

Lincoln, RI

**Narragansett Bay
Commission
Septage
Receiving
Equipment**

**Request for
Proposals**



**W&C Project No. 0234475.00
NBC Project No. 710.00D**

**Narragansett Bay
Commission**

February 2025

SECTION 00010

TABLE OF CONTENTS - REQUEST FOR PROPOSAL

INTRODUCTORY INFORMATION

00010 Table of Contents

PROPOSAL DOCUMENTS

00100 Request for Proposal

00215 Instructions to Proposers

Evaluation Matrix

Statement of Intent

Proposal Security

Sample NBC's Construction Contract (with terms and conditions)

CWSRF AIS Requirements

Sample Section 01060 Permits and Regulatory Requirements

Sample Section 01068 State and Federal Requirements

Sample Section 01300 Submittals

Sample Section 01600 Material & Equipment

Sample Section 01730 Operation, Maintenance and Instruction Manuals

Sample Section 01740 Warranties

Certification Regarding Debarment & Suspension and Other Responsibility Matters Form

Disclosure Questionnaire – Debarment & Suspension

Certification Regarding Federal Lobbying

Disclosure Questionnaire – Lobbying Activities

PRICE PROPOSAL - TO BE SUBMITTED TOGETHER IN A SEPARATE PACKAGE FROM THE TECHNICAL PROPOSAL

00415 Proposal Form

00416 Unit Prices Form for Contract Price Adjustments for Additional Work

00215 Proposal Surety Bond

TECHNICAL PROPOSAL - TO BE SUBMITTED TOGETHER IN A SEPARATE PACKAGE FROM THE PRICE PROPOSAL

00435 Information, Schedules and Data

00450 Non-Collusion Affidavit

SPECIFICATIONS

11305 Septage Receiving Equipment

END OF SECTION

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SECTION 00100

REQUEST FOR PROPOSAL

The Narragansett Bay Commission (The Commission) invites submission of Proposals for a fully automatic, self-cleaning, septage receiving unit and its associated controls; 1-year warranty; and services by a manufacturer's field service engineer to perform field services in accordance with the Request for Proposal for Equipment Preselection for septage receiving equipment at the Lincoln Septage Receiving Facility in Lincoln, RI. The Commission intends to select an Equipment Supplier and will enter into a Statement of Intent with the Equipment Supplier as a result of this Request for Proposal (RFP). **A contract will not be awarded.**

The Proposal of the selected Equipment Supplier will then be included in the construction design and as a required bid item in the Commission's separate bidding documents for construction of the Lincoln Septage Receiving Facility Improvements, subject to Rhode Island General Law. Upon award of the separate construction contract (which is planned to be awarded on or about April 2026), the Equipment Supplier will provide the septage receiving equipment under a Supplier subcontract to the construction Contractor.

Note that the Commission's construction Project (for which the pre-selected equipment is intended to be a part) is to be funded in part with monies made available by the Clean Water State Revolving Fund (SRF) and EPA's Water Infrastructure Finance and Innovation Act (WIFIA). Therefore, the equipment provided must be in accordance with the American Iron and Steel requirements of P.L. 113-76 (the Consolidated Appropriations Act of 2014); and Equipment Supplier must agree to comply with applicable requirements.

The Proposal Documents may be obtained **electronically** at no cost at the following locations to be included on the Proposers List.

<https://www.narrabay.com/about-us/purchasing/bid-opportunities/> and
<https://purchasing.ri.gov/bidding/externalbidsearch.aspx>

Instructions for accessing the Proposal Documents will then be provided to all parties on the Proposer's list which will be maintained by the Engineer at the Issuing Office.

Each Proposal shall be accompanied by a Proposal Surety Bond in the amount of 5 percent of the Total Proposed Price. This Surety Bond shall be in the form and subject to the conditions provided in Section 00215 Instructions to Proposers, Article 4, Submittal of Proposals.

Written requests for interpretation of the Proposal Documents will be accepted via e-mail no later than 4:00 PM local time on February 19, 2025. No oral requests for interpretations will be accepted. Requests should be sent to:

Michael Caruolo, PE

Mcaruolo@narrabay.com

With a copy to: Amanda Sparks, Engineer asparks@woodardcurran.com

Responses to all the questions will be compiled and addressed by Addendum which will be e-mailed to each Proposer and posted on the original RFP Document site locations.

Complete responses must be received at the below address **on or before 10:00 AM local time on Thursday, March 6, 2025.**

THERE WILL BE NO EXCEPTIONS TO THIS DEADLINE. Faxed or emailed Proposals will not be accepted. No supplemental material will be accepted after this date.

Respondents shall submit 6 hard copies of each separate portion of its Proposal (Technical and Price) to:

Narragansett Bay Commission

Corporate Office Building

One Service Rd.

Providence RI 02905

Attention: Emilia Petteruti, Purchasing Manager.

It is the responsibility of Proposers to ensure responses arrive by the due date and time indicated.

All copies shall be subject to all Proposal submittal requirements. The submitted Proposal must follow the instructions and address all categories and performance dimensions indicated in the Proposal Documents. Failure to complete and address all requirements may result in rejection of a Proposal.

Proposals **must be submitted in 2 separate folders** marked "TECHNICAL PROPOSAL" and "PRICE PROPOSAL". The Price and Technical proposals may be bundled in one complete submittal package, containing the two separate folders, marked "TECHNICAL PROPOSAL" and "PRICE PROPOSAL".

THERE MUST BE NO MENTION OF THE PROPOSER'S PRICE IN ITS TECHNICAL PROPOSAL. ANY MENTION OF PRICE IN THE TECHNICAL PROPOSAL WILL BE CAUSE FOR REJECTION.

The Commission reserves the right to accept or reject any or all Proposals submitted. The Commission will review and analyze each Proposal and reserves the right to interview selected Proposers. The Commission will select the Proposer, which in the Commission's opinion, has submitted the Proposal deemed to comply with the terms of Proposal Documents and best suited to meet the needs and goals of the Commission and its operations.

Furthermore, the Proposal does not commit the Commission to pay any costs incurred by the Equipment Supplier in association with the preparation, submittal and management of Proposal packages submitted, including development of subsequent work scopes, price proposals, negotiations and carrying out interview presentation, if any, and does not commit the Commission or the State of Rhode Island to procure or contract any service.

END OF SECTION

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SECTION 00215

INSTRUCTIONS TO PROPOSERS

ARTICLE 1 - COPIES OF PROPOSAL DOCUMENTS

- 1.01 Complete sets of the Proposal Documents may be examined and obtained as indicated in the Request for Proposal issued by Woodard & Curran (Engineer).
- 1.02 Proposal Documents shall be used in preparing Proposals; neither the Commission nor Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Proposal Documents, Proposal Documents provided by third parties, or for modifications to the Proposal Documents not made by official Addenda, including electronic conversion.
- 1.03 The Commission and Engineer have made copies of Proposal Documents available on the above terms only for the purpose of obtaining Proposals for pre-selection purposes and do not authorize or confer a license for any other use.

ARTICLE 2 - INTERPRETATIONS AND ADDENDA

- 2.01 All questions about the meaning or intent of the Proposal Documents are to be submitted to Engineer as indicated in the Request for Proposal.
- 2.02 Interpretations or clarifications considered necessary in response to such questions will be issued by Addenda, emailed to all parties recorded as having received the Proposal Documents. Only answers in the Addenda will be binding.

ARTICLE 3 - PREPARATION OF PROPOSAL

- 3.01 The Proposal Form and supplements are included with the Proposal Documents.
- 3.02 The Proposal shall be bound by 8 ½-inch by 11-inch format and may include single-sided or double-sided pages. Pages that are 11-inch by 17-inch may also be used but must be folded to fit the 8 ½-inch by 11-inch format when bound. No rigid page limit will be applied to the Technical Proposal, but brevity is encouraged. Excessive submittal length may be considered detrimental when the Commission is evaluating Proposals.
- 3.03 Fonts in the text and tables of the Proposal shall be a minimum size of 11 points. Figures shall have appropriately sized, readable fonts. Drawings and other graphic materials, including photographs, shall be included where appropriate.
- 3.04 Proposals are to be submitted as indicated in the Proposal Form. All blanks on the Proposal Form shall be completed in ink or typed and the Proposal Form signed in ink. Erasures or alterations shall be initialed in ink by the person signing the Proposal Form. A Proposal price shall be indicated for each item listed therein. In the case of optional alternates, the words “No Proposal,” “No Change,” or “Not Applicable” may be entered.

- 3.05 A Proposal by a corporation shall be executed in the corporate name by the president or a vice-president or other corporate officer accompanied by evidence of authority to sign. The corporate seal shall be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation shall be shown.
- 3.06 A Proposal by a partnership shall be executed in the partnership name and signed by a partner (whose title must appear under the signature), accompanied by evidence of authority to sign. The official address of the partnership shall be shown.
- 3.07 A Proposal by a limited liability company shall be executed in the name of the firm by a member and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm shall be shown.
- 3.08 A Proposal by an individual shall show the Proposer's name and official address.
- 3.09 A Proposal by a joint venture shall be executed by each joint venturer in the manner indicated on the Proposal Form. The official address of the joint venture shall be shown.
- 3.10 All names must be printed in ink below the signatures.
- 3.11 The Proposal shall contain an acknowledgment of receipt of all Addenda, the numbers of which shall be filled in on the Proposal Form.
- 3.12 Each Proposer shall list the postal address, e-mail address, and telephone number for communications regarding the Proposal.
- 3.13 The Proposal shall contain evidence of Proposer's authority and qualification to do business in the state of the Project, or Proposer shall covenant in writing to obtain such authority and qualification prior to award of the Owner's construction contract, and attach such covenant to the Proposal.
- 3.14 Proposers are advised to carefully review those portions of the Proposal Form and Proposal Documents requiring Proposer's representations and certifications that are to be submitted with a Proposal or subsequent to the Proposal opening, and that are made a condition of the Proposal.

ARTICLE 4 - SUBMITTAL OF PROPOSALS

- 4.01 Refer to the Request for Proposal for information for time and location for submission of Proposals.
- 4.02 Each Proposal submitted shall be accompanied by a Surety Bond in the amount of five percent of the total proposal amount.
 - A. The amount of the bond shall be designated in Section 00100 Request for Proposal.
 - B. The bond must be enclosed in the sealed envelope within the PRICE PROPOSAL.

- C. Each bond may be held by the Commission as security for the fulfillment of the Proposer's commitment that the Proposer will not withdraw its Proposal while it is being considered. If the Proposal is accepted by the Commission, as indicated by issuance of a Letter of Intent to the selected Proposer, the deposit will be held by the Commission as security for the fulfillment of the Proposer's promises that the Proposer will enter into a Supplier subcontract with the construction Contractor who is selected by the Commission to construct the Project and provide the equipment and services as established in the Proposal. Should the Proposer fail to fulfill such agreements, any check shall become the property of the Commission or if a bond was furnished, the bond shall become payable to the Commission, as liquidated damages; otherwise, the security check shall be returned to the Proposer as hereinafter provided, or if the security is a bond, the bond shall become null and void.
 - D. The bonds will be returned promptly if no selection has been made within 90 calendar days after the date of the receipt of Proposals, or; if said Proposal shall be rejected or withdrawn as provided in this Section. In the alternative, if said Proposal shall be accepted and the Proposer shall enter into a Supplier subcontract with the Commission's chosen construction Contractor, then this obligation shall be void. Otherwise, it shall remain in full force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder in no event shall exceed the amount of this obligation.
 - E. The Surety bond shall be in no way impaired or affected by any extensions of the time within which such Proposal may be accepted, and Surety shall waive notice of any such extensions.
- 4.03 Proposals must be submitted in 2 separate folders marked "TECHNICAL PROPOSAL" and "PRICE PROPOSAL". **THERE MUST BE NO MENTION OF THE PROPOSER'S PRICE IN ITS TECHNICAL PROPOSAL. ANY MENTION OF PRICE IN THE TECHNICAL PROPOSAL WILL BE CAUSE FOR REJECTION.**
- 4.04 **Failure to comply with above requirements may be cause for immediate rejection.**
- 4.05 A complete and responsive Proposal must include the following.
- A. **PRICE PROPOSAL:** Complete and executed Section 00415 Proposal Form and Section 00416 Unit Prices Form for Contract Price Adjustments for Additional Work. Also include the Proposal Security in a sealed envelope as detailed above.
 - B. **TECHNICAL PROPOSAL:** Completed Section 00435 Information, Schedules and Data and submission of requested documentation and drawings and completed and executed Non-Collusion Affidavit.

ARTICLE 5 - MODIFICATION AND WITHDRAWAL OF PROPOSAL

5.01 A Proposal may be withdrawn by an appropriate document duly executed in the same manner that a Proposal must be executed and delivered to the place where Proposals are to be submitted prior to the date and time for the opening of Proposals.

ARTICLE 6 - OPENING OF PROPOSALS

6.01 Proposals will be opened at the time and place indicated in the Request for Proposal.

ARTICLE 7 - PROPOSALS TO REMAIN SUBJECT TO ACCEPTANCE

7.01 All Proposals will remain subject to acceptance for the period of time stated in the Proposal Form and indicated in the Statement of Intent, if any.

ARTICLE 8 - EVALUATION OF PROPOSALS

8.01 For the pre-selection process, competitive Proposals are being solicited which include capital cost information as well as guaranteed minimum performance criteria that can be used in the evaluation and selection process.

- A. The evaluation will consider the initial equipment cost, operating costs, maintenance costs and other costs related to the equipment system.
- B. Qualifications, service experience and support services available will be significant factors used to select the equipment, but other factors may also be considered.

8.02 The Commission has established specific criteria for Proposal evaluation reflected in the Proposal Evaluation Matrix detailing the criteria and ratings which is included as an attachment to this section. The evaluation committee will use the comparative criterion for each separate rating area, and based upon this criterion, will assign an overall rating to each Proposal.

- A. Each of the criterion shall contain ratings of:

- Highly Advantageous
- Advantageous
- Not Advantageous
- Unacceptable

B. Criteria to be Rated

Minimum Criteria
Responsiveness
Qualifications
Life Cycle Costs
Compatibility
System performance
Maintenance

8.03 Completed Section 00435 Information, Schedules and Data from Proposers, along with documentation and drawings submitted, will be used for determining Proposer responsiveness and in evaluating qualifications, support services, service/maintenance, system performance.

A. Proposers may be investigated by the Commission to determine if they are qualified to supply the equipment specified. All Proposers shall be prepared to submit within 5 days of Commission's request, written evidence of such information and data necessary to make this determination in addition to that requested in Section 00435.

B. The investigation of a Proposer will be to determine whether the organization is adequate in size, is authorized to do business in the jurisdiction where the Project is located, has had previous experience, owns/licenses or distributes the technology, has process engineering, project management and engineering support in the United States, and whether available equipment and financial resources are adequate to assure the Commission that the specified equipment will be provided in accordance with the Specifications.

C. The Commission reserves the right to reject any Proposal if the evidence submitted by or the investigation of such Proposer fails to satisfy the Commission that such Proposer is properly qualified to provide the specified equipment.

8.04 The completed and executed Section 00415 Proposal Form will be used to evaluate costs.

8.05 Section 00416 Unit Prices Form for Contract Price Adjustments for Additional Work and the completed and executed Section 00450 Non-Collusion Affidavit will be used to determine responsiveness only.

8.06 The Commission reserves the right to accept or reject any or all of the Proposals submitted. The Commission will review and analyze each Proposal and reserves the right to interview selected Proposers. The Commission will select the Proposer, which in the Commission's opinion, has submitted the Proposal deemed to comply with the terms of Proposal Documents and best suited to meet the needs and goals of the Commission and its operations.

ARTICLE 9 - SUCCESSFUL PROPOSAL FOR PRE-SELECTION

9.01 It is the Commission's intent that the selected Septage Receiving Equipment be included in the construction design and named as a required item in the Commission's separate bidding documents for construction of the Lincoln Septage Receiving Facility Improvements Project. The Commission intends to enter into a Statement of Intent (a sample of which is included as an attachment to this Section) with the selected Equipment Supplier reflecting the following.

- A. The Proposal will remain subject to acceptance until award of the construction contract, however, in case of delay, the Proposal Price(s) may thereafter be adjusted based upon the pricing index identified in the Statement of Intent, for the period between the date of the Proposal and the actual award of the construction contract.
- B. The selected septage receiving equipment will be included in the construction design and Shop Drawings and other submittals will be required in advance of the issuance of the construction contract.
- C. The selected septage receiving equipment will be named as a required item in the Commission's separate bidding documents for construction of the Lincoln Septage Receiving Facility Improvements Project. The construction bidders will be required to include the selected septage receiving equipment at the price quoted in the Proposal (adjusted as described above).
- D. The selected Equipment Supplier will subcontract directly with the successful construction Contractor as a Supplier and be bound by the required construction schedule and contract. The Commission intends to include the following provisions in the construction contract with regard to the pre-selected equipment and subject to the terms and conditions of the construction contract that will be based on the Commission's Contract (with terms and conditions) and the terms included in Article 10 of this Section. A copy of the Commission's Contract is included as an attachment to this Section for informational purposes and is subject to change.
 1. All Shop Drawings and Samples required shall be submitted for review and approval **within 30 days** after the receipt of order or notice to proceed from the construction Contractor.
 2. The equipment shall be delivered to the Site **within 120 days** after approval of Shop Drawings and receipt of notice to ship by the construction Contractor.
 3. Furnishing of field services to construction Contractor will commence in accordance with the approved construction schedule.
 4. Progress Payments; Retainage for Septage Receiving Equipment
 - a. **10 percent** of the equipment Proposal price upon approval of all Shop Drawings and submittals

- b. An additional **70 percent** of the equipment Proposal price upon acceptance of delivery by construction Contractor
 - c. An additional **10 percent** of the equipment Proposal price upon correction of all non-conformities, completion of field services, submission of test reports and all other required documents, less any set offs or withholding, including but not limited to, liquidated damages
 - d. Final **10 percent** of the equipment Proposal price at Final Completion of construction and trainings, less any set offs or withholding, including but not limited to, liquidated damages.
- E. Comply with applicable Clean Water State Revolving Fund (SRF) and EPA’s Water Infrastructure Finance and Innovation Act (WIFIA) requirements including the American Iron and Steel requirements of P.L. 113-76 (the Consolidated Appropriations Act of 2014). See requirements attached.
- F. Comply with the following sections, which will be included in the Construction Contract Documents: Section 01060 Permits and Regulatory Requirements; Section 01068 Federal and State Requirements; Section 01300 Submittals; Section 01600 Material & Equipment; Section 01730 Operation, Maintenance and Instruction Manuals; and Section 01740 Warranties. Sample sections are appended to this Section for reference.
- G. Agree that all obligations of the selected Equipment Supplier shall become obligations to the construction Contractor, as well as continuing obligations to the Commission.
- H. Provide 3D equipment drawings in .rfa or .sat file format compatible with Revit 2024.
- I. Honor the equipment, materials and services costs for the time period listed in the method for cost escalation of the Septage Receiving Equipment, provided in Section 00415 Proposal Form.
- J. Agree to provide equipment, materials and services at an adjusted selling price, calculated based on the method identified in Statement of Intent, in the event that construction contract award for the Project occurs later than the time period listed in Section 00415 Proposal Form.
- K. Agree to furnish replacement parts at a guaranteed price calculated based on the cost escalation method described in Statement of Intent. (The Commission reserves the right to delete optional items from the scope of supply and deduct the cost of these optional items from the proposed price.)
- 9.02 If for any reason the Commission does not award the Project, the Commission is under no obligation to purchase the equipment, materials, and services in the Proposal, or pay for

work performed by the Equipment Supplier in preparing submittals and assisting the Engineer during the design phase.

ARTICLE 10 - ADDITIONAL REQUIREMENTS

- 10.01 **Federal Requirements** - The Commission's construction Project (for which the pre-selected equipment is intended to be a part) is to be funded in part with monies made available by the Clean Water State Revolving Fund (SRF) and EPA's Water Infrastructure Finance and Innovation Act (WIFIA). Therefore, the equipment provided must be in accordance with the American Iron and Steel requirements of P.L. 113-76 (the Consolidated Appropriations Act of 2014). Refer to the attached requirements.
- 10.02 **Rhode Island Sales and Use Tax** – The materials and equipment proposed will be exempt from Rhode Island Sales and Use Tax. The Commission will supply the construction contractor with the required tax information who in turn shall provide it to the Equipment Supplier upon execution of a subcontract. Each Proposer shall take this exemption into account in calculation its Proposal.
- 10.03 **Public Records** – Proposers are advised that all documents, correspondence, and other submission to the Commission may be accessible as public records, pursuant to Title 38, Chapter 2 of the General Laws, absent specific notice that portions of such submittals may contain confidential or proprietary information, such that public access to those items should be withheld.
- A. Any information submitted to the Commission pursuant to the Request for Proposal may be claimed as confidential by the Proposer. This claim must be asserted at the time of submission in the manner described below. If no claim made at this time of the submission, the Commission or authorized state or federal agencies may make the information available to the public without further notice.
1. A business confidentiality claim may be asserted by attaching or placing on this information, a cover sheet, or a stamped or types legend upon each page, or other suitable form of notice employing language such as “trade secret”, “proprietary”, or “company confidential”. Allegedly confidential portions of otherwise non-confidential documents should be clearly identified as such and may be submitted separately to facilitate identification and handling of the Commission. If confidential treatment is desired only until a certain date or until the occurrence of a certain event, this should also be clearly indicated. Information covered by such claims will be disclosed only to the extent, and by means of the procedures set forth by state or federal law. However, in the even that such ascertain of confidentiality is made for any information which is subject to public disclosure pursuant to RIGL Chapter 38-2, such information shall be made available to the public upon request.
- 10.04 **Civil Rights Act** - The Proposer is required to comply with Title VI of the Civil Rights Act of 1964 42 U.S.C.204 to d4 and such rules, regulations or guidelines as the State of Rhode Island may issue to implement these requirements.

10.05 **Conflict of Interest** – The Proposer must provide a signed letter certifying that it has reviewed all current and/or pending contractual obligations and assignments of its personnel and proposed staff and that no potential conflict of interest or unfair advantage exists.

- A. Proposers with recently completed (past 12 months), ongoing or pending contracts with private developers or governmental entities in Rhode Island must list these contracts. Details must include project names, locations, nature of assignment, expected start and completion, approximate dollar value of contract, developer or governmental entity for whom the work was/will be performed, prime contractor (if your firm was a subcontractor) firm's project manager or responsible officer, and names and addresses of reviewing and/or approving governmental entities, if applicable. The Commission will consider this information a possible conflict of interest and reserve the right, as its sole discretion, to eliminate respondents based on findings.

10.06 **Debarment, Suspension, Ineligibility, and Voluntary Exclusion** – The Equipment Supplier, by submission of its Proposal, certifies that neither it nor its principals, or its material suppliers

- is presently excluded, disqualified, debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal, state, or local department or agency,
 - has been convicted of or had a civil judgment rendered against it within the preceding 3-year period for an offense contemplated in C.F.R. 180.800(a) and is not presently indicted for or otherwise criminally or civilly charged by a federal, state, or local governmental entity for such an offense,
 - has had one or more public federal, state, or local transactions terminated for cause within the preceding 3-year period, and/or
 - is not delinquent on a government debt.
- A. The Equipment Supplier shall also submit an executed Certification Regarding Debarment & Suspension and Other Responsibility Matters with its Proposal, as well as the Disclosure Questionnaire. If the Equipment Supplier or any of the Equipment Supplier's lower tier subcontractors or material suppliers is unable to make the certifications relating to Debarment, Suspension, Ineligibility and Voluntary Exclusion, it shall attach a written explanation in its Proposal.
- B. The inability of the Equipment Supplier to make the certifications, with or without a written explanation, may be cause for disqualification. The Equipment Supplier further agrees by submitting its Proposal that it will include this clause without modification in all lower tier subcontracts.

10.07 **Federal Lobbying Activities** – The Equipment Supplier, by submission of its Proposal, certifies neither it nor its principals, or its material suppliers, that to the best of his or her knowledge and belief, that:

- A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned or the Equipment Supplier, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Proposal for and Statement of Intent between the COMMISSION, and the extension, continuation, renewal, amendment, or modification of the same.
- B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Proposal for and Statement of Intent between the COMMISSION, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” (Attachment) in accordance with its instructions.
- C. The undersigned shall require that the language of this certification be included in the selection/award documents for all subawards/sub-selections at all tiers (including subcontracts, subgrants, and contracts under this Proposal for and Statement of Intent between the COMMISSION) and that all subrecipients shall certify and disclose accordingly.
- D. This certification is a material representation of fact upon which reliance was placed when this Proposal for and Statement of Intent between the COMMISSION was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- E. The Equipment Supplier shall also submit an executed Certification Regarding Federal Lobbying Activities with its Proposal, as well as the Disclosure Questionnaire for Lobbying Activities. If the Equipment Supplier or any of the Equipment Supplier’s lower tier subcontractors or material suppliers is unable to make the certifications relating to Federal Lobbying Activities, it shall attach a written explanation in its Proposal.
- F. The inability of the Equipment Supplier to make the certifications, with or without a written explanation, may be cause for disqualification. The Equipment Supplier further agrees by submitting its Proposal that it will include this clause without modification in all lower tier subcontracts.

ARTICLE 11 - ATTACHMENTS

- Proposal Evaluation Matrix
- Sample Statement of Intent
- Proposal Security
- Sample NBC's Construction Contract (with terms and conditions)
- CWSRF AIS Requirements
- Sample Section 01060 Permits and Regulatory Requirements
- Sample Section 01068 Federal and State Requirements
- Sample Section 01300 Submittals
- Sample Section 01600 Material and Equipment
- Sample Section 01730 Operation, Maintenance and Instruction Manuals
- Sample Section 01740 Warranties
- Certification Regarding Debarment & Suspension and Other Responsibility Matters Form
- Disclosure Questionnaire – Debarment & Suspension and Other Responsibility Matters
- Certification Regarding Federal Lobbying
- Disclosure Questionnaire – Lobbying Activities

END OF SECTION

00215A - EVALUATION MATRIX

	Selection Criteria	Highly Advantageous	Advantageous	Not Advantageous
Minimum Criteria	Price Proposal Submitted (Y/N)	<p style="color: red;">Minimum Criteria must be met in order for the Proposal to be further considered. Proposals which do not meet the minimum criteria will be disqualified from further consideration.</p>		
	Technical Proposal Submitted (Y/N)			
	Required Forms Completed (Y/N)			
	General conformance with Technical Requirements (see below)			
Responsiveness	Overall Completeness of Proposal Submittals	The Proposal is complete and thorough per requirements in Section 00435. The data sheets and drawings provided show detailed information on the proposed equipment and all ancillary equipment.	The Proposal is generally complete per requirements in Section 00435. The data sheets and drawings provided generally show the detailed information and proposed equipment provided but not all information is included.	The Proposal is incomplete per requirements in Section 00435. The data sheets and drawings are missing key pieces of information related to the proposed equipment and all ancillary equipment.
Qualifications	References	The Proposal includes many strong and credible client references with accurate contact information.	The Proposal includes some strong and credible client references with contact information.	The Proposal includes few strong credible client references with contact information.
	Company Experience	Has at least 10 years' experience, with a proven track record, providing septage receiving equipment to wastewater utilities and meets requirements in Section 11305.	Has 5-10 years' experience providing septage receiving equipment to wastewater utilities and generally meets requirements in Section 11305.	Has less than 5 years' experience, with a limited track record, providing septage receiving equipment to wastewater utilities.
Costs	20-year Lifecycle Cost	Lifetime capital and operations and maintenance costs are low and cost competitive.	Lifetime capital and operations and maintenance costs are generally low and cost competitive.	Lifetime capital and operations and maintenance costs are high and are not cost competitive.
Compatibility with Existing Site	Dimensions of the proposed equipment and ancillary equipment (Height, Length, Width, Diameter)	Dimensions of the proposed equipment and ancillary equipment allow for a compact building.	Dimensions of the proposed equipment and ancillary equipment allow for a moderately sized building.	Dimensions of the proposed equipment and ancillary equipment require a building with a large footprint.

	Selection Criteria	Highly Advantageous	Advantageous	Not Advantageous
System Performance	Technical Quality of proposed equipment	The proposed equipment submitted appear to be well suited for the application.	The proposed equipment submitted appear somewhat well-suited for the application.	The proposed equipment submitted do not appear suitable for the application.
	Conformance with Technical Specifications	The proposed equipment conforms with the Specifications or has exceptions which will not impact performance and durability.	The proposed equipment generally conforms with the Specifications, with exceptions that will have minor impacts on performance or durability.	The proposed equipment does not conform with the Specifications and has exceptions which will have major impacts on performance or durability.
Maintenance	Maintenance Schedule and Replacement Parts Costs	The proposed equipment maintenance schedule is reasonable, and costs are comparative to existing station maintenance costs.	The proposed equipment maintenance varies moderately from the existing station's maintenance schedule and costs.	The proposed equipment maintenance varies significantly from the existing station's maintenance schedule and costs.
	Proximity of Service Center	The proposed service center/technicians are within close proximity to the site and can be deployed to the facility within a reasonable timeframe should service be required.	The proposed service center/technicians are within average proximity to the site and can be deployed to the facility within a reasonable timeframe should service be required.	The proposed service center/technicians are not within proximity to the site and may not be deployed to the facility within a reasonable timeframe should service be required.

00215B

SAMPLE STATEMENT OF INTENT

DATE

SELECTED EQUIPMENT SUPPLIER
ADDRESS
CONTACT

RE: Statement of Intent to Pre-Select Septage Receiving Equipment for the
The Narragansett Bay Commission Lincoln Septage Receiving Facility Improvements

In response to the Request for Proposals dated _____ issued by the Narragansett Bay Commission of Providence, RI and based on the Proposal received from _____ (Equipment Supplier) in response to the Request for Proposal, the Commission has selected the Equipment Supplier's Septage Receiving Unit to be included in the Lincoln Septage Receiving Facility Improvements.

It is the Commission's intent that the selected septage receiving equipment be included in the construction design and named as a required item in the Commission's separate bidding documents for construction of the Lincoln Septage Receiving Facility Improvements. The construction Bidders will be required to include the selected septage receiving equipment at the price quoted in your Proposal (adjusted as described below).

The Equipment Supplier's Proposal shall remain subject to acceptance until award of the construction contract, anticipated to be April 2026, however, the Proposal Price(s) may be adjusted prior to issuing Bidding Documents for construction based upon the index below in case of delay.

The Proposal Price(s) must not be subject to change until April 2026. The Proposal Price(s) may thereafter be adjusted for the period between April 2026 and the issue date of the Bidding Documents for construction and/or upon award of the construction contract based on Engineering News Record (ENR) 20 City Construction Cost Index.

Since the Engineer's design will be based on the Equipment Supplier's Septage Receiving Equipment, Shop Drawings and other submittals will be required in advance of the issuance of the construction contract. Please provide the Shop Drawings and submittals listed in the attachment within 30 days of acceptance of this Statement of Intent.

It is the Commission's intent that the Equipment Supplier subcontract directly with the successful construction contractor and be bound by the required construction schedule and contract. The Commission intends to include the following provisions in the construction contract with regard to the pre-selected equipment and subject to the terms and conditions of the Contract that will be based on the Commission's standards as included in the RFP (see Construction Agreement and Division 01 sections) and the terms included in Section 00215 Instructions to Proposers.

Construction Contract Provisions

1. All Shop Drawings and Samples required shall be submitted for review and approval (and confirmation of compliance with those submitted under the Statement of Intent) **within 30 days** after the receipt of order or notice to proceed from the construction Contractor.
2. The equipment shall be delivered to the Site **within 120 days** after approval of Shop Drawings and receipt of notice to ship by the construction Contractor.
3. Furnishing of field services to construction Contractor will commence in accordance with the approved construction schedule.
4. Progress Payments; Retainage for Septage Receiving Equipment
 - **10 percent** of the equipment Proposal price upon approval of all Shop Drawings and submittals
 - An additional **70 percent** of the equipment Proposal price upon acceptance of delivery by construction Contractor
 - An additional **10 percent** of the equipment Proposal price upon correction of all non-conformities, completion of field services, submission of test reports and all other required documents, less any set offs or withholding, including but not limited to, liquidated damages
 - Final **10 percent** of the equipment Proposal price at Final Completion of construction and trainings, less any set offs or withholding, including but not limited to, liquidated damages.

0234475.00
Issue Date: February 2025

Narragansett Bay Commission Septage Receiving Equipment Preselection
Lincoln, RI

Please sign and return a copy of this Statement as your acknowledgement and agreement with the provisions of this Statement.

On behalf of the Narragansett Bay Commission

LAURIE A. HORRIDGE, EXECUTIVE DIRECTOR

ACKNOWLEDGED AND AGREED

[Equipment Supplier NAME]

[COMPANY NAME]

Date:

Attachments: Equipment Supplier Proposal

SHOP DRAWINGS AND SUBMITTALS

Product Data

- Septage Receiving Equipment
 - Septage receiving equipment screen, valves, instrumentation, and controllers.
- Washpress
 - Washpress, compactor, valves, instrumentation, and controllers.
- Control Panel
 - Panel, controller, operator interface, and network devices.
- Hauler Access Station
 - Package system data including access panel, user interface, program details.

Shop Drawings for all systems to include:

- Layout and dimensions of equipment, major components, key alignment locations and locations of bolt holes, location of access points for maintenance and operations on the equipment, critical dimensions identified by manufacturer.
- Wiring and schematic diagrams and any other details required to demonstrate that system has been coordinated and will properly function as a unit.
- Proposed layouts and anchorage of equipment and appurtenances and equipment relationships to other parts of the Work including clearances for maintenance and operation.
- Process and Instrumentation Diagrams (P&IDs) showing equipment and instrumentation to be controlled by the manufacturer's control system.
- Manufacturers and specific part numbers for each component, installation details and electronic Revit 2024 blocks/files (.rfa or .sat) of all equipment for integration into the Engineer's design.

PROPOSAL SURETY BOND

KNOW ALL MEN BY THESE PRESENTS, that we the undersigned

_____, as Principal, and
(insert name of Proposer)

_____, as Surety, are hereby
(insert name of surety)

held and firmly bound unto the Narragansett Bay Commission, NBC Corporate Office Building, 1 Service Road, Providence, RI 02905, as Owner, in the sum of 5% of the Proposal as liquidated damages for payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns.

The condition of this obligation is such that whereas the Principal has submitted to the Narragansett Bay Commission a certain Proposal attached hereto and hereby made a part hereof, to enter into a Letter of Intent for Narragansett Bay Commission Septage Receiving Equipment Preselection and subsequently enter into a Supplier subcontract with the Commission's construction Contractor if awarded.

NOW THEREFORE,

(a) If said Proposal shall be rejected or withdrawn as provided in the Instructions to Proposers included in the RFP, in the alternative,

(b) If said Proposal shall be accepted and the Principal shall duly execute and deliver the Letter of Intent attached hereto and enter into a Supplier subcontract with the Commission's construction Contractor if awarded. Then this obligation shall be void, otherwise it shall remain in full force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder in no event shall exceed the amount of this obligation.

The Surety, for value received, hereby agrees that the obligations of said Surety and its bond shall be in no way impaired or affected by any extensions of the time within which such Proposal may be accepted, and said Surety does hereby waive notice of any such extensions.

IN WITNESS WHEREOF, the parties hereto have duly executed this bond on the _____ day of _____, 20__.

(SEAL)

_____ L.S.
(Name of Principal)

By _____

(SEAL)

(Name of Surety)

By _____

Sealed and delivered
in the presence of

SAMPLE NBC CONSTRUCTION AGREEMENT (CA)

Project Title: _____ (hereinafter, the “Project”).

Project Location: _____

Contract: _____

THIS Agreement, is made as of this _____ day of _____ 20__.

(hereinafter, the “Agreement”) by and between the Narragansett Bay Commission, with an address of NBC Corporate Office Building, 1 Service Road, Providence, RI 02905, acting by and through its Commission, duly authorized therefor, which acts herein solely for said Commission and without personal liability to itself, hereinafter referred to as the “Owner,” and _____, a corporation organized and existing under the laws of the State of _____, with an address of _____ (hereinafter referred to as the “Contractor”).

WITNESSETH, that the Owner and the Contractor, each in consideration of the undertakings, promises, and agreements on the part of the other herein contained, have undertaken, promised, and agreed and do hereby undertake, promise, and agree, the Owner for itself, its successors and assigns, and the Contractor for itself and its heirs, executors, administrators, successors and assigns, as follows:

1. The Contractor will furnish all labor, services, materials, equipment, plant, machinery, apparatus, appliances, tools, supplies, and all other things necessary to do all work required for the completion of the Project as specified and described herein.
2. As specified and described herein, the Contractor will commence the work required by the Contract Documents on a date specified in a written “Notice to Proceed.”
3. The Contractor will fully complete the Project before the expiration of the time limit stipulated in Table A of this Agreement unless the period for completion is extended otherwise by and in accordance with the Contract Documents. The Contractor further agrees to pay delay damages for each calendar day of delay in completing all obligations and work required within the time specified. The value of the delay damages is indicated in Table A included herewith as part of the Agreement.
4. The Contractor agrees to perform all of the work specified in the Contract Documents and necessary to complete the Project, and comply with the terms therein for the total Contract Price of \$ _____.
5. The Owner will pay to the Contractor in the manner and at such times as set forth in this Agreement such amount as required by the Contract Documents.
6. Nothing herein shall be construed as creating any personal liability on part of any officer or agent of any public body which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the Owner and Contractor.
7. This Agreement represents the entire understanding of the Owner and Contractor to those matters contained herein. No prior oral or written understanding shall be of any force or

effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing signed by both parties.

8. This Agreement shall be administered and interpreted under the laws of the State of Rhode Island. Jurisdiction over all disputes arising from this Agreement shall be in that state.
9. If any part of this Agreement is found by a court of competent jurisdiction to be in conflict with applicable laws, such part shall be inoperative, null, and void insofar of this Agreement shall be in full force and effect.
10. This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.
11. This Agreement includes Table A included herewith as part of Section CA.

IN WITNESS THEREOF, the parties to this Agreement have hereunto set their hands and seals as of the day and year first above written. Four copies of this form shall be signed and sealed, with original signatures and seals, by the parties to this Agreement.

OWNER:

NARRAGANSETT BAY COMMISSION:

by: _____
Vincent J. Mesolella Jr., Chairman

by: _____
Laurie Horridge, Executive Director

CONTRACTOR:

by: _____

(Name and Title)

Certificate of Acknowledgment
of Contractor if a Corporation

For Agreement

I have the authority to execute this document on behalf of _____, the corporation described herein; I know the corporate seal of said corporation; the seal affixed to the foregoing instrument is such corporate seal and it was so affixed by order of the Board of Directors of said corporation; and that by the authority of said corporation, I signed thereto my name and official designation on behalf of the corporation.

Corporate Officer

State of _____)

County of _____)

On this _____ day of _____, 20____,

before me personally came _____,
the _____ of _____ to me known, and known by me to be the party executing the foregoing instrument on behalf of said corporation and he/she acknowledged said instrument by him/her executed to be his/her free act and deed, individually and in his/her said capacity and the free act and deed of said corporation

Notary Public (Seal)

My commission expires _____

INDEX

Article 1	Conventions and Definitions
§1.1	Conventions
§1.2	Definitions
Article 2	Owner
§2.1	Access to Work
§2.2	Audit Access to Records
§2.3	Right to Withhold Monies
Article 3	Contractor
§3.1	Obligations and Liability of Contractor
§3.2	Compliance with Laws
§3.3	Supervision of Work
§3.4	Employ Competent Persons
§3.5	Employ Sufficient Labor and Equipment
§3.6	Not to Sublet or Assign
§3.7	Warranty
§3.8	Assignment of Warranties
§3.9	Protection Against Water and Storm
§3.10	Permits
§3.11	Return of Drawings
§3.12	Cleaning Up
§3.13	Intoxicating Liquors and Controlled Substances
§3.14	Payrolls of Contractors and Subcontractors
§3.15	General Indemnification
§3.16	Patents
§3.17	Debarment and Suspension
Article 4	Administration of the Agreement
§4.1	Interpreting The Contract Documents
§4.2	Authority of the Engineer
§4.3	Progress Estimates and Payments
§4.4	Claims Against Contractor
§4.5	Discharging Liens
§4.6	Claims for Damages Against Owner
§4.7	Dispute Resolution
Article 5	Subcontractors
§5.1	Award of Subcontracts for Portions of the Work
§5.2	Subcontractual Relations
Article 6	Construction by the Owner or by Separate Contractors
§6.1	Separate Contracts
Article 7	Changes in the Work
§7.1	Changes
§7.2	Extra Work
§7.3	Reduction in Scope of Work
§7.4	Changes Not to Affect Bonds

- §7.5 Modification
- §7.6 Differing Site Conditions

Article 8 Time

- §8.1 Computation of Time
- §8.2 Allowable Delay by Owner
- §8.3 Time for Completion
- §8.4 Extension of Time
- §8.5 Delay Damages

Article 9 Final Estimate, Payment, and Completion

- §9.1 Prices for Work
- §9.2 Formal Acceptance
- §9.3 Substantial Completion
- §9.4 Partial Utilization
- §9.5 Final Estimate and Payment
- §9.6 Liability of Owner
- §9.7 Right to Materials

Article 10 Protection of Persons and Property

- §10.1 Safety Precautions
- §10.2 Hazardous Materials

Article 11 Insurance and Bonds

- §11.1 Insurance
- §11.2 Additional or Substitute Bonds

Article 12 Uncovering and Correction of Work

- §12.1 Examination of Work
- §12.2 Defective Work
- §12.3 Retain Money For Repairs

Article 13 Miscellaneous Provisions

- §13.1 Night and Sunday Work
- §13.2 Notice and Service
- §13.3 Headings
- §13.4 No conflict with Laws or Regulations
- §13.5 No Waiver

Article 14 Termination and Suspension

- §14.1 Suspension of Work
- §14.2 Termination for Cause
- §14.3 Termination for Convenience

ARTICLE 1 – CONVENTIONS AND DEFINITIONS

§1.1 CONVENTIONS

- a. Whenever in the Contract Documents, or upon the Drawings, the words "as directed," "as ordered," "as requested," "as required," "as permitted," "as instructed," "as designated," "as considered necessary," or words of like import are used, it shall be understood that the direction, order, request, requirement, or permission of the Engineer is intended, unless clearly indicated otherwise. Similarly, the words "approved," "acceptable," "suitable," "satisfactory," and words of like import shall mean satisfactory to the Engineer, unless clearly indicated otherwise.
- b. The words "herein," "hereinafter," "hereunder," and words of like import shall be deemed to refer to the Contract Documents.

§1.2 DEFINITIONS

Wherever the words hereinafter defined or pronouns used in their stead occur in the Contract Documents, they shall have the meaning indicated which shall be applicable to both the singular and plural thereof:

- a. Addenda - Written or graphic instruments issued prior to the opening of Bids which modify or interpret the Contract Documents, Drawings, and Specifications by additions, deletions, clarifications or corrections.
- b. Agreement - The written contract between Owner and Contractor covering the Work to be performed; other Contract Documents which are attached to the Agreement and made a part thereof as provided therein.
- c. Application For Payment - The form accepted by Engineer that is to be used by Contractor in requesting progress or final payment and that is to be accompanied by such supporting documentation as is required by the Contract Documents.
- d. Bid - The offer or proposal of the Bidder submitted in the prescribed form setting forth the prices for the Work to be performed together with all required supporting documents.
- e. Bidder - Any person, firm or corporation submitting a Bid for the Work.
- f. Change Order - A written order to the Contractor signed by the Engineer and the Owner authorizing an addition, deletion, or revision in the Work within the general scope of the Contract Documents or authorizing an adjustment in the Contract Price or Contract Time and issued on or after the date of the Agreement.
- g. Completion Date: The date that equates to the date of commencement as specified in the Notice to Proceed plus the Contract Time days, plus approved expansions to the Contract Time.
- h. Construction Superintendent - The person designated by the Contractor to be in charge of the Work and to carry out the provisions of the Contract Documents.

- i. Contract Bonds - Bid, Performance, and Labor and Materials Payment Bonds and other instruments of security furnished by the Contractor and its surety in accordance with the Contract Documents.
- j. Contract Documents - The Notice to Bidders; the Information for Bidders; the Bid; the Agreement; the Contract Bonds; the Specifications; the Drawings; Appendices; Addenda; Shop Drawings; written amendments to the Agreement; Field Orders; Change Orders; and Engineer's written interpretations and clarifications of the Contract Documents executed on or after the date of the Agreement. The Contract Documents are complementary, and what is called for by any one shall be as binding as if called for by all. Where there is a conflict, the more stringent requirements as determined by the Engineer shall govern, as provided in Article 4, Administration of the Contract.
- k. Contract Price - The total monies payable to the Contractor under the terms and conditions of the Contract Documents.
- l. Contract Time - The number of calendar days stated in the Contract Documents for the completion of the Work, including completion of all the punch list items.
- m. Contractor - The person, firm or corporation with whom the Owner has executed the Agreement.
- n. Cost and Pricing Data - All data used by the Contractor in negotiating and pricing work covered by changes, or involved in a proposal or claim, including, but not limited to, bid estimates, estimating guides, proposal or claim estimates pricing adjustments in Contract Price or Contract Time, back-up computations and assumptions.
- o. Datum - Any level surface to which Elevations are referred.
- p. Defective -An adjective which, when modifying the word Work, refers to Work that is unsatisfactory, faulty or deficient, in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference, standard, test or approval referred to in the Contract Documents.
- q. Drawings - The drawings which are part of the Contract Documents and which show the characteristics and scope of the Work to be performed and which have been prepared or approved by the Engineer.
- r. Earth - The word "earth", wherever used as the name of an excavated material or material to be excavated, shall mean all kinds of material other than rock as defined below.
- s. Elevation - The figures given on the Drawings or in the other Contract Documents after the word "elevation" or abbreviation of it shall mean the distance in feet above the datum adopted by the Engineer.
- t. Engineer - The person(s) or firm(s) duly appointed by the Owner to represent the Owner during the entirety of the Agreement, to observe the Work on behalf of the Owner, and to undertake certain actions and duties for the Owner as delineated in the Contract Documents. The Owner may designate itself the Engineer.

- u. Engineer's Consultant - A person, firm or corporation having a contract with Engineer to furnish services as Engineer's independent professional associate or consultant with respect to the Project.
- v. Extra Work - Work in connection with the Project, but not included in the Contract Documents, which is ordered in writing by the Engineer and the Owner.
- w. Field Order - A written order effecting change in the Work not involving an adjustment in the Contract Price or the Contract Time, issued by the Engineer to the Contractor during construction.
- x. Final Completion - That date as certified by the Engineer, through written notice to the Owner, when the construction for the Project is completed in accordance with all provisions of the Contract Documents, including completion of all the punch list items.
- y. Laws or Regulations - Any and all applicable laws, rules, regulations, ordinances, codes and orders of any and all governmental bodies, agencies, authorities and courts having any jurisdiction over any area of the Work.
- z. Lump Sum Work - Work to be paid on the basis of a fixed price amount.
- aa. Milestone - A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of the Work.
- bb. Mobilization - Subject to the written approval of the Engineer, the Contractor activities required to establish temporary facilities, equipment and personnel at the site thereby enabling the Work to commence.
- cc. Notice of Award - The written notice of the acceptance of the Bid from the Owner to the successful Bidder.
- dd. Notice to Proceed - Written communication issued by the Owner to the Contractor authorizing it to proceed with the Work and establishing the date of commencement of the Work and the date for final completion.
- ee. Owner - The Narragansett Bay Commission, also known as the Commission.
- ff. Partial Utilization - Use by the Owner of a portion of the Work for the purpose for which it is intended (or a related purpose) before reaching Substantial Completion of the Work.
- gg. Product(s) - New material, machinery, components, equipment, fixtures and systems forming the Work; excluding machinery and equipment used for the preparation, fabrication, conveying and/or erection of the Work. Product(s) may also include existing materials or components required for reuse.
- hh. Project - The total construction to be accomplished by the Work as provided in the Contract Documents, sometimes also referred to by the Owner's designated "Contract No. " as set forth on page CA-1 of the Agreement.

- ii. Project Schedule - The Project Schedule shall represent the Contractor's best judgment and intended plan for the completion of the Work within the Contract Time and in compliance with the Contract Documents.
- jj. Resident Representative - The authorized representative of the Engineer who is assigned to the Project.
- kk. Rock -The word "rock," wherever used as the name of an excavated material or material to be excavated, shall mean only boulders and pieces of concrete or masonry exceeding 1 cu. yd. in volume, or solid ledge rock which, in the sole opinion of the Engineer, requires, for its removal, drilling and blasting, wedging, sledging, barring, or breaking up with a power-operated tool. "Rock" shall expressly not mean: (i) soft or disintegrated rock which can be removed with a hand pick or power-operated excavator or shovel; (ii) loose, shaken, or previously blasted rock or broken stone in rock fillings or elsewhere; and (iii) rock exterior to the maximum limits of measurement allowed, which may fall into the excavation.
- ll. Samples - Physical examples of materials, equipment or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
- mm. Shop Drawings - All drawings, diagrams, illustrations, brochures, schedules and other data which are prepared by the Contractor, a Subcontractor, Manufacturer, Supplier, or distributor which illustrate how specific portions of the Work shall be fabricated or installed.
- nn. Specifications - A part of the Contract Documents consisting of written descriptions of a technical nature of materials, equipment, construction systems, standards and workmanship.
- oo. Sub Agreements - A contract or purchase order awarding a part of the Work under the Contract Documents to a Subcontractor, Supplier or other person or organization.
- pp. Subcontractor - An individual, firm, or corporation, approved by the Owner and Engineer having a direct contract with the Contractor or with any other Subcontractor for the performance of a part of the Work on the Project.
- qq. Substantial Completion - That date as certified by the Engineer, through written notice to the Owner, when the construction for the Project or a specified part thereof is sufficiently completed in accordance with the Contract Documents so that the Work or specified part can be utilized for the purposes for which it is intended.
- rr. Supplier - Any person or organization who supplies materials or equipment for the Work, including that fabricated to a special design, but who does not perform labor at the site.
- ss. Underground Utilities - All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other similar facilities or attachments, and any encasement containing such facilities which have been installed underground to furnish any of the following: water, electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, sewerage and drainage removal, traffic, or control systems.

- tt. Unit Price Work - Work to be paid on the basis of a unit price for a specific item of Work.
- uu. Work - The entire completed construction required to be furnished under the Contract Documents. Work includes and is the result of performing and furnishing any and all services, obligations, duties, responsibilities, labor, materials, equipment, temporary facilities, and incidentals necessary to complete the construction assigned to, or undertaken by the Contractor, pursuant to the Contract Documents.
- vv. Written Notice - Any notice to any party of the Agreement relative to any part of this Agreement in writing and delivered as set forth in Section 13.2 of this Agreement.

ARTICLE 2 – OWNER

§2.1 ACCESS TO WORK

The Owner, the Engineer, representatives of the state and any local municipal and federal agencies and their officers, agents, servants and employees may at any and all times and for any and all purposes, enter upon the Work and the site thereof and the premises used by the Contractor including off-site storage facilities and manufacturing facilities, and the Contractor shall at all times provide safe and proper facilities therefor.

§2.2 AUDIT ACCESS TO RECORDS

The Owner, the Governor of the State of Rhode Island or his/her designee, the Secretary of Administration and Finance of the State of Rhode Island or his/her designee, and the State Auditor or his/her designee shall have the right at reasonable times and upon reasonable notice to examine the books, records and other compilations of data of the Contractor and all Subcontractors which pertain to the performance of the provisions and requirements of this Agreement.

If the Contractor has submitted Cost and Pricing data in connection with the pricing of any Change Order or claim related to this Agreement, the Owner, the Engineer, any of their duly authorized representatives, and those organizations itemized in the paragraph above, shall have the right to examine and audit all books, ledgers, records, and documents pertinent to all Cost and Pricing data available and relied upon by the Contractor (including that used by the Contractor in the determination of its Bid for the Work), in order to evaluate the accuracy, completeness, and currency of the Cost or Pricing data. This right to audit shall not apply to prices based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by Laws or Regulations.

Contractor's refusal to comply with this Section shall constitute a material breach of this Agreement entitling the Owner to terminate the Contractor for cause under Section 14.2.

The Contractor shall make available at all reasonable times the materials described in the paragraph above, for examination, audit, or reproduction, until six (6) years after final payment under this Agreement.

If this Agreement is completely or partially terminated, the records relating to the Work terminated shall be made available for three (3) years after any resulting final termination settlement.

Records pertaining to the settlement of claims arising under or relating to the performance of this Agreement shall be made available for three (3) years after disposition of such appeals, litigation, or claims.

§2.3 RIGHT TO WITHHOLD MONIES

Notwithstanding anything to the contrary in this Agreement or the existence of any performance or labor or material payment bond, the Owner is hereby empowered to withhold from the Contractor an amount, equal in the opinion of the Owner to the amounts necessary to complete the entire Work, (or any part thereof), necessary to compensate Owner for any unexcused delay on the part of the Contractor, or necessary to pay and fully discharge any claims or liens arising out of the Work performed under this Agreement that may arise and be unpaid, for which, if established, the Owner may become liable. If any such obligations, claims or liens exceed the amount of the unpaid amounts under the Agreement, or arise after the full Contract Price has been paid or otherwise satisfied in accordance with and subject to the terms and conditions hereof, the Contractor, immediately upon demand, shall pay to the Owner, as the case may be, all monies that the Owner may have paid or become obligated to pay for any and all costs, expenses, losses, damage, liabilities, suits, judgments, engineering/consultant fees, attorneys' fees, court costs, and awards incurred to discharge such obligations, liens or claims with respect to the Project.

ARTICLE 3 – CONTRACTOR

§3.1 OBLIGATIONS AND LIABILITY OF CONTRACTOR

The Contractor shall do all the work and perform and furnish all the labor, services, materials, equipment, plant, machinery, apparatus, appliances, tools, supplies and all other things (except as otherwise expressly provided herein) necessary and as herein specified for the proper performance and completion of the Work in the manner and within the time hereinafter specified, in strict accordance with the Contract Documents, in conformity with the directions and to the satisfaction of the Engineer, and at the prices herein agreed upon therefor.

If, during the performance of the Work, the Contractor discovers any conflict, error, ambiguity or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code or of any instruction of any Supplier, the Contractor shall promptly report it to the Engineer in writing.

All parts of the Work and all fixtures, equipment, apparatus and other items indicated on the Drawings and not mentioned in the Specifications, or vice versa, and all work and material usual and necessary to make the Work complete in all its parts, including all incidental work necessary to make it complete and satisfactory and ready for use and operation, whether or not they are indicated on the Drawings or mentioned in the Specifications, shall be furnished and executed the same as if they were called for both by the Drawings and by the Specifications.

The Contractor shall conduct the Work so as to interfere as little as possible with private business and public travel. Wherever and whenever necessary or required, it shall maintain fences, furnish watchmen, maintain lights, and take such other precaution as may be necessary to protect life and property.

The Contractor shall have complete responsibility for the Work and the protection thereof, and for preventing injuries to any persons and damage to the Work and property and utilities on or about the Work, until final completion and final acceptance thereof. The Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures for construction. The Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. It shall in no way be relieved of its responsibility by any right of the Engineer to give permission or directions relating to any part of the Work, by any such permission or directions given, or by failure of the Engineer to give such permission or directions. Except as provided in Section 7.6 (Differing Site Conditions), the Contractor shall bear all costs, expenses, losses and damages on account of the quantity or character of the Work or the nature of the land (including but not limited to subsurface conditions) in or under or on which the Work is done being different from that indicated or shown in the Contract Documents or from what was estimated or expected, or on account of the weather, elements, or other causes.

The Contractor shall conduct its operations so as not to damage existing structures or work installed either by it or by other contractors. In case of any such damage resulting from its operations, it shall repair and make good as new the damaged portions at its own expense with the consent of the damaged party. In the event that consent is not given, the Contractor shall continue to be liable for the damages caused.

The Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with Contractor just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier or other person or organization any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier or other person or organization except as may otherwise be required by Laws or Regulations.

At its sole discretion, the Parties agree that the Owner may issue joint checks to the Contractor and the Contractor's Subcontractors and Suppliers. In no way should this create an express or implied obligation or expectation on the Owner to issue joint checks.

The Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with Contractor. Contractor shall require all Subcontractors, Suppliers and such other persons and organizations performing or furnishing any of the Work to communicate with the Engineer through the Contractor.

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

All Work performed for the Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of the Owner and Engineer. Failure of the Contractor to specifically so bind the Subcontractor or Supplier shall constitute a material breach of this Agreement. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional

insured on the property insurance provided in Article 11, Insurance and Bonds, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against the Owner, Engineer and all other additional losses and damages caused by, arising out of or resulting from any of the perils covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, the Contractor will obtain the same.

The Contractor shall promptly pay all federal, state and local taxes which may be assessed against it in connection with the Work or its operations under the Contract Documents, including, but not limited to, taxes attributable to the purchase of material and equipment, to the performance of services, and the employment of persons in the prosecution of the Work.

§3.2 COMPLIANCE WITH LAWS

The Contractor shall keep itself fully informed of all existing and future federal, state, and local laws, ordinances, rules, and regulations affecting those engaged or employed on the Work, the materials and equipment used in the Work or the conduct of the Work, and of all orders, decrees and other requirements of bodies or tribunals having any jurisdiction or authority over the same. If any discrepancy or inconsistency is discovered in the Drawings, Specifications or other Contract Documents in relation to any such law, ordinance, rule, regulation, order, decree or other requirement, the Contractor shall promptly report the same to the Engineer in writing. The Contractor shall at all times observe and comply with, and cause all its agents, servants, employees and subcontractors to observe and comply with all such existing and future laws, ordinances, rules, regulations, orders, decrees and other requirements, and it shall protect, indemnify and save harmless the Owner, its officers, agents, servants and employees, from and against any and all claims, demands, suits, proceedings, liabilities, judgments, penalties, losses, damages, costs and expenses, including attorneys' fees, arising from or based upon any violation or claimed violation of any such law, ordinance, rule, regulation, order, decree or other requirement committed by the Contractor or any of his agents, servants, employees or subcontractors.

§3.3 SUPERVISION OF WORK

The Contractor shall be solely responsible for supervision of the Work, shall give the Work the constant attention necessary to ensure the expeditious and orderly progress thereof, and shall cooperate with the Engineer and the Owner.

At all times, the Contractor shall have as its agent on the Project a full-time, on-site competent Superintendent capable of reading and thoroughly understanding the Contract Documents, with full authority to execute the directions of the Engineer without delay and to supply promptly such labor, services, materials, equipment, plant, apparatus, appliances, tools, supplies and other items as may be required.

§3.4 EMPLOY COMPETENT PERSONS

The Contractor shall employ only competent persons on the Work and shall not engage in activities which may cause strikes, work stoppages or any disturbances by persons employed by the Contractor, any subcontractor, the Owner, the Engineer or any other contractor. Whenever the Engineer notifies the Contractor in writing that in the Engineer's opinion any person on the Work is incompetent, unfaithful, disorderly, or otherwise unsatisfactory, or not employed in

accordance with the provisions of the Contract Documents, such person shall be discharged from the Work and shall not again be employed on it, except with the written consent of the Engineer.

The Contractor shall verify that all members of the project team, its employees and subcontractors are legally eligible to be employed in the United States. The Contractor is required to utilize such verification sources as necessary to adequately ensure compliance with federal and state law in this regard.

The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, handicap, or national origin. The Contractor shall take affirmative action to ensure that applicants and employees are treated during employment without regard to their race, color, religion, sex, age, handicap, or national origin. Such actions shall include, but not be limited to the following: employment, upgrading, demotions, or transfers; recruitment or recruitment advertising, layoffs or terminations; rates of pay or other forms of compensation; selection of training including apprenticeship; and participation in recreational and educational activities. The Contractor agrees to post in conspicuous places available to employees and applicants for employment notice to be provided setting forth the provisions of this nondiscrimination clause. The Contractor will in all solicitations or advertisement 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, age, handicap or national origin. The Contractor will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement so that such provisions will be binding upon each subcontractor and upon subcontracts of standard commercial supplies or raw materials.

The Contractor shall keep such records and submit such reports concerning the racial and ethnic origin of applicants for employment and employees as the Owner may require as consistent with Federal and State law.

The Contractor agrees to comply with such rules, regulations, or guidelines as the State of Rhode Island may issue to implement these requirements. The Contractor further warrants that it will comply with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 200d to d4.

§3.5 EMPLOY SUFFICIENT LABOR AND EQUIPMENT

The Contractor shall at all times employ sufficient labor, plant, equipment or other means to complete the Work within the time specified herein.

If, in the sole judgment of the Engineer, the Contractor is not employing sufficient labor, plant, equipment or other means to complete the Work within the time specified in the Project Schedule, the Engineer may, after giving three (3) days written notice to Contractor, require the Contractor to employ such additional labor, plant, equipment and other means as the Engineer deems necessary to enable the Work to progress properly.

§3.6 NOT TO SUBLET OR ASSIGN

The Contractor shall constantly give its personal attention to the faithful prosecution of the Work, shall keep the same under its personal control, shall not assign the Agreement or sublet the Work or any part thereof without the previous written consent of the Owner, and shall not assign any of the moneys payable under the Agreement, or its claim thereto, unless by and with the like written consent of the Owner and the Surety on the Contract Bonds. Any assignment or subletting in violation hereof shall be void and unenforceable.

§3.7 WARRANTY

The Contractor warrants that the Work and services to be performed under the Contract Documents, and all workmanship, materials and equipment performed, furnished, used or installed in the construction of the same, shall be free from defects and flaws, and shall be performed and furnished in strict accordance with the Drawings, Specifications, and other Contract Documents, that the strength of all parts of all manufactured equipment shall be adequate and as specified and that the performance test requirements of the Contract Documents shall be fulfilled.

§3.8 ASSIGNMENT OF WARRANTIES

The Contractor shall assign to Owner all manufacturer's and Supplier's warranties on Products. Such warranties shall be in addition to and not in substitution of the Contractor's obligations under Article 3, §3.7, Warranty.

§3.9 PROTECTION AGAINST WATER AND STORM

The Contractor shall take all precautions necessary to prevent damage to the Work by storms or by water entering the site of the Work directly or through the ground. In case of damage by storm or water, the Contractor shall, at its own cost and expense, make such repairs or replacements or rebuild such parts of the Work as the Engineer may require in order that the finished Work may be completed as required by the Contract Documents. Without limiting the generality of the foregoing, the Contractor shall comply with the requirements of Specification Section 01501.

§3.10 PERMITS

The Contractor shall, at its own expense, take out and maintain from all federal, state, county and local authorities all permits required for its equipment, work force or particular operations (such as blasting) in the performance of the Work.

§3.11 RETURN OF DRAWINGS

All Drawings furnished by the Owner or the Engineer to the Contractor may be used only in connection with the performance of the Work and shall be returned by the Contractor upon completion of the Work or upon Contractor's termination for cause or convenience.

§3.12 CLEANING UP

During the progress of the Work, the Contractor shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work, the Contractor shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery and surplus materials. The Contractor shall leave the site clean and ready for occupancy by the Owner at Substantial Completion of the Work. The Contractor shall restore to original condition all property not designated for alteration by the Contract Documents. Without limiting the generality of the foregoing, the Contractor shall comply with the requirements of Section 01000.

§3.13 INTOXICATING LIQUORS AND CONTROLLED SUBSTANCES

The Contractor shall not sell and shall neither permit the introduction or use of intoxicating liquors or controlled substances upon or about the Work. See additional requirements under Specification Section 01540.

§3.14 PAYROLLS OF CONTRACTORS AND SUBCONTRACTORS

The Contractor and each of its Subcontractors shall prepare their payrolls on forms required by the Rhode Island Department of Labor and submit certified copies of the same in accordance with all Laws or Regulations, including but not limited to Rhode Island General Laws, Section 37-13-13. Each such payroll shall contain the statement required by the Federal Regulations issued pursuant to the "Anti-Kickback Statute," (48 Stat. 948; 18 U.S.C. 874; 40 U.S.C. 276).

The Contractor shall not carry on its payrolls any person not employed by it. The Contractor shall not carry on its payrolls employees of a subcontractor, but such employees must be carried only on the payrolls of the employing subcontractor.

The Contractor and each Subcontractor shall preserve its weekly payroll records for a period of six (6) years after final payment under this Agreement. The payroll records shall set out accurately and completely the name, occupational classification, and hourly wage rate of each employee, hours worked by him/her during the payroll period and full weekly wages earned by him/her, and deductions made from such weekly wages and the actual weekly wages paid to him/her. Such payroll records shall be made available at all times for inspection by the Owner or its authorized representatives, the Engineer, agents of the United States Department of Labor, and such other persons as are required by state or federal law.

The Contractor agrees to defend, indemnify and hold harmless the Owner, its officers, directors, commissioners, associates, employees, agents, representatives, successors and assigns from and against all claims, losses, expenses (including attorneys' fees and court costs), damages, demands, judgments, causes of action or suits of any kind, arising from the failure of the Contractor or any of its subcontractors to comply with RIGL Section 37-13-13, or the rules, regulations, orders and decisions derived therefrom.

§3.15 GENERAL INDEMNIFICATION

Contractor shall defend, indemnify and hold harmless Owner and its respective parents, subsidiaries, affiliates, successors, assignees, agents, representatives, employees, officers, directors and members (collectively, the "Indemnified Parties") from and against all claims, damages, losses and expenses brought or asserted by third parties, (including but not limited to attorneys' fees and expenses), arising out of or resulting from any negligent or intentionally wrongful act or omission of Contractor or any Subcontractor or Vendor of any tier in the performance of the Work, any breach of a representation or warranty under this Agreement or any other breach of this Agreement including, without limitation, the failure to complete the Project in accordance with the requirements hereof. Contractor shall diligently defend any claim or suit brought against Owner or any assignee of Owner and shall pay all costs and expenses (including reasonable attorneys' fees and expenses) in connection with such claim or suit, provided that Owner or such assignee gives Contractor written notice of such claim or suit and provides such reasonable assistance in connection therewith as Contractor may request.

In any and all claims, damages, losses or expenses by any employee of the Contractor, Subcontractor, Vendors, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Section shall not

be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor, any Subcontractor, Vendor or any other party under workers' compensation acts, disability benefit acts or other employee benefit acts.

Owner shall be entitled to collect, besides all legal damages attributable to Contractor's breach of any provision of this Article; (i) all attorneys' fees and costs incurred in bringing an action to enforce the provisions of this indemnity or any other indemnity contained in the Contract Documents; (ii) all attorneys' fees and costs incurred in defending the claim for which Contractor has failed to defend Owner; (iii) all expert, engineering, and consultant costs incurred in defending the claim for which Contractor has failed to defend Owner; and (iv) all other related expenses, costs, etc. incurred by Owner or the Indemnified Parties.

Only to the extent prohibited by any law prohibiting a party from being indemnified against their own negligence, the obligations of the Contractor under any indemnification provision in this Agreement shall not extend to the liability of Owner or any Indemnified Parties arising out of that party's own negligence.

The insurance requirements and coverage limits listed in Article 11 and the coverage maintained by the Contractor shall not limit any of the Contractor's indemnity obligations or other liabilities under this Agreement.

§3.16 PATENTS

The Contractor shall indemnify and save harmless the Owner and all persons acting for or on behalf of the Owner from all claims and liability of any nature or kind, and all damages, costs and expenses, including attorney's fees, arising from or occasioned by an infringement or alleged infringement of any patents or patent rights on any invention, process, material, equipment, article, or apparatus, or any part thereof, furnished and installed by the Contractor, or arising from or occasioned by the use or manufacture thereof, including their use by the Owner.

§3.17 DEBARMENT AND SUSPENSION

The Contractor represents that it is not presently excluded, disqualified, debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal, state, or local department or agency. The Contractor further represents that it has not within the preceding 3-year period been convicted of or had a civil judgment rendered against it, and is not presently indicted for or otherwise criminally or civilly charged by a federal, state or local governmental entity for a) commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, b) violation of federal or state antitrust statutes, c) commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice, or d) commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects its present responsibility. The Contractor further represents that it has not within the preceding 3-year period had one or more public federal, state, or local transactions terminated for cause, and is not delinquent on a government debt. The Contractor shall submit an executed CERTIFICATION REGARDING DEBARMENT & SUSPENSION AND OTHER RESPONSIBILITY MATTERS form in Attachment A, as well as the Disclosure Questionnaire in Attachment B. Furthermore, the Contractor shall submit an executed CERTIFICATION REGARDING DEBARMENT & SUSPENSION AND OTHER RESPONSIBILITY MATTERS form and a Disclosure Questionnaire with each Application for

Payment. The Attachment A certification is applicable to the Contractor and all of its subcontractors associated with the Project in which payment is being sought.

If at any time the Contractor, or any of the members of the Contractor's Project team or its employees and/or subcontractors is unable to make the aforementioned representations, the Contractor shall immediately notify Owner in writing within twenty-four (24) hours. An inability to make said certifications and/or representations at any time during the term of this Agreement shall be deemed a default and grounds for termination of this Agreement. The 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 (per Executive Order 12549, 51 FR 6370, February 21, 1986) or who is prohibited under Section 306 of the Clean Air Act or Section 508 of the Clean Water Act to participate in the Project. Suspension and debarment information can be accessed at <http://www.sam.gov>. The Contractor further represents and warrants that it has or will include terms or conditions requiring compliance with the same in all of its subcontracts under this Agreement.

ARTICLE 4 – ADMINISTRATION OF THE AGREEMENT

§ 4.1 INTERPRETING THE CONTRACT DOCUMENTS

It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work, materials or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result shall be furnished and performed whether or not specifically called for.

When words or phrases which have a well-known technical or construction industry or trade meaning are used to describe the Work, materials or equipment, such words or phrases shall be interpreted in accordance with that meaning unless said meaning is modified by the Contract Documents.

Reference in the Contract Documents to standard specifications, manuals or codes of any technical society, organization or association, or to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the edition of the standard specification, manual, code or laws or regulations identified in the reference. In the event a particular edition is not identified, the reference shall mean the latest edition in effect at the time of receipt of the Bid.

However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall change the duties and responsibilities of the Owner, the Contractor or the Engineer, or any of their consultants, agents or employees from those set forth in the Contract Documents, nor shall it be effective to assign to the Engineer, or any of the Engineer's consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the work or any duty or authority to undertake responsibility contrary to the provisions of this Agreement.

Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in §4.2, Authority of the Engineer.

§ 4.2 AUTHORITY OF THE ENGINEER

The Engineer shall solely decide the intent and meaning of the Drawings, Specifications, and Contract Documents and the Engineer's decisions thereon and interpretation thereof shall be final, conclusive and binding on the Contractor, subject to the provisions of this § 4.2.

The Engineer shall be the Owner's representative during the life of the Agreement and shall observe the Work in progress on behalf of the Owner. The Engineer shall have authority (1) to act on behalf of the Owner to the extent expressly provided in the Contract Documents or otherwise in writing; (2) to determine the amount of the Work and its general conformance to the Contract Documents; and (3) to decide all questions which arise in relation to the Work, and the execution thereof.

The Engineer will make on-site observations to observe the progress, quantity and quality of the executed Work and to determine if, in the Engineer's sole judgment, the Work is proceeding in accordance with the Contract Documents. However, on-site observations taken by the Engineer or not taken by the Engineer shall not give rise to any duty on the part of the Engineer to undertake such observations for the benefit of the Contractor or any other third party. In no event does the Engineer making or not making on-site observations relieve in any way the Contractor of or diminish any of its responsibilities, obligations and liabilities under the Contract Documents.

The Engineer will issue with reasonable promptness written clarifications or interpretations of the requirements of the Contract Documents (in the form of Drawings or otherwise), as the Engineer may determine necessary, which shall be consistent with or reasonably inferable from the intent of the Contract Documents.

The Contractor shall proceed without delay to perform the work as directed, instructed, determined or decided by the Engineer and shall comply promptly with such directions, instructions, determinations or decisions. If the Contractor has any objection thereto it may, within three (3) days of having received any such direction, instruction, determination or decision, require that any such direction, instruction, determination or decision be put in writing and within three (3) days after receipt of any such writing it may file a written protest with the Owner stating clearly and in detail its objections, the reasons therefor, and the nature and amount of additional compensation, if any, to which it claims it will be entitled under the Contract Documents. A copy of such protest shall be filed with the Engineer at the same time it is filed with the Owner. Unless the Contractor requires that any such direction, instruction, determination or decision be put in writing within three (3) days of having received such direction, instruction, determination or decision and unless the Contractor files such written protest with the Owner and Engineer within such three (3) day period, it shall be deemed to have waived all grounds for protest of such direction, instruction, determination, or decision and all claims for additional compensation or damages occasioned thereby, and shall further be deemed to have accepted such direction, instruction, determination, or decision as being fair, reasonable, and finally determinative of its obligations and rights under the Contract Documents.

The Engineer may authorize minor variations in the Work (not involving an adjustment in Contract Price or Contract Time) which are consistent with the intent of the Contract Documents and required to produce the intended result. These may be accomplished by a Field Order and shall be binding on the Contractor who shall perform the Work promptly.

The Engineer shall have authority to evaluate and disapprove any test procedure for construction or equipment, and any pre-operational, start-up, or demonstration tests proposed to be conducted

by the Contractor which the Engineer believes to be inconsistent with the requirements of the Contract Documents, insufficient or unsuitable for the intended purpose, or impracticable. However, it shall not be the Engineer's primary responsibility to make certain that any such test procedures are acceptable, nor shall this authority give rise to any duty on the part of the Engineer to exercise this authority for the benefit of the Contractor.

Neither the Engineer's authority to act under the Contract Documents nor any decision or determination made by the Engineer in good faith to exercise or not to exercise such authority shall give rise to any duty or responsibility of the Engineer to the Contractor, any Subcontractor, any Supplier, or any other person or organization performing any of the Work, or to any surety for any of them.

Whenever in the Contract Documents the terms "as ordered", "as directed", "as required", "as allowed", "as approved", or terms of like effect or importance are used, or the adjectives "reasonable", "suitable", "acceptable", "proper", or "satisfactory" or adjectives of like effect or importance are used to describe a requirement, direction, review or judgment of the Engineer as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate the Work for general compliance with the Contract Documents (unless there is a specific statement indicating otherwise). When such a term or adjective is used, it shall not be effective to assign to the Engineer any duty or authority to supervise or direct the furnishing or performance of the Work, including but not limited to review of Contractor's Shop Drawings, or any duty or authority to undertake responsibility contrary to the provisions of this paragraph.

The Engineer will not supervise, direct, control, have authority over, or be responsible for the Contractor's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incidental to safety, or for any failure of Contractor to comply with Laws or Regulations applicable to the furnishing or performance of the Work. The Engineer will not be responsible for the Contractor's failure to perform or furnish the Work in accordance with the Contract Documents.

The Engineer will not be responsible for the acts or omissions of the Contractor or of any Subcontractor, any Supplier, or of any other person or organization performing or furnishing any of the Work.

The limitations on the Engineer's authority and responsibility as set forth in this § 4.2 shall also apply to Engineer's Consultants and Resident Representative.

§4.3 PROGRESS ESTIMATES AND PAYMENTS

Except as hereinafter provided, the Engineer shall make a monthly estimate in writing of the total amount and value of the work completed during each of the twelve (12) separate work periods set per the annual schedule promulgated by the Rhode Island Infrastructure Bank. The Owner shall retain a percentage of such estimated value, as set forth in Table A at the end of this section, as part security for fulfillment of the Agreement by the Contractor and shall deduct from the balance all previous payments made to the Contractor, all sums chargeable against the Contractor and all sums to be retained under the provisions of the Contract Documents.

The Owner shall pay monthly to the Contractor the balance of the progress estimate not deducted and/or retained as aforesaid, except that payment may be withheld at any time if, in the judgment of the Engineer, the Work is not proceeding in accordance with the Contract Documents. No progress estimate or payment thereof need be made when, in the judgment of

the Engineer, the total value of the work done since the last estimate amounts to less than the amount set forth in Table A at the end of this section.

Estimates of lump sum items shall be based on a schedule dividing each such item into its appropriate component parts together with a quantity and a unit price for each part so that the sum of the products of prices and quantities will equal the Contract Price for the item. This schedule shall be submitted by the Contractor for and must have the approval of the Engineer before the first estimate becomes due.

The Engineer will determine the actual quantities and classifications of Unit Price Work performed by the Contractor.

Materials and equipment will not be included in progress estimates until the following requirements have been fulfilled.

1. The Contractor must present an invoice to the Engineer for each item of equipment he is requesting payment. The invoice must be broken down to show the costs for the actual equipment, and reasonable costs for Operations and Maintenance manuals, spare parts, start-up certification, training, testing, final acceptance testing, and any other services required by Contract Documents.
2. Sufficient monies have been allocated in the payment requisition line items to cover all of the costs listed in "1" above, plus the costs of physically installing the equipment.
3. The equipment has been submitted and approved for use in this Project.
4. The equipment is acceptably stored and protected. Off site storage must be in a facility suitable to the Engineer, and proof of insurance coverage specifically for the item being stored must be provided.
5. The manufacturer's short and/or long term storage requirements have been received by the Engineer, prior to payment.
6. The Contractor has established a program to implement the manufacturer's required storage procedures. Said program to consist of at the very least a written schedule of daily, weekly, monthly, etc., routine maintenance requirements for each piece of equipment. A copy of this schedule, signed by the Contractor, stating that the required maintenance has been performed is to be presented to the Engineer prior to each requisition submittal.
7. Signed, notarized Title Transfers in a format to be furnished by the Engineer must be furnished for each item of equipment.

When Items 1 through 7 above have been complied with to the satisfaction of the Engineer, payment will be authorized for the full invoice values of the item of equipment, less normal retainage and less all costs for Operations and Maintenance manuals, spare parts, start-up certification, training, testing, final acceptance testing, and installation.

The Contractor must submit documentation to certify that the material or equipment has been paid for by the Contractor within 15 days of the Contractor receiving payment for same by the Owner. If this documentation is not provided, the value of the equipment or material will be deducted from the next pay requisition.

The Contractor shall submit Applications For Payment for each progress estimate. The Contractor shall include a monthly cash flow projection with each Application For Payment. These projections shall indicate the actual value paid to date and the Contractor's estimate of the value due each month from that point in time through the Completion Date. Each Application for Payment must also include an executed CERTIFICATION REGARDING DEBARMENT & SUSPENSION AND OTHER RESPONSIBILITY MATTERS form and a Disclosure Questionnaire. The Owner, at its discretion, may require the Contractor to include releases and lien waivers, on a form supplied by the Owner, fully executed by the Contractor with the Contractor's Applications For Payment.

§4.4 CLAIMS AGAINST CONTRACTOR

If at any time there is any evidence of any claims for which the Contractor is or may become liable or responsible hereunder, the Contractor shall promptly settle or otherwise dispose of the same, and until such claims are settled or disposed of, the Owner may withhold payment to Contractor in accordance with Sections 2.3, 12.2, and 12.3.

§4.5 DISCHARGING LIENS

If at any time any notices of lien are filed for labor performed or materials or equipment manufactured, furnished, or delivered to or for the Work, the Contractor shall, at its own cost and expense, promptly discharge, remove or otherwise dispose of the same, and until such discharge, removal or disposition, the Owner may withhold payment to Contractor in accordance with Sections 2.3, 12.2, and 12.3.

§4.6 CLAIMS FOR DAMAGES AGAINST OWNER

Contractor may not claim damages for an alleged breach of contract or otherwise, unless Contractor provides written notice of the occurrence to Engineer and Owner ("Claim Notice") as soon as possible after such occurrence is discovered, but in no event more than three (3) calendar days, or such longer time as may be extended by the Owner, after the earlier of (a) the occurrence of the alleged breach or (b) any part of the alleged damages have begun to be sustained.

Subsequent to such Claim Notice, Contractor shall file with the Engineer and Owner a written, itemized statement of the details of the alleged breach and the details and amount of the alleged damages ("Claim Statement"), within ten (10) calendar days, or such longer time as may be extended by Owner, after the earlier of (a) the occurrence of the alleged breach or (b) any part of the alleged damages have begun to be sustained,.

The requirements to provide the Claim Notice and Claim Statement are material terms of this Agreement. Unless such Claim Notice and Claim Statement are made and filed as so required, the Contractor's claim for damages shall be deemed waived, invalid and unenforceable, and it shall not be entitled to any compensation for any such alleged damages.

The Contractor shall not be entitled to claim any additional compensation for damages by reason of any direction, instruction, determination or decision of the Engineer, nor shall any such claims be considered, unless the Contractor shall have complied in all respects with Section 4.2 of this Agreement titled "Authority of the Engineer", including, but not limited to, the filing of a written protest in the manner and within the time therein provided.

Subject to the provisions of Section 4., Dispute Resolution below, the Contractor, and any Subcontractor, Supplier and any other person or organization performing any part of Work, agree that each of them will waive jurisdiction and venue and shall submit to the jurisdiction of the courts of the State of Rhode Island regardless of residence or domicile, with respect to any actions or suits at law or in equity arising under or related to the bidding, award or performance of the Work.

Subject to the provisions of Section 4.7, Dispute Resolution below, the Contractor, Subcontractor, Supplier or any other person or organization shall not commence any action, other than those in the State of Rhode Island in the county where the Owner's headquarters are located, against the Owner and the Engineer, or any of their consultants, and/or any of their respective directors, officers, employees, representatives or agents, with regard to any matter whatsoever arising out of or relating to the validity, construction, interpretation or reinforcement of the Agreement.

§4.7 DISPUTE RESOLUTION

- A. Claims, counter-claims, disputes and other matters in question between the Owner and the Contractor arising out of, or relating to, this Agreement or the breach of it shall be settled by mediation under the Construction Industry Mediation Procedures of the American Arbitration Association. If a party fails to respond to a written request for mediation within 30 days after service or fails to participate in any scheduled mediation conference, that party shall be deemed to have waived its right to mediate the issues in dispute. In that event, the dispute will be resolved in accordance with this Section.
- B. Submission to Arbitration: If the mediation does not result in settlement of the dispute within 30 days after the initial mediation conference or if a party has waived its right to mediate any issues in dispute, then any unresolved controversy or claim arising out of or relating to this Agreement or breach thereof shall be settled by arbitration administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.
- C. Number and Qualifications of Arbitrators: In the event the claim exceeds \$1,000,000, exclusive of interest and attorneys' fees, and unless otherwise agreed by the parties, the dispute shall be heard and determined by three arbitrators consisting of persons qualified in engineering, construction management or construction law and one of the three arbitrators shall be a lawyer specializing in construction law.
- D. Consolidation and Joinder: The Owner, the Engineer, the Contractor, and all subcontractors, specialty contractors, material suppliers, engineers, designers, architects, construction lenders, bonding companies and other parties providing labor, material or services for the Project that is the subject of this Agreement are bound, each to each other, by this arbitration clause, provided that they have signed this Agreement or an Agreement that incorporates this Agreement by reference or signed any other agreement to be bound by this arbitration clause. Each such party agrees that it may be joined as an additional party to an arbitration involving other parties under any such agreement. If more than one arbitration is begun under any such agreement and any party contends that two or more arbitrations are substantially related and that the issues should be heard in one proceeding, the arbitrator(s) selected in the first filed of such proceedings in which the Owner is a party

shall determine whether, in the interests of justice and efficiency, the proceedings should be consolidated before that (those) arbitrator(s).

- E. Discovery in Arbitration: At the request of a party, the arbitrator(s) shall have the discretion to order examination by deposition of witnesses to the extent the arbitrator(s) deems such additional discovery necessary to the orderly conduct of the hearings. Depositions shall be limited to a maximum of three per party, limited to three hours each and shall be held within 30 days of the making of a request. Additional depositions may be scheduled only with the permission of the arbitrator(s), and for good cause shown. All objections are reserved for the arbitration hearing except for objections based on privilege and proprietary or confidential information.
- F. Governing Law and Locale of Arbitration: This Agreement and any arbitration hereunder shall be governed by the laws of the State of Rhode Island and the place of arbitration shall be Providence, Rhode Island.
- G. Pre-judgment interest: The parties agree that the award of pre-judgment interest, if any, and the rate of pre-judgment interest is a discretionary decision to be made by the arbitrator or arbitration panel. However, in no event may the arbitrator or arbitrator panel apply a rate of pre-judgment interest that exceeds 5% per annum.

ARTICLE 5 – SUBCONTRACTORS

§5.1 AWARD OF SUBCONTRACTS FOR PORTIONS OF THE WORK

Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Agreement, shall furnish in writing to the Owner and the Engineer, the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner or Engineer may reasonably object in writing to any such proposed entity or person. In such objection, the Owner or Engineer shall provide the reason(s) for the objection. It is agreed that the Owner, in determining whether to object, may consider past negative experience with the entity or person, lack of qualifications and experience to perform the work, or a belief of financial inability to perform the work. The Contractor may respond in writing within seven (7) days should it wish to continue with the proposed entity or person. Thereafter, upon a finding of good cause for its objection, the Owner may prohibit the employ of such proposed entity or person.

§5.2 SUBCONTRACTUAL RELATIONS

By appropriate agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Contract Documents, assumes toward the Owner.

ARTICLE 6 – CONSTRUCTION BY THE OWNER OR BY SEPARATE CONTRACTORS

§6.1 SEPARATE CONTRACTS

The attention of the Contractor is directed to the fact that the Work to be done under this Agreement is only part of the program of improvements, that contracts have been let for additional facilities, and that the successful operation of the improvements is dependent upon the completion of the Agreement under the contract and of the work to be done by others.

The Owner reserves the right to let other contracts in connection with the construction of the contemplated work of this project or contiguous projects of the Owner. The Contractor, therefore, will afford any such other Contractors reasonable opportunity for the introductions and storage of their materials and execution of their work, will properly connect and coordinate its work with theirs, and will not commit or permit any act which will interfere with the performance of their work.

The Contractor shall afford the Owner and other Contractors proper and safe access to the site and a reasonable opportunity for the introduction and storage and materials and equipment and the execution of their work, and shall properly correct and coordinate the Work with theirs. The Contractor shall not endanger any work of others by cutting, excavating or otherwise altering that work and will only cut or alter their work with the written consent of the Engineer and those whose work will be affected.

If any part of the Contractor's Work depends upon proper execution or results of the work of the Owner or any other contractor or owner, the Contractor shall inspect and promptly report to the Engineer in writing any delays, defects or deficiencies in that work that render it unavailable or unsuitable for proper execution and results. The Contractor's commencement of work will constitute an acceptance of other work as fit and proper for integration with the Work except for latent or nonapparent defects and deficiencies in the other work. Whenever the Work to be performed by the Contractor is dependent upon the work of others, the Contractor shall coordinate its Work with the dependent work; provide necessary dependent data and requirements; supply and/or install items to be built into dependent work; make provisions for dependent work; check and verify dependent dimensions of previously placed work; notify the Engineer of previously placed dependent work or dependent dimensions which are unsatisfactory or prevent satisfactory installation of its Work, and not proceed with its Work until the unsatisfactory dependent conditions have been corrected. Installation of Work by the Contractor or by a Subcontractor in any given area shall constitute acceptance by the Contractor or the Subcontractor of all previously placed dependent work.

Should the Contractor cause damage to the work or property of any other contractor or owner performing work at or contiguous to the site, or should any claim arising out of the Contractor's performance of the Work at or contiguous to the site be made by any other contractor or owner against the Contractor, the Owner, or the Engineer, the Contractor shall promptly attempt to resolve such claim with such separate contractor or owner by agreement, or otherwise resolve the dispute at law or in equity. The Contractor shall, to the fullest extent permitted by Laws or Regulations, indemnify and hold harmless the Owner, the Engineer, and their consultants, agents and employees from and against all claims, damages, losses and expenses (including, but not limited to, fees of engineers, architects, attorneys, and other professionals and court or arbitration costs) arising out of or resulting from damage to the work of others caused by the Contractor's performance of the Work.

Should another contractor or owner cause damage to the Work or property of the Contractor, or should the performance of work by another contractor or owner give rise to any other claim by the Contractor, the Contractor shall promptly attempt to resolve such claim with that contractor or owner by agreement, or otherwise resolve the dispute at law or in equity.

The Contractor shall not institute any action, legal or equitable, against the Owner or the Engineer, their consultants agents or employees, or permit any action against them to be maintained and continued in its name or for its benefit in any court or before any arbiter which seeks to impose liability or recover damages from the Owner or the Engineer, or their consultants, agents or employees, on account of such damages or claims caused by another contractor or owner.

In the event that the Owner incurs costs contrary to the provisions of §6.1, Separate Contracts, the Contractor shall reimburse the Owner for those costs, and if the Contractor fails to pay the Owner within thirty (30) days after receipt of an invoice from the Owner, the Owner will be entitled to an appropriate decrease in Contract Price, or to withhold a set-off against any amount recommended for payment.

The Contractor shall be responsible for settling or resolving at equity or at law directly with all other contractors all claims arising out of delay, disruption, interference, hindrance or schedule extension caused by the Contractor or inflicted upon the Contractor by the actions of another contractor, regardless of whether or not an extension or shortening in Contract Time is ordered by the Owner. The Contractor agrees and understands that neither the Owner, the Engineer, nor any of their consultants, employees or agents, will be involved in any way in such actions, and hereby waives any and all claims against the Owner, the Engineer and any of their consultants, employees or agents for any such claims.

If the Contractor is delayed at any time in performing or furnishing the Work by any act or neglect of another contractor or owner performing work under a separate contract with the Owner, the Contractor shall absorb all related delay, extension or acceleration costs, however caused; except that if the Owner and the Contractor believe such delay to require an adjustment in Contract Time, the Owner may authorize the necessary extension in Contract Time. However, an extension in Contract Time(s), if any so granted, shall be the Contractor's sole and exclusive remedy with respect to the Owner and the Engineer, or any of their consultants, agents or employees for any delay, disruption, interference, extension or hindrance and associated costs, however caused, resulting from delays caused by others performing work under separate contracts with the Owner, and the right to additional compensation for such claims is expressly waived.

The Contractor shall give prompt written notice to the Engineer and any other affected contractor(s) whenever the Contractor anticipates a conflict in Contract Time(s) related to or simultaneous with associated contact time(s) in the work of others. Within ten (10) days thereafter, the Contractor shall be required to deliver to the Engineer proposed actions to either prevent an adverse effect on the progress schedule of the other contractors arising from delays to the Work, or overcome an adverse effect on the Project Schedule for the Work arising from delays from another contract, all at no additional cost to the Owner or the Engineer.

When Work is performed out of sequence and ahead of interfacing work, the Contractor shall be responsible for taking reasonable steps to minimize damage or loss to the Work which may be caused by others during the performance of their work, including but not limited to furnishing prompt written notice to the Engineer and to the other contractors that Work has been performed out of sequence and ahead of interfacing work.

When work by others is performed out of sequence and ahead of interfacing Work, the said work shall be considered as if it had been shown on the Contract Documents. The Contractor shall be responsible for protecting that work and shall replace, repair or otherwise settle with others any

and all damage caused as a result of the performance of work out of sequence unless the Contractor had not actual knowledge thereof or could not reasonably have known thereof.

ARTICLE 7 – CHANGES IN THE WORK

§7.1 CHANGES

The Owner, through the Engineer or a consultant, if applicable, may make changes in the Work and in the Specifications and Drawings therefor by making alterations therein, additions thereto or omissions therefrom. All Work resulting from such changes shall be performed and furnished under and pursuant to the terms and conditions of the Contract Documents. If such changes result in an increase or decrease in the Work to be done hereunder, or increase or decrease the quantities thereof, adjustment in compensation shall be made as provided hereinafter under the subsection titled "Extra Work".

Except in an emergency endangering life, safety, health or welfare of the public or property, no change shall be made without a prior written order from the Engineer authorizing the change, and no claim for additional compensation shall be valid unless the change is so ordered in writing.

The Contractor agrees that it shall neither have nor assert any claim for or be entitled to, any additional compensation for damages or for loss of anticipated profits on work that is eliminated.

If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any Contract Bond to be given to a surety, the giving of any such notice will be Contractor's responsibility, and the amount of each applicable Contract Bond will be adjusted accordingly.

§7.2 EXTRA WORK

The Contractor shall perform any Extra Work when and as ordered in writing by the Engineer, and shall be compensated therefor at the Cost of the Extra Work plus a Contractor's Fee as set forth in this Section.

No Extra Work shall be paid for unless specifically ordered as such in writing by the Engineer.

At the request of the Engineer, the Contractor shall furnish itemized statements of the Cost of the Extra Work ordered as above and give the Engineer access to all records, accounts, bills and vouchers and correspondence relating thereto. The itemized statements shall be provided by the Contractor within seven (7) days from the date the request is sent by the Engineer.

The methods to be used to determine an adjustment in Contract Price necessitated by changes ordered or negotiated pursuant to this Agreement, or Extra Work covered by a submittal or a claim are limited to the following:

- a. Where the Extra Work is covered or is of the same character as work covered by lump sum prices in the Contract Documents: On the basis of those lump sum prices.
- b. Where the Extra Work is covered or is of the same character as Unit Price Work: By application of those unit prices to the quantities of the items involved.

- c. Where the Extra Work is not covered by either of the methods specified in subparagraph a or b above: By mutual acceptance of a lump sum price negotiated on the basis of the Contractor's itemized estimate of the anticipated cost of the Extra Work, determined as specified in this Article, and a Contractor's Fee determined as one hundred percent (100%) of the fee allowed under this Article.
- d. Where the Extra Work is not covered by either of the methods specified in subparagraph a or b above, and the Engineer directs the Contractor to proceed with the Extra Work with payments to be made on the basis of actual costs: On the basis of the actual Cost of the Extra Work, determined as specified in this Article, and a Contractor's Fee determined as seventy five percent (75%) of the fee allowed under this Article.
- e. Where the Extra Work is not covered by any of the preceding methods, and when payment is to be determined pursuant to Section 4.7, Dispute Resolution, the actual cost method in subparagraph d above shall be the method for determining the cost of the Extra Work.

In computing either anticipated, or actual costs, the term "Cost of the Extra Work" means the sum of all reasonable incremental costs which would be, or actually were, necessarily incurred by the Contractor in the proper performance of the Extra Work. Those costs shall be in amounts no higher than those prevailing in the locality of the Project, and shall include only the appropriate items for labor, material/equipment, subagreement, equipment, and supplemental costs specified below.

Payroll costs shall be included for craft assigned to the site and engaged in furnishing and incorporating materials or equipment in the Extra Work. Payroll costs shall include wage plus the necessary labor burdens, which may include social security, unemployment, workers' compensation, health and retirement benefits, vacation and holiday pay, and other payments pursuant to union agreements. When determining payroll costs under subparagraphs d and e above, daily time sheets, certified at the end of each day by the Engineer and signed by the Engineer and the Contractor, shall be the record upon which actual payroll costs shall be based. When determining payroll costs under subparagraphs d and e above, daily time sheets shall be valid only if they expressly identify the labor hours are for the Extra Work and if made when the Extra Work was performed.

Payments by the Contractor to Suppliers for all material and equipment in the Extra Work shall be included. All trade discounts, rebates and refunds and all returns from sale of surplus items shall accrue to the Owner, and the Contractor shall make provisions so that they may be obtained. When required by the Engineer, the Contractor shall obtain competitive bids from Suppliers and shall deliver such bids to the Engineer. When determining actual material and equipment costs, actual invoices segregating items associated with the Extra Work shall be the record upon which actual costs shall be based.

Payments by the Contractor to Subcontractors for Extra Work performed by Subcontractors shall be included. If required by the Engineer, the Contractor shall obtain competitive detailed bids from three (3) Subcontractors and shall deliver them to the Engineer who will then determine which bid will be selected. When determining Subcontractor costs at any tier, the Subcontractor's Cost shall be determined in the same manner as the Contractor's Cost of the Extra Work. All Subagreements shall be subject to the provisions of this Section insofar as applicable.

Equipment costs required solely in connection with the Extra Work reflecting rented or leased or owned equipment costs for individual construction equipment or machinery whose replacement value is in excess of \$1,000.00 shall be included. Transportation, loading and unloading, installation, dismantling and removal costs shall be included only if such equipment is or was transported to the site solely to perform the Extra Work. Payroll costs for craft labor operating the equipment shall be as described above. Equipment costs shall be computed using the same accounting and estimating rules regardless of whether related to added or deleted items of work.

When determining equipment costs, daily records listing the equipment units, operators, and actual usage, and certified at the end of each day by the Engineer and signed by the Engineer and the Contractor, shall be the record upon which actual equipment use shall be based. When determining equipment costs under subparagraphs d and e above, such daily records shall be valid only if they list the equipment units, their operators, and actual usage, and were developed when the Extra Work was performed.

Rented or owned equipment at the site and not in actual use as a direct result of the change, shall be paid at the rates for rented equipment as specified below. In no event shall the idle time claimed in a day exceed the established working schedule. Payments for idle equipment shall come due only as long as the equipment was idled solely by the actions of the Owner or Engineer, and that the idle period exceeds that normally experienced for such equipment.

For equipment rented or leased by the Contractor, the fair rental shall be based upon the most recent edition of "Rental Rate Bluebook for Construction Equipment" (the Bluebook), published by Nielson/Dataquest, or a similar publication approved by the Engineer. Rental for machinery and equipment shall be based upon an appropriate fraction of the approved monthly rate schedule. If the Extra Work requires the use of machinery or equipment not already on the site of the Work, the cost of transportation, not exceeding a distance of 100 miles, of such machinery or equipment to and from the Work shall be added to the fair monthly rental; provided, however, that this shall not apply to machinery or equipment already required to be furnished under the terms of the Contract Documents. In addition to the rental or leasing rate, operating costs shall not exceed the estimated hourly rate in the aforementioned guide. There shall be no operating costs allocated for idle time.

Hourly rates shall be developed by dividing the monthly Blue Book rates by 176 hours a month (the "weekly", "hourly", and "daily" rates listed in the Blue Book shall not be used). Rates in all cases shall be adjusted by application of the Rate Adjustment Tables (machine age adjustment) plus adjustments to eliminate Equipment Overhead plus Regional Adjustments.

The equipment rate for usage in excess of eight hours a day shall be fifty percent (50%) of the base hourly rate as established in the initial hourly calculation above.

The rates used for billing purposes will be those most economical to the Owner based on the circumstances of actual usage and all applicable credits and discounts.

For equipment rented or leased from lessor firms associated with or owned by the Contractor, the Contractor shall be entitled to reimbursement as though the equipment was owned equipment, as specified below.

For equipment owned by the Contractor, the Contractor shall be entitled to costs based on its normal accounting practices used in developing general bids, but in no event shall those costs plus the estimated operating costs exceed the hourly rates as established above. The Contractor

shall provide documentation to substantiate the equipment rates used when developing the bid if requested by the Owner or Engineer.

Supplemental costs may include the proportion of necessary transportation, travel and subsistence expenses of Contractor's employees incurred in discharge of duties concerned with the Extra Work, and the cost of materials, supplies and equipment installed in the Extra Work.

The Contractor shall be reimbursed for the direct cost (no additional fee) of any increased Contract Bond premium due to an increase in the adjusted Contract Price, provided, however, that the percentage premium rate applied to the increased Contract Price shall not exceed the percentage premium rate paid for the original Contract Bonds issued to the Owner. Contractor's right to recover this cost is subject to the Owner's right to audit.

The Contractor shall provide a credit to the Owner for any decreased Contract Bond premium due to a decrease in the adjusted Contract Price.

The Cost of the Extra Work shall not include any of the following costs, all of which are considered supplemental costs not allowed, administrative costs, or contingencies and covered by the Contractor's Fee:

- a. Costs already included in the Contract Price for the Work (including all previously authorized adjustments).
- b. Payroll costs and other compensation of personnel employed by the Contractor whether at the site or in the Contractor's principal or a branch office for management, administration or in support of the performance, management or administration of the Work, including, but not limited to, the Contractor's officers, executives, principals, general managers, project managers, construction managers, superintendents, estimators and schedulers, detailer, claims consultants, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, engineers, architects, timekeepers, and clerks.
- c. Expenses of the Contractor's principal and branch offices including, but not limited to, Contractor's office and temporary facilities at the site.
- d. Any part of the Contractor's capital expenses, including interest on the Contractor's capital employed for the Extra Work and charges for delinquent payments.
- e. Costs due to the fault or negligence of the Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, deposits to be lost, costs to correct defective work, disposal of materials or equipment wrongly supplied and making good any damage to property.
- f. Costs of a rental of small tools; costs of a rental of buildings.
- g. Costs associated with the preparation of Change Orders (whether or not ultimately authorized), cost estimates, or the preparation or filing of claims.
- h. Expenses of the Contractor associated with anticipated lost profits or lost revenues, lost income or earnings, lost interest on earnings or unpaid retainage.

- i. Costs derived from the computation of a "home office overhead" rate by application of the Eichleay, Allegheny, Burden Fluctuation, or other similar methods.
- j. Costs of special consultants or attorneys, whether or not in the direct employ of the Contractor, employed for services specifically related to the resolution of a claim, dispute, or other matter relating to the acceptability of the Work.
- k. Acceleration costs incurred as an alternative to an extension in Contract Time on account of delays not meeting the requirements for extensions in Contract Time.
- l. Escalation costs for any part of the Work which is not delayed beyond the applicable Late Dates in the Construction Schedule required by Section 01311 of the Specifications.
- m. Delay costs.
- n. Early completion costs.
- o. Costs associated with the indirect or cumulative impact, disruption, losses of productivity, acceleration, time delays, or overtime performed by the Contractor. Changes and Extra Work are anticipated on this Project and it is entirely anticipated that there will be many Changes during the performance of the Work. Contractor, and its Subcontractors and Suppliers, agree to include any and all costs in their Extra Work pricing proposals.
- p. Other administrative expense or contingent costs of any kind, and the costs of any item not specifically and expressly included in this Section.

The Contractor's Fee (profit), in connection with the Extra Work shall not exceed the following percentages of the various portions of the Cost of the Extra Work:

- a. For the Contractor's labor costs, the Contractor's Fee shall not exceed fifteen percent (15%).
- b. For the Contractor's material/equipment or construction equipment costs, the Contractor's Fee shall not exceed ten percent (10%).
- c. For Extra Work performed by (a) a Subcontractor having a direct Subcontract with the Contractor, the Contractor's Fee shall not exceed five percent (5%) of the cost of the Extra Work excluding lower tier fees, and the Subcontractor's Fee shall not exceed ten percent (10%); (b) a lower tier Subcontractor, the Contractor's Fee and the corresponding first tier Subcontractor's Fee shall not exceed five percent (5%) each, and the lower tier Subcontractor's Fee shall not exceed ten percent (10%).

No Contractor's Fee shall be payable on the basis of Subcontractor's Fees.

The credit to be allowed by the Contractor to the Owner for any individual Change in the Work (combining additions and deletions) which results in a net decrease in cost (Cost of the Extra Work is negative) shall be the amount of the actual net decrease. The Contractor is not required to provide a credit for the fee associated with the decrease.

When more than one individual change, each resulting in a net increase or decrease in the Cost of the Extra Work, is covered in one specific Change Order or submittal or claim, the adjustment in the Contractor's Fee shall be the sum of the individual Fees.

§7.3 REDUCTION IN SCOPE OF WORK

The Owner, through the Engineer or a consultant, if applicable, reserves the right to decrease the scope of the Work to be done under this Agreement and to omit any Work should the Owner deem it to be in the public interest to do so. To this end, the Owner reserves the right to reduce the quantity of any item or omit any item as set forth in the Bid, either prior to executing the Agreement or at any time during the performance of the Work. The Owner further reserves the right, at any time during the performance of the Work, to restore all or part of any item previously omitted or reduced. An equitable reduction in the Contract Price shall be determined in accordance with the provisions of Section 7.2, Extra Work. Exercise by the Owner of the above rights shall not constitute any ground or basis of claim for damages or for anticipated profits on the work omitted.

§7.4 CHANGES NOT TO AFFECT BONDS

Any changes made in the Work or the Drawings or Specifications therefor (whether such changes increase or decrease the Contract Price or Contract Time or any changes in the manner of time of payments made by the Owner to the Contractor, or any other modifications of the Contract Documents, shall in no way annul, release, diminish or affect the liability of the Surety on the Bonds given by the Contractor, it being the intent hereof that, notwithstanding such Changes, the liability of the Surety on said bonds continue and remain in full force and effect.

§7.5 MODIFICATION

Except as otherwise expressly provided herein, the Agreement may not be amended or otherwise modified except in writing signed by the parties hereto. In the event the Contractor does not sign the respective documents outlined in the Agreement, the Owner shall issue a unilateral modification.

§7.6 DIFFERING SITE CONDITIONS

If during the progress of the Work, the Contractor or the Owner discovers that the actual subsurface or latent physical conditions encountered at the site differ substantially and materially from those indicated in the Contract Documents or discovers unknown physical conditions at the site of an unusual nature differing substantially and materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents either the Contractor or the Owner may request an equitable adjustment in the Contract Price and Contract Time for work affected by the differing site conditions.

To make a claim for an equitable adjustment due to alleged differing site conditions, the party making the claim shall provide written notice to the other party and the Engineer (“DSC Claim Notice”) as soon as possible after such conditions are discovered, and before the conditions are disturbed, but in no event more than three (3) calendar days, or such longer time as may be extended by the Owner, after the earlier of (a) discovery of such conditions or (b) the date on which the party making the claim knows or should have known of such condition.

Subsequent to such DSC Claim Notice, the party making the claim shall prepare a written, itemized statement of the details of the alleged differing site condition, which shall be supported by sufficient engineering investigation and opinion, the details and amount of the alleged costs, and the suggested method of addressing the differing site condition (“DSC Claim

Statement”)Such DSC Claim Statement shall be delivered by the party making the claim to the other party and the Engineer as soon as possible after such conditions are discovered, and before the conditions are disturbed, but in no event more than ten (10) calendar days, or such longer time as may be extended by the Owner, after the earlier of (a) discovery of such condition, or (b) the date on which the party making the claim knows or should have known of such condition.

In no event does a claim of a differing site condition by either party relieve or diminish any responsibilities, obligations and liabilities under the Contract Documents of either party.

Upon receipt of DSC Claim Notice and DSC Claim Statement from the Contractor, or upon its own initiative after providing the DSC Claim Notice and DSC Claim to the Contractor, the Owner shall make an investigation of such physical conditions, and, if they differ substantially or materially from those indicated in the Contract Documents or from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents, and are of such a nature as to cause an increase or decrease in the cost of performance of the Work or a change in the construction methods required for the performance of the Work, the Owner shall make an equitable adjustment, which is the actual costs incurred by the Contractor due to the differing site condition plus its reasonable profit (defined as the “Contractor’s Fee” per in Section 7.2) or the actual cost savings enjoyed by the Contractor, whichever may be applicable. The Contract Price and the Contract Documents shall be modified in writing accordingly.

In no event does Owner’s confirmation of a differing site condition relieve or diminish any responsibilities, obligations and liabilities under the Contract Documents of either party. The requirements to provide the DSC Claim Notice and DSC Claim Statement, as described in this Section, are material terms of this Agreement for the Contractor. Unless such DSC Claim Notice and DSC Claim Statement is filed with the Owner by Contractor as required, the Contractor’s claim for an equitable adjustment shall be deemed waived, invalid and unenforceable, and it shall not be entitled to any compensation for any such alleged differing site condition. No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after Final Payment under this Agreement.

ARTICLE 8 – TIME

§8.1 COMPUTATION OF TIME

Any period of time in days will be computed in calendar days and shall exclude the first and include the last day of such period. If the last day of any such period falls on a day other than a business day, that day shall be omitted from the computation.

§8.2 ALLOWABLE DELAY BY OWNER

The Owner may delay the beginning of the Work or any part thereof if the necessary lands or rights-of-way for such Work shall not have been obtained. The Contractor shall have no claim for additional compensation or damages on account of such delay, but shall be entitled only to an extension of time as hereinafter provided.

§8.3 TIME FOR COMPLETION

The rate of progress shall be such that the Work shall be performed and completed in accordance with the Contract Documents before the expiration of the time limit stipulated in Table A of this Agreement, except as otherwise expressly provided herein.

The time of commencement, any interim milestones and final completion of the Work in accordance with the Contract Documents are essential conditions of this Agreement.

It is agreed that the rate of progress herein required has been purposely set low enough to allow for the ordinary and foreseeable delays incident to construction work of this character. No extension of time will be given for ordinary or foreseeable delays, inclement weather, or accidents, and the occurrence of such will not relieve the Contractor from the necessity of maintaining this rate of progress and completing the Work within the Contract Time.

If delays are caused by acts of God, acts of government, unavoidable strikes, extra work, or other causes or contingencies clearly beyond the control or responsibility of the Contractor, the Contractor may be entitled to additional time to perform and complete the Work, provided that the Contractor shall, within ten (10) days from the beginning of such delay notify the Owner in writing, with a copy to the Engineer, of the cause and particulars of the delay. Upon receipt of such notification, the Owner shall review and evaluate the cause and extent of the delay. If, under the terms of the Agreement, the delay is properly excusable, the Owner will, in writing, appropriately extend the Contract Time for completion of the Work. (This paragraph will be interpreted to include delays in receipt of equipment provided that the Contractor placed its order and submitted shop drawings for such equipment promptly after execution of the Agreement, that it has shown due diligence in following the progress of the order, and that the time required for delivery is in accordance with conditions generally prevailing in the industry.) The Contractor agrees that it shall not have or assert any claim for nor shall it be entitled to any additional compensation or damages on account of such delays.

The time is of the essence for this Agreement and the Work to be performed and completed in accordance with the Contract Documents. Where, in accordance with the Contract Documents additional Contract Time is allowed for completion of any Work, the new time fixed by such extension shall be of the essence of this Agreement.

§8.4 EXTENSION OF TIME

When Extra Work, as per §7.2, is ordered near the completion of the Work or at any time during the performance of the Work which unavoidably increases the time for the completion of the Work, an extension of time shall be granted as hereinbefore provided. Extra Work which is not on the critical path of the Project Schedule will not be considered.

The criteria to be used to determine an adjustment in Contract Time necessitated by changes ordered or negotiated pursuant to this Agreement, or work covered by a submittal or a claim, are limited to the following:

- i. An adjustment in Contract Time will be based solely upon net increases in the time required for the performance or completion of parts of the Work that negatively impact the Critical Path of the Project Schedule. However, even if time required for the performance or completion of controlling parts of the Work is extended, an extension in Contract Time will not be granted until all of the available Total Float in the Project Schedule is consumed and performance or completion of the controlling Work necessarily extends beyond the Contract Time.
- ii. An extension in Contract Time will not be granted unless the Contractor can demonstrate through an analysis of the Project Schedule that the increases in the time to perform or complete the Work, or specified part of the Work, beyond the

corresponding Contract Time(s) arise from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and its Subcontractors, suppliers or other persons or organizations, and that such causes in fact lead to performance or completion of the Work, or specified part in question, beyond the corresponding Contract Time, despite the Contractor's reasonable and diligent actions to guard against those effects. Examples of such causes include acts of God, acts of government, unavoidable strikes, certain extra work, or other causes or contingencies clearly beyond the control or responsibility of the Contractor.

It is the intent of the Contract Documents that an extension in Contract Time, if any granted, shall be the Contractor's sole and exclusive remedy in law or in equity for any delay, disruption, interference, or hindrance and associated costs, however caused.

§8.5 DELAY DAMAGES

As set forth in Section 8.3, Time For Completion, time is of the essence with respect to the date for final completion specified in Table A of this Agreement and all other time periods and dates specified in the Contract Documents. The Contractor understands that delays in completion of the Work will cause the Owner to suffer damages and incur costs, and will expose the Owner to other substantial liabilities. Such damages, costs, and liabilities include, but may not be limited additional engineering/consultant fees, administrative expenses, legal expenses, penalties or fines. The amount currently estimated after the Owner's approximation of these costs is identified in Table A. Contractor and Owner agree that the anticipated damages to the Owner arising from delay are difficult to forecast and to quantify and therefore voluntarily stipulate that the fixed amount per day listed in Table A is a good faith approximation of the anticipated damages. Contractor does not consider this amount of liquidated delay damages a penalty and expressly and voluntarily agrees to the assessment of the liquidated damages.

The Contractor understands that, without limitation of the provisions of Section 3.1, Obligations and Liability of Contractor, or any other provisions of the Contract Documents, if the Contractor shall neglect, fail or refuse to achieve final completion of the work within the time specified in Table A, or shall fail to achieve any other interim or milestone date specified in the Contract Documents, as such-times or dates may be extended pursuant to the provisions of the Contract Documents, the Owner will hold the Contractor strictly liable for all such damages, costs, expenses or liabilities sustained or incurred by the Owner arising directly or indirectly out of such delays.

Such damages may be retained from time to time by the Owner from payments of progress estimates or any other amounts owing to the Contractor, or otherwise collected. None of the following shall constitute a waiver or release of the Contractor's or its Surety's obligations or liabilities for such damages or any portion thereof: (a) acceptance of any portion of the Work or the use or occupancy thereof; (b) completion of a portion of the Work or the use or occupancy thereof by the Owner or separate Contractor; or (c) the Owner's requiring or allowing the Contractor or its Surety to complete the Work. The Owner's right to recover such damages is in addition to and shall not limit any other rights and remedies provided under the Contract Documents or by operation of law.

However, the Contractor shall not be charged with delay damages or any excess costs when the delay in completion of the Work is for reasons included in Section 8.4, Extension of Time. Provided, further, that Contractor shall furnish Owner the required notification of such delays in accordance with Section 4.6, Claims for Damages Against Owner.

ARTICLE 9 – FINAL ESTIMATE, PAYMENT, AND COMPLETION

§9.1 PRICES FOR WORK

The Owner shall pay and the Contractor shall receive the prices stipulated in the Bid made a part hereof as full compensation for everything performed and furnished and for all risks and obligations undertaken by the Contractor under and as required by the Contract Documents.

§9.2 FORMAL ACCEPTANCE

This Agreement constitutes an entire contract for one whole and complete Work or result. Fixing of the date of completion and acceptance of the Work or a specified part thereof shall only be effective when accomplished by a writing specifically so stating and signed by the Owner.

§9.3 SUBSTANTIAL COMPLETION

Unless otherwise provided in the Contract Documents, Substantial Completion shall mean that substantially all of the Work has been completed and opened to public use except for minor incomplete or unsatisfactory work items that do not materially impair the usefulness of the Work required by the Contract Documents. Substantial Completion shall be conclusively determined by the Engineer after inspection of the Work and in accordance with all requirements of the Contract Documents.

When the Contractor determines that he has met all requirements for Substantial Completion as detailed in the Contract Documents, it shall notify the Owner and the Engineer in writing that the entire Work is substantially complete (except for items specifically listed by the Contractor as incomplete) and request that the Engineer issue a Certificate of Substantial Completion. Within a reasonable time thereafter, the Owner, the Contractor and the Engineer shall make an inspection of the Work to determine the status of completion. If, after consultation with the Owner, the Engineer does not consider the Work substantially complete, the Engineer will notify the Contractor in writing stating the reasons therefor. If, after consultation with the Owner, the Engineer determines and the Owner agrees that the Work is substantially complete, the Engineer will prepare and deliver to the Contractor, in a form approved by the Owner, a Certificate of Substantial Completion which shall fix the date of Substantial Completion. Included or referenced within the Certificate of Substantial Completion shall be a list of items to be completed or corrected before final payment.

The Owner shall have the right to exclude the Contractor from the Work, or specified part, after the date of Substantial Completion, but the Owner shall allow the Contractor reasonable access to complete or correct items on the list included within or referenced by the Certificate of Substantial Completion.

§9.4 PARTIAL UTILIZATION

The Owner may, at any time in a written order to the Contractor (1) declare that he intends to use a specified part of the Work which in the Owner's opinion is sufficiently complete, in accordance with the Contract Documents, to permit its use; (2) enclose a tentative list of items remaining to be completed or corrected, and (3) fix the date of Substantial Completion of that specified part of the Work.

No occupancy or separate operation of part of the Work will be accomplished prior to compliance with the requirements of Section 11.1, Insurance, in respect to property insurance.

Within forty-five (45) days after acceptance under this subsection, the Engineer shall make an estimate in writing of the amount and value of the part of the Work so accepted. The Owner shall pay said amount to the Contractor after deducting therefrom all previous payments, all charges against the Contractor as provided for hereunder, and all amounts to be retained under the provisions of the Agreement, said payment to be made at the time of the next monthly progress estimate.

Partial utilization by the Owner under this subsection shall not relieve the Contractor of any obligations under the Contract Documents except to the extent agreed upon in writing between the Owner and the Contractor.

The Owner shall have the right to exclude the Contractor from any part of the Work which has been accepted, but the Owner shall allow the Contractor reasonable access thereto to complete or correct items on the tentative list.

§9.5 FINAL ESTIMATE AND PAYMENT

As soon as practicable (but not more than sixty-five (65) days) after final completion of the Work, the Engineer shall make a final estimate in writing of the quantity of Work done under the Agreement and the amount earned by the Contractor.

The Owner shall pay to the Contractor the entire amount found by the Engineer to be earned and due hereunder after deducting therefrom all previous payments and all charges against the Contractor as provided for hereunder. Except as in this subsection otherwise provided, such payment shall be made not later than forty-five (45) days after but in no event before, the expiration of the time within which claims for labor performed or materials or equipment furnished must be filed under the applicable lien law.

All quantities shown on progress estimates and all prior payments shall be subject to correction in the final estimate and payment.

The Owner, at its discretion, may require the Contractor to include a final release and lien waivers, on a form provided by the Owner, fully executed by the Contractor with the Contractor's Final Application For Payment.

§9.6 LIABILITY OF OWNER

No person, firm or corporation, other than the Contractor, who signed this Agreement as such, shall have any interest herein or right hereunder. No claim shall be made or be valid either against the Owner or any agent of the Owner and neither the Owner nor any agent of the Owner shall be liable for or be held to pay any money, except as herein provided. The acceptance by the Contractor of the payment as fixed in the final estimate shall operate as and shall be a full and complete release of the Owner and of every agent of the Owner of and from any and all claims, demands, damages and liabilities of, by or to the Contractor for anything done or furnished for or arising out of or relating to or by reason of the Work or for or on account of any act or neglect of the Owner or of any agent of the Owner or of any other person, arising out of,

relating to or by reason of the Work, except the claim against the Owner for the unpaid balance, if any there be, of the amounts retained as herein provided.

§9.7 RIGHT TO MATERIALS

Nothing in the Agreement shall be construed as vesting in the Contractor any right of property in the materials, equipment, apparatus and other items furnished after they have been installed or incorporated in or attached or affixed to the Work or the site and no later than the time of payment, but all such materials, equipment, apparatus and other items shall, upon being so installed, incorporated, attached or affixed, become the property of the Owner. Nothing in this subsection shall relieve the Contractor of its duty to protect and maintain all such materials, equipment, apparatus and other items.

ARTICLE 10 – PROTECTION OF PERSONS AND PROPERTY

§10.1 SAFETY PRECAUTIONS

The Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Work.

§10.2 HAZARDOUS MATERIALS

If a hazardous material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), is encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop its Work in the affected area and report the condition to the Owner and Engineer in writing.

ARTICLE 11 – INSURANCE AND BONDS

§11.1 INSURANCE

Before starting and until final completion and acceptance of the Work, including Warranties, the Contractor shall procure and maintain insurance of the types specified in paragraphs (A) to (H), inclusive, below. All insurance shall be obtained from companies satisfactory to the Owner.

Insurance shall be in such forms as will protect the Contractor from all claims and liability for damages for bodily and personal injury, including accidental death and property damage, which may arise from operations under the Work, whether such operations be by itself, its subcontractors, or by anyone directly or indirectly employed or engaged by the Contractor.

The following types of insurance shall be provided. The insurance carriers shall be rated by A.M. Best's with no less than an "A-" rating and a financial size of "8" or higher and licensed to do business in the State of Rhode Island. The limits, terms, and conditions of the various policies shall be as detailed in the Certificates of Insurance attached hereto:

- A. Contract Bonds as required under applicable Laws or Regulations including but not limited to Rhode Island General Laws § 37-13-14. The bond requirements are more particularly referenced in the Contract Bonds (CB) Section of this Agreement.
- B. Commercial General Liability (CGL) Insurance.

1. CGL coverage shall provide limits of not less than \$1,000,000 each occurrence and \$2,000,000 annual aggregate. If the CGL coverage contains a General Aggregate Limit, such General Aggregate shall apply separately to this Project.
2. CGL coverage shall be written on ISO Occurrence form CG 00 01(12-07) or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contractors, products-completed operations, and personal and advertising injury.
3. The Owner, its agents, officers, employees, and any other parties identified within the exhibit (hereinafter referred to collectively as “Designated Parties” or “Additional Insured”) shall be included as additional insureds on the CGL, using ISO Additional Insured endorsement CG 2010 (11/85) or CG 2010 (07/04) for ongoing operations and CG 2037 (07/04) for products and completed operations or an endorsement providing equivalent coverage to the Additional Insureds. This insurance for the Additional Insureds shall be as broad as the coverage provided for the named insured contractor and/or its subcontractor(s). Such insurance shall include cross liability coverage as provided under the standard ISO separation of insured clause. It shall apply as primary and non-contributing insurance before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the Additional Insureds.
4. Contractor and its Subcontractors shall maintain CGL coverage for themselves and the Additional Insureds for the duration of the Project and maintain Products and Completed Operations coverage for themselves and the Designated Parties for at least 10 years after completion of the Work.

C. Commercial Automobile Liability Insurance.

1. Commercial Auto Liability with a minimum of \$1,000,000 combined single limit.
2. Commercial Auto coverage must include coverage for liability arising out of all owned, leased, hired, and non-owned automobiles.
3. All parties defined above as Designated Parties shall be included as an additional insured on the commercial auto policy on a primary, non-contributing basis.

D. Worker’s Compensation and Employer’s Liability Insurance.

1. Statutory RI worker’s compensation coverage and the state of hirer, if different, shall be provided with Employers Liability limits no less than:
 - i. Bodily Injury by Accident \$500,000 Each Accident
 - ii. Bodily Injury by Disease \$500,000 Policy Limit
 - iii. Bodily Injury by Disease \$500,000 Each Employee
2. Terms and Conditions shall include:

- i. USL&H – where applicable by law
 - ii. Jones Act – where applicable by law
- E. Builders’ Risk and Installation Floater Coverage.
 1. If applicable, Builders’ Risk and Installation Floater Coverage issued on an “All Risk” form including the completed value basis in the amount of the total insurable value of all structures, materials, and equipment to be built and installed. The policy shall indicate the Owner, the Contractor, all Subcontractors, and the Engineer as the named insured. Any co-insurance clause shall be null and void and the agreed amount endorsement shall apply.
 2. The Builders Risk coverage should include the perils of Flood and Earthquake as well as Equipment Breakdown exposures, including the testing of equipment.
 3. If the Owner will be occupying and/or utilizing buildings or structures while under renovation or construction, therefore, the Builder’s Risk policy shall be endorsed to include the “permission of occupancy” agreement.
- F. Commercial Umbrella/Excess Liability.
 1. The Umbrella/Excess must be at least \$__TBD__ per occurrence.
 2. Umbrella/Excess coverage must include the Designated Parties as mentioned in the CGL coverage section as additional insureds. The additional insured coverage shall apply as primary and non-contributory before any other insurance that is maintained by, or provided to the Designated Parties, other than any Worker's Compensation and Employer's Liability, Commercial General Liability, Commercial Auto Liability, Builder’s Risk coverages maintained by the Contractor for the benefit of the Additional Insureds.
- G. Contractor’s Pollution Liability (CPL).
 1. If applicable, the Contractor and all subcontractors shall maintain CPL coverage for all work involving pollution related exposures including abatement, handling, removal, storage, transportation, excavation, and disposal or any hazardous materials. The CPL shall also include coverage for mold, fungi, bacteria, and microbial events.
 2. The minimum policy limit shall be \$2,000,000 per occurrence and in the aggregate and include coverage for bodily injury, property damage, and clean-up costs.
 3. The CPL coverage shall also include the Designated Parties as additional insureds on a primary basis and before any other insurance or self-insurance, including any deductible that is maintained by, or provided to the Additional Insureds. Contractor shall maintain CPL coverage for itself and the Additional Insureds for the duration of the project and maintain Completed Operations coverage for itself and the Additional Insureds for a minimum of 10 years after completion of Contractor’s work.

H. Professional Liability Coverage.

1. If the Contractor's or subcontractor's scope of work requires design and/or trade/subcontractor's designer, architect, or engineer shall provide professional liability insurance for protection from claims arising out of the performance of any design, engineering, or professional services performed or furnished in connection with the Contractor's work caused by any negligent act, error, or omission for which the Contractor's or subcontractor's architects or engineers may be liable.
 - i. No exclusion for asbestos, pollutants, mold, fungi, etc.
 - ii. Coverage must be primary and non-contributory insurance.
 - iii. Contractual Liability should be included.
2. The professional liability coverage shall remain in effect after acceptance by the Owner until the later of the statute of limitations or the statute of repose. If such coverage is project specific then an extended reporting endorsement must be provided for such period.

Additional Insurance Requirements:

Should there be an insured loss on any of the above lines of coverage, it shall be the Contractor's responsibility for the payment of any deductible that may apply.

All policies must include the Terrorism Risk Insurance Act Coverage (TRIA).

Waiver of Subrogation: Contractor and its subcontractor(s) shall waive all rights they may have against the Owner and against each of the other Designated Parties, for damages covered by any Property or Liability insurance maintained by the Contractor, and their subcontractors including but not limited to Commercial General Liability, Business Automobile Liability, Inland Marine, Commercial Umbrella, Contractors Pollution Liability, and Workers' Compensation & Employers Liability Insurance. This waiver shall apply even if the insurance maintained by the Contractor is self-insurance or is subject to a deductible or a self-insured retention.

All insurance shall be obtained before the Work is started and shall be maintained until the date of final completion of the Work and performance of warranty obligation except for Builders' Risk insurance which shall be maintained until final completion, or until the Owner occupies or otherwise takes possession of the structure, whichever occurs first.

All policies shall be so written that the Owner and the Engineer will be notified in writing of cancellation or restrictive amendment at least thirty (30) days prior to the effective date of such cancellation or amendment.

Copies of the foregoing insurance policies and/or Certificates of Insurance shall be provided to the Owner within thirty (30) days of the execution of the Agreement and prior to the start of any work or at any time as requested by the Owner after the job has commenced.

Certificates of Insurance from the Contractor's insurance carriers stating the coverage provided, the limits of liability, and expiration dates shall be filed in triplicate with the Owner and the

Engineer before operations are begun. Such certificates shall be on the form furnished by the Engineer, a copy of which is attached hereto.

Renewal certificates must be furnished by the Contractor prior to the expiration date of any of the initial insurance.

It is further agreed between NBC and Contractor that the failure of NBC to require or verify complete and timely performance of the Contractor's obligations under this agreement shall not be a waiver by NBC of any right of NBC to require the Contractor to comply with these insurance requirements and/or to seek damages because of Contractor's failure to comply with the insurance or other requirements required within this contract document.

§ 11.2 ADDITIONAL OR SUBSTITUTE BONDS

If at any time the Owner, for justifiable cause, is or shall become dissatisfied with any Surety or Sureties the Contractor shall, within five (5) calendar days after notice from the Owner to do so, substitute an acceptable bond (or bonds) in such form and sum and signed by such other Surety or Sureties, as may be acceptable to the Owner. The premiums on such bonds shall be paid by the Contractor with no additional expense to the Owner. No further payments shall be deemed nor will be made until the new Surety or Sureties shall have furnished such as acceptable bond to the Owner.

ARTICLE 12 – UNCOVERING AND CORRECTION OF WORK

§12.1 EXAMINATION OF WORK

The Engineer shall be furnished by the Contractor with every reasonable facility for examining and inspecting the Work and for ascertaining that the Work is being performed in accordance with the requirements and intent of the Agreement, even to the extent of requiring the uncovering or taking down portions of finished work by the Contractor.

Should the Engineer in its sole judgment consider the Work thus uncovered or taken down satisfactory, the cost of uncovering or taking down and the replacement thereof shall be considered as Extra Work unless the original Work was done in violation of the Contract Documents in point of time or in the absence of the Engineer or the Engineer's inspector and without the Engineer's written authorization, in which case said cost shall be borne by the Contractor. Should the work uncovered or taken down prove unsatisfactory in the Engineer's sole judgment, said cost shall likewise be borne by the Contractor.

Examination or inspection of the Work shall not relieve the Contractor of any of its obligations to perform and complete the Work as required by the Contract Documents.

§12.2 DEFECTIVE WORK

Until acceptance and in accordance with its Warranty obligations, the Contractor shall promptly, without charge, repair, correct or replace work, equipment, materials, apparatus or parts thereof which are defective, damaged or unsuitable or which in any way fail to comply with or be in strict accordance with the provisions and requirements of the Contract Documents or applicable Warranty and shall pay to the Owner all resulting costs, expenses, losses or damages suffered by the Owner (including, but not limited to, all costs of repair or replacement of work by others).

If any material, equipment, apparatus or other items brought upon the site for use or incorporation in the Work, or selected for the same, is rejected by the Engineer as unsuitable or not in conformity with the Specifications or any of the other Contract Documents, the Contractor shall forthwith remove such materials, equipment, apparatus and other items from the site of the Work and shall at its own cost and expense make good and replace the same and any material furnished by the Owner which shall be damaged or rendered defective by the handling or improper installation by the Contractor, its agents, servants, employees or subcontractors.

If the Contractor fails within a reasonable time after written notice from the Engineer to correct Defective Work or to remove and replace rejected Work as required by the Engineer in accordance with this Section, or if the Contractor fails to perform the Work in accordance with the Contract Documents, or if the Contractor fails to comply with any other provision of the Contract Documents, the Owner, may, after three (3) days' written notice to the Contractor, correct and remedy any such deficiency. (This notification period may be reduced when the deficiencies affect the health, safety or welfare of the public or critical facility operations.) In exercising the rights and remedies under this paragraph the Owner shall proceed expeditiously. In connection with such corrective and remedial action, the Owner may exclude the Contractor from all or part of the site, take possession of all or part of the Work, and suspend the Contractor's services related thereto, take possession of the Contractor's tools, appliances, construction equipment and machinery at the site and incorporate in the Work all materials and equipment stored at the site or for which the Owner has paid the Contractor but which are stored elsewhere. The Contractor shall allow the Owner, the Owner's representatives, agent and employees, the Owner's other contractors and the Engineer access to the site to enable the Owner to exercise the rights and remedies under this paragraph. All claims, costs, losses and damages incurred or sustained by the Owner in exercising such rights and remedies will be charged against the Contractor. Such claims, costs, losses and damages will include but not be limited to all costs of repair or replacement of work of others destroyed or the damaged by correction, removal or replacement of the Contractor's Defective Work. The Contractor shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by the Owner or the Owner's rights and remedies hereunder.

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 pay all claims, costs, losses and damages attributable to the Owner's evaluation of and determination to accept such Defective Work. A Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work and the Owner shall be entitled to an appropriate decrease in the Contract Price.

§12.3 RETAIN MONEY FOR REPAIRS

If at any time any part of the Work requires repair, correction or replacement, the Owner may notify the Contractor in writing to make the required repairs, correction, or replacements. If the Contractor neglects to commence making such repairs, correction, or replacements to the satisfaction of the Owner within (3) days from the date of receipt of such notice, or having commenced fails to perform such Work with diligence, the Owner may employ other persons to make the same, and all direct and indirect costs of making said repairs, correction or replacements, including compensation for additional professional services, shall be paid by the Contractor.

ARTICLE 13 – MISCELLANEOUS PROVISIONS

§13.1 NIGHT AND SUNDAY WORK

No work shall be done at night or on Sunday except (1) usual protective work, such as pumping and the tending of temporary lighting/power and temporary heating, (2) work done in case of emergency threatening injury to persons or property, or (3) if all of the conditions set forth in the next paragraph below are met.

No work other than that included in (1) and (2) above shall be done at night or on Sunday except when (a) in the sole judgment of the Engineer, the work will be of advantage to the Owner and can be performed satisfactorily, (b) the work will be done by a crew organized for regular and continuous work, (c) the Engineer has given written permission for such work, or (d) the work is specified in Specification 01311 or Specification 01810 to be completed in accordance with specific time restraints.

§13.2 NOTICE AND SERVICE

Any notice given per this Agreement shall be in writing.

The principal contacts for written notices for the Owner and Contractor shall be the following at the commencement of the Work:

**Owner’s Contact
for Notice:**

Address: _____
Email: _____

**Contractor’s Contact
for Notice:**

Address: _____
Email: _____

The Owner and Contractor may only change the contact person for notice in writing.

For all notices other than those given pursuant to Article 14, Termination and Suspension, or communications to the Contractor’s Sureties, notice and delivery of the written communication shall be deemed accomplished by one or more of the following methods:

- (a) Email communication. Notice shall be deemed effective one (1) business day after sending of the email communication to the proper email address designated above (or later designated substitute) unless receipt is confirmed by the recipient or otherwise responded to by the recipient in which case notice is accomplished the same day the email was sent and actually received.
- (b) Personal delivery. Written notices may be delivered in-hand to the contact person designated above. Notice shall be deemed effective on the date of actual receipt.

- (c) Mail. Written notices may be delivered by U.S. Mail, Federal Express, UPS, or some other professional delivery service provided that the written communication is properly addressed to the contact person (or later designated substitute) for the Owner or Contractor.

For notices given pursuant to Article 14, Termination and Suspension, or any written notice or other communication to the Contractor's sureties, such notices shall be mailed by certified mail, return receipt requested, to the home office of the Contractor, the home office of the Surety (or address listed for notice by the Surety on the issued Contract Bonds), or to the agent who executed the Contract Bonds on behalf of the Surety.

§13.3 HEADINGS

The headings or titles of any section, subsection, paragraph, provision, or part of the Contract Documents shall not be deemed to limit or restrict the content, meaning or effect of such section, subsection, paragraph, provision or part.

§13.4 NO CONFLICT WITH LAWS OR REGULATIONS

The duties, obligations, criteria or procedure imposed by this Agreement and the rights and remedies made available are in addition to, and are not be construed in any way as a limitation of any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, except that in the event that a specific part of detailed requirement of a provision, criterion or procedure in this Agreement and a specific part or detailed requirement of a provision, criteria or procedure imposed or available by Laws or Regulations are in conflict, the specific part or detailed requirement of such provision, criterion or procedure imposed or available by Laws or Regulations in conflict shall govern. All other specific parts or detailed requirements in the provisions, criteria or procedures of this Agreement not in conflict with applicable laws or regulations shall remain in full force and effect and be read with the controlling specific part or detailed requirement.

The provisions of this Section will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply.

If the Agreement or Contract Documents contain any unlawful provisions, such unlawful provisions shall be of no effect. Upon the application of either party, the unlawful provisions shall be considered stricken from the Agreement or the Contract Documents without affecting the remainder of the Agreement or Contract Documents.

It is intended that all provisions of law required to be inserted in the Agreement or Contract Documents shall be and are inserted herein. If through mistake, neglect, oversight or otherwise, any such provisions is not herein inserted or inserted in improper form, upon the application of either party, the Agreement or Contract Documents shall be changed by the Owner, at no increase in Contract Price or extension in Contract Time, so as to strictly comply with the law and without prejudice to the rights of either party hereunder.

§13.5 NO WAIVER

Observation by the Engineer or by any of the Engineer's representatives, any measurement or report by the Engineer, any order by the Owner for the payment of money, any payment for or

acceptance of any Work or any extension in Contract Time or any Partial Utilization by the Owner shall not operate as a waiver of any provision of the Contract Documents, or any power preserved to the Owner, or of any right to any damages provided. Any waiver of any breach of this Agreement shall not be held to be a waiver of any other or subsequent breach.

Neither the inspection by the Owner or the Engineer, nor any order, measurement, approval, determination, decision or certificate by the Engineer, nor any order by the Owner for the payment of money, nor any payment for or use, occupancy, possession or acceptance of the whole or any part of the Work by the Owner, nor any extension of Contract Time, nor any other act or omission of the Owner or of the Engineer shall constitute or be deemed to be an acceptance of any Defective Work, materials, or equipment nor operate as a waiver of any requirement or provision of the Contract Documents, nor of any remedy, power or right of or herein reserved to the Owner, nor of any right to damages for breach of contract. Any and all rights and/or remedies provided for in the Agreement are intended and shall be construed to be cumulative; and, in addition to each and every other right and remedy provided for herein or by law, the Owner shall be entitled as of right to a writ of injunction against any breach or threatened breach of the Agreement by the Contractor, by its Subcontractors or by any other person or persons.

The Owner reserves the right to correct any error that may be discovered in any estimate that may have been paid, and to adjust same to meet the requirements of the Contract Documents. The Owner further reserves the right, should proof of Defective Work on the part of the Contractor be discovered after final payment, to claim, and recover from the Contractor or its surety, or both, such sums as may be sufficient to correct the error, or make good the defects in the Work.

Any waiver issued by the Owner of any provision of the Contract Documents shall only be effective if issued in writing by the Owner and shall be specific, shall apply only to the particular matter concerned and not to other similar or dissimilar matters.

ARTICLE 14 – TERMINATION AND SUSPENSION

§14.1 SUSPENSION OF WORK

The Owner may at any time and without cause suspend the Work or any portion thereof for a period of not more than ninety (90) days by notice in writing to the Contractor that shall fix the date on which Work shall be resumed. The Contractor shall resume the Work on the date so fixed. The Contractor shall be entitled to an extension of the Contract Time in accordance with the provisions of Section 8.4, Extension of Time.

The Contractor may be entitled to an equitable adjustment in accordance with the provisions of Section 7.2, Extra Work. No equitable adjustments shall be made for any suspension to the extent that performance would have been so suspended pursuant to this Agreement or for which an equitable adjustment is provided for or excluded under any other provision of the Contract Documents.

§14.2 TERMINATION FOR CAUSE

The Owner, acting on belief or knowledge, shall have full power and authority to give written notice to the Contractor and the Surety of the Owner's intention to terminate the services of the

Contractor seven (7) days after the giving of notice, or sooner, if, in the opinion of the Owner it is in the best interests of the Owner to do so, because:

- a. The Contractor fails to complete the Work, or a separable part of the Work, within the corresponding Contract Time, including any authorized adjustments;
- b. The Contractor refuses or fails to perform the Work, or a separable part of the Work, with the diligence that will cause its completion within the corresponding Contract Time, including any authorized adjustments;
- c. The Contractor refuses or fails to supply sufficient skilled workers, materials, or equipment in adherence with the Project Schedule revised from time to time;
- d. The Contractor refuses or fails to provide labor, including that of subcontractors, that can work in harmony with all other elements of labor employed or to be employed by Contractor or other contractors of Owner;
- e. The Contractor refuses or fails to comply with the Project Schedule requirements;
- f. The Contractor disregards the authority of the Engineer;
- g. The Contractor is unable to pay its debts generally as they become due;
- h. The Contractor in response to a demand by the Owner as a result of the Contractor becoming insolvent, seeking relief in bankruptcy, or making a general assignment for the benefit of creditors, fails to provide adequate assurances, the adequacy of which the Owner shall be the sole judge, of the Contractor's future performance in accordance with the requirements of the Contract Documents;
- i. A trustee, receiver, custodian or agent of the Contractor is appointed under applicable law or under contract, whose appointment or authority to take charge of property of such Contractor is for the purpose of enforcing a Lien against such property or for the purpose of general administration of such property for the benefit of the Contractor's creditors; or
- j. The Contractor otherwise violates any provisions of the Contract Documents, fails to perform the Work in accordance with the Contract Documents, or disregards Laws or Regulations of any public entity having jurisdiction over any aspect of the Work.

If upon receipt of a notice of intent to terminate for cause, the Contractor does not cure the default or make adequate assurances that it will immediately take action to cure the default within three (3) days of that notice, the Owner shall have full power and authority, to terminate in whole or in part the Work of the Contractor, exclude the Contractor from the site and, take possession of the Work and of all the Contractor's tools, appliances, plant, construction equipment and machinery at the site and use the same to the full extent they could be used by the Contractor (without liability to the Contractor for trespass or conversion), incorporate in the Work all materials and equipment stored at the site or for which the Owner has paid the Contractor but which are stored elsewhere and prosecute the Work to completion by Agreement or as the Owner may deem expedient. Upon receipt of a notice of termination, the Contractor shall immediately proceed in accordance with any specific provisions or instruction, to protect and maintain the Work, and make reasonable efforts to mitigate any costs.

In the event that the Owner so terminates the Contractor's services for cause, the Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds the direct, indirect and consequential costs of completing the Work (including but not limited to delay damages, fees and charges of engineers, consultants, architects, attorneys and other professionals and court costs) that excess will be paid to the Contractor. If those costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. Costs incurred by the Owner will be incorporated in a Change Order.

Where the Contractor's services have been so terminated by the Owner, the termination will not affect any rights or remedies of the Owner against the Contractor then existing or which may accrue after termination. Any retention or payment of monies due the Contractor by the Owner will not release the Contractor from liability.

All provisions of the Contract Documents that by their nature survive the Completion Date under the Agreement shall remain in full force and effect after a termination for cause. The Owner may, at its sole discretion, permit the Contractor to continue to perform Work when the Contractor is in default, however caused, including but not limited to default under subparagraph b above. Such a decision by the Owner shall in no way operate as a waiver on the part of the Owner of any of its rights under the Contract Documents.

Where the Contractor's services have been so terminated by the Owner, and the Surety completes the Work in place of the defaulted Contractor, the Surety's contract with another contractor makes that Contractor a Subcontractor under the Agreement, in which case:

The provisions of §7.2, Extra Work, shall remain in full force and effect, and the methods and criteria to be used to compute the Surety's and that contractor's Cost of the Work involved in any subsequent changes shall be limited to those provided in §7.2, Extra Work. All Work performed by any such contractor pursuant to a Subcontract between that contractor and the Surety shall be governed by the requirements of the Contract Documents pertaining to Subcontracts.

§14.3 TERMINATION FOR CONVENIENCE

Upon seven (7) days written notice to the Contractor and the Surety, the Owner may, without cause and without prejudice to any other right or remedy, elect to terminate the Agreement in whole or in part. Upon receipt of such notice, the Contractor shall immediately proceed in accordance with any specific provisions or instructions, protect and maintain the Work, and make reasonable and diligent efforts to mitigate costs associated with the termination.

In any such termination for the convenience by the Owner, the Contractor shall be paid for Work completed in accordance with the Contract Documents prior to receipt of the notice of termination, and for reasonable termination settlement costs relating to commitments which had become firm prior to the termination; provided, however, that the payment to the Contractor will exclude any and all anticipated supplemental costs, administrative expenses and profit on uncompleted Work.

If, after notice of termination of the services of the Contractor for any of the causes listed in subparagraphs a through g, "Termination for Cause", it is determined that the Contractor was not in default, the termination shall be deemed to have been for the convenience by the Owner. In such event, the Contractor may recover from the Owner payment in accordance with this Section.

TABLE A

<u>AGREEMENT SUBSECTION</u>	<u>ITEM</u>	<u>LIMITS</u>
§8.3	Contract Time	Within TBD consecutive calendar Days from the Notice to Proceed
§8.5	Delay Damages	\$TBD per Calendar Day
§4.3	Percentage of Progress Estimates to be Retained	5% Until Substantial Completion; 0.5% plus Punch List through one year after the Completion Date
§4.3	Amount of Minimum Progress Estimates	\$10,000.00

ATTACHMENT A-CA

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

(for compliance with all federal, state and local funding related requirements)

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

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

Name and Title of Authorized Agent

Date

Signature of Authorized Agent

NBC Project/Contract No.

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

**ATTACHMENT B - CA
DISCLOSURE QUESTIONNAIRE**

Please answer “Yes” for any event that occurred, in whole or in part, during the past three (3) years. Please attach additional pages explaining the nature and circumstances of each disclosed matter. Failure to respond to each question and/or to provide adequate explanations may lead to the rejection of the Proposal.

For the purposes of these questions: (A) a bid, SOQ, proposal, response, or agreement submitted for the Project is a “Proposal”; (B) a person or entity that submits a Proposal is a “Respondent”; (C) a Respondent and each of its owners, directors, officers, employees, agents, and representatives is a “Respondent Party”; and (D) “Debarment” means an oral or written finding or decision barring, suspending, or otherwise limiting a person’s or entity’s right to engage in any business activity with a governmental entity.

		YES	NO
1.	Has a federal, state, or local governmental entity proposed or issued a Debarment against a Respondent Party?		
2.	Is there a past, pending, or threatened civil, criminal, administrative, or regulatory proceeding involving allegations that a Respondent Party: (a) made one or more material misrepresentations or omissions in a business transaction or (b) engaged in an act or omission in a business transaction that resulted in alleged damages that are greater than or equal to 10% of the Respondent’s annual revenues?		
3.	Has a customer: (a) terminated a contract with Respondent for cause/default or (b) accepted damages from Respondent in lieu of contractual termination for cause/default?		
4.	Is there any reason why NBC might be prohibited from doing business with a Respondent Party?		
5.	Has a Respondent Party had any professional license or certificate suspended or revoked?		
6.	Has a Respondent Party been convicted of a felony criminal offense?		
7.	Has Respondent sought bankruptcy protection in a United States Bankruptcy Court?		

The undersigned warrants that: (1) (s)he is the _____ [TITLE] of _____ [RESPONDENT]; (2) (s)he is authorized to make the representations, warranties, and covenants in this AGREEMENT on Respondent’s behalf; and (3) under penalty of perjury, the warranties and covenants set forth in this AGREEMENT are true and correct.

Signature: _____

Date: _____

NBC Project/Contract No.

CERTIFICATE OF INSURANCE

PROJECT: _____

INSURANCE AGENCY: _____

TYPE	COVERAGE REQUIRED BY INSURANCE CONTRACT DOCUMENTS	POLICY COMPANY	POLICY NUMBER	COVERAGE	EXPIRATION DATE
Workmen's Compensation and Employee's Liability Insurance	As Required by the Laws of the State of Rhode Island	_____	_____	\$ _____	_____
Commercial General Liability	\$1,000,000 each occurrence	_____	_____	\$ _____	_____
	\$2,000,000 annual aggregate Products – Completed Operation aggregate	_____	_____	\$ _____	_____
Commercial Automobile Liability	\$1,000,000 each accident	_____	_____	\$ _____	_____
Builder's Risk Insurance	Total insurable value of all structures, materials, & equipment to be built & installed.	_____	_____	\$ _____	_____
Commercial Umbrella Liability Insurance	\$10,000,000	_____	_____	\$ _____	_____
Pollution Liability including asbestos and lead abatement	\$1,000,000 each occurrence	_____	_____	\$ _____	_____
	\$3,000,000 aggregate	_____	_____	\$ _____	_____

We certify that the coverages noted above meet or exceed the coverages required under Article 11 of the Agreement.

Contractor's Authorized Representative
Date _____

Insurance Agents. Authorized Representative
Date _____



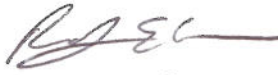
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460


MAR 20 2014

OFFICE OF WATER

MEMORANDUM

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

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

Peter C. Grevatt, Director 
Office of Ground Water and Drinking Water (4601M)

TO: Water Management Division Directors
Regions I - X

P.L. 113-76, Consolidated Appropriations Act, 2014 (Act), includes an “American Iron and Steel (AIS)” requirement in section 436 that requires Clean Water State Revolving Loan Fund (CWSRF) and Drinking Water State Revolving Loan Fund (DWSRF) assistance recipients to use iron and steel products that are produced in the United States for projects for the construction, alteration, maintenance, or repair of a public water system or treatment works if the project is funded through an assistance agreement executed beginning January 17, 2014 (enactment of the Act), through the end of Federal Fiscal Year 2014.

Section 436 also sets forth certain circumstances under which EPA may waive the AIS requirement. Furthermore, the Act specifically exempts projects where engineering plans and specifications were approved by a State agency prior to January 17, 2014.

The approach described below explains how EPA will implement the AIS requirement. The first section is in the form of questions and answers that address the types of projects that must comply with the AIS requirement, the types of products covered by the AIS requirement, and compliance. The second section is a step-by-step process for requesting waivers and the circumstances under which waivers may be granted.

Implementation

The Act states:

Sec. 436. (a)(1) None of the funds made available by a State water pollution control revolving fund as authorized by title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) or made available by a drinking water treatment revolving loan fund as authorized by section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12) shall be used for a project for the construction, alteration, maintenance, or repair of a public water system or treatment works unless all of the iron and steel products used in the project are produced in the United States.

(2) In this section, the term “iron and steel products” means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.

(b) Subsection (a) shall not apply in any case or category of cases in which the Administrator of the Environmental Protection Agency (in this section referred to as the “Administrator”) finds that—

(1) applying subsection (a) would be inconsistent with the public interest;

(2) iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(3) inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

(c) If the Administrator receives a request for a waiver under this section, the Administrator shall make available to the public on an informal basis a copy of the request and information available to the Administrator concerning the request, and shall allow for informal public input on the request for at least 15 days prior to making a finding based on the request. The Administrator shall make the request and accompanying information available by electronic means, including on the official public Internet Web site of the Environmental Protection Agency.

(d) This section shall be applied in a manner consistent with United States obligations under international agreements.

(e) The Administrator may retain up to 0.25 percent of the funds appropriated in this Act for the Clean and Drinking Water State Revolving Funds for carrying out

the provisions described in subsection (a)(1) for management and oversight of the requirements of this section.

(f) This section does not apply with respect to a project if a State agency approves the engineering plans and specifications for the project, in that agency's capacity to approve such plans and specifications prior to a project requesting bids, prior to the date of the enactment of this Act.

The following questions and answers provide guidance for implementing and complying with the AIS requirements:

Project Coverage

1) What classes of projects are covered by the AIS requirement?

All treatment works projects funded by a CWSRF assistance agreement, and all public water system projects funded by a DWSRF assistance agreement, from the date of enactment through the end of Federal Fiscal Year 2014, are covered. The AIS requirements apply to the entirety of the project, no matter when construction begins or ends. Additionally, the AIS requirements apply to all parts of the project, no matter the source of funding.

2) Does the AIS requirement apply to nonpoint source projects or national estuary projects?

No. Congress did not include an AIS requirement for nonpoint source and national estuary projects unless the project can also be classified as a 'treatment works' as defined by section 212 of the Clean Water Act.

3) Are any projects for the construction, alteration, maintenance, or repair of a public water system or treatment works excluded from the AIS requirement?

Any project, whether a treatment works project or a public water system project, for which engineering plans and specifications were approved by the responsible state agency prior to January 17, 2014, is excluded from the AIS requirements.

4) What if the project does not have approved engineering plans and specifications but has signed an assistance agreement with a CWSRF or DWSRF program prior to January 17, 2014?

The AIS requirements do not apply to any project for which an assistance agreement was signed prior to January 17, 2014.

5) What if the project does not have approved engineering plans and specifications, but bids were advertised prior to January 17, 2014 and an assistance agreement was signed after January 17, 2014?

If the project does not require approved engineering plans and specifications, the bid advertisement date will count in lieu of the approval date for purposes of the exemption in section 436(f).

6) What if the assistance agreement that was signed prior to January 17, 2014, only funded a part of the overall project, where the remainder of the project will be funded later with another SRF loan?

If the original assistance agreement funded any construction of the project, the date of the original assistance agreement counts for purposes of the exemption. If the original assistance agreement was only for planning and design, the date of that assistance agreement will count for purposes of the exemption only if there is a written commitment or expectation on the part of the assistance recipient to fund the remainder of the project with SRF funds.

7) What if the assistance agreement that was signed prior to January 17, 2014, funded the first phase of a multi-phase project, where the remaining phases will be funded by SRF assistance in the future?

In such a case, the phases of the project will be considered a single project if all construction necessary to complete the building or work, regardless of the number of contracts or assistance agreements involved, are closely related in purpose, time and place. However, there are many situations in which major construction activities are clearly undertaken in phases that are distinct in purpose, time, or place. In the case of distinct phases, projects with engineering plans and specifications approval or assistance agreements signed prior to January 17, 2014 would be excluded from AIS requirements while those approved/signed on January 17, 2014, or later would be covered by the AIS requirements.

8) What if a project has split funding from a non-SRF source?

Many States intend to fund projects with “split” funding, from the SRF program and from State or other programs. Based on the Act language in section 436, which requires that American iron and steel products be used in any project for the construction, alteration, maintenance, or repair of a public water system or treatment works receiving SRF funding between and including January 17, 2014 and September 30, 2014, any project that is funded in whole or in part with such funds must comply with the AIS requirement. A “project” consists of all construction necessary to complete the building or work regardless of the number of contracts or assistance agreements involved so long as all contracts and assistance agreements awarded are closely related in purpose, time and place. This precludes the intentional splitting of SRF projects into separate and smaller contracts or assistance agreements to avoid AIS coverage on some portion of a larger

project, particularly where the activities are integrally and proximately related to the whole. However, there are many situations in which major construction activities are clearly undertaken in separate phases that are distinct in purpose, time, or place, in which case, separate contracts or assistance agreement for SRF and State or other funding would carry separate requirements.

9) What about refinancing?

If a project began construction, financed from a non-SRF source, prior to January 17, 2014, but is refinanced through an SRF assistance agreement executed on or after January 17, 2014 and prior to October 1, 2014, AIS requirements will apply to all construction that occurs on or after January 17, 2014, through completion of construction, unless, as is likely, engineering plans and specifications were approved by a responsible state agency prior to January 17, 2014. There is no retroactive application of the AIS requirements where a refinancing occurs for a project that has completed construction prior to January 17, 2014.

10) Do the AIS requirements apply to any other EPA programs, besides the SRF program, such as the Tribal Set-aside grants or grants to the Territories and DC?

No, the AIS requirement only applies to funds made available by a State water pollution control revolving fund as authorized by title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) or made available by a drinking water treatment revolving loan fund as authorized by section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12)

Covered Iron and Steel Products

11) What is an iron or steel product?

For purposes of the CWSRF and DWSRF projects that must comply with the AIS requirement, an iron or steel product is one of the following made primarily of iron or steel that is permanently incorporated into the public water system or treatment works:

- Lined or unlined pipes or fittings;
- Manhole Covers;
- Municipal Castings (defined in more detail below);
- Hydrants;
- Tanks;
- Flanges;
- Pipe clamps and restraints;
- Valves;
- Structural steel (defined in more detail below);
- Reinforced precast concrete; and
- Construction materials (defined in more detail below).

12) What does the term ‘primarily iron or steel’ mean?

‘Primarily iron or steel’ places constraints on the list of products above. For one of the listed products to be considered subject to the AIS requirements, it must be made of greater than 50% iron or steel, measured by cost. The cost should be based on the material costs.

13) Can you provide an example of how to perform a cost determination?

For example, the iron portion of a fire hydrant would likely be the bonnet, body and shoe, and the cost then would include the pouring and casting to create those components. The other material costs would include non-iron and steel internal workings of the fire hydrant (i.e., stem, coupling, valve, seals, etc). However, the assembly of the internal workings into the hydrant body would not be included in this cost calculation. If one of the listed products is not made primarily of iron or steel, United States (US) provenance is not required. An exception to this definition is reinforced precast concrete, which is addressed in a later question.

14) If a product is composed of more than 50% iron or steel, but is not listed in the above list of items, must the item be produced in the US? Alternatively, must the iron or steel in such a product be produced in the US?

The answer to both question is no. Only items on the above list must be produced in the US. Additionally, the iron or steel in a non-listed item can be sourced from outside the US.

15) What is the definition of steel?

Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements. Metallic elements such as chromium, nickel, molybdenum, manganese, and silicon may be added during the melting of steel for the purpose of enhancing properties such as corrosion resistance, hardness, or strength. The definition of steel covers carbon steel, alloy steel, stainless steel, tool steel and other specialty steels.

16) What does ‘produced in the United States’ mean?

Production in the United States of the iron or steel products used in the project requires that all manufacturing processes, including application of coatings, must take place in the United States, with the exception of metallurgical processes involving refinement of steel additives. All manufacturing processes includes processes such as melting, refining, forming, rolling, drawing, finishing, fabricating and coating. Further, if a domestic iron and steel product is taken out of the US for any part of the manufacturing process, it becomes foreign source material. However, raw materials such as iron ore, limestone and iron and steel scrap are not covered by the AIS requirement, and the

material(s), if any, being applied as a coating are similarly not covered. Non-iron or steel components of an iron and steel product may come from non-US sources. For example, for products such as valves and hydrants, the individual non-iron and steel components do not have to be of domestic origin.

17) Are the raw materials used in the production of iron or steel required to come from US sources?

No. Raw materials, such as iron ore, limestone, scrap iron, and scrap steel, can come from non-US sources.

18) If an above listed item is primarily made of iron or steel, but is only at the construction site temporarily, must such an item be produced in the US?

No. Only the above listed products made primarily of iron or steel, permanently incorporated into the project must be produced in the US. For example trench boxes, scaffolding or equipment, which are removed from the project site upon completion of the project, are not required to be made of U.S. Iron or Steel.

19) What is the definition of ‘municipal castings’?

Municipal castings are cast iron or steel infrastructure products that are melted and cast. They typically provide access, protection, or housing for components incorporated into utility owned drinking water, storm water, wastewater, and surface infrastructure. They are typically made of grey or ductile iron, or steel. Examples of municipal castings are:

- Access Hatches;
- Ballast Screen;
- Benches (Iron or Steel);
- Bollards;
- Cast Bases;
- Cast Iron Hinged Hatches, Square and Rectangular;
- Cast Iron Riser Rings;
- Catch Basin Inlet;
- Cleanout/Monument Boxes;
- Construction Covers and Frames;
- Curb and Corner Guards;
- Curb Openings;
- Detectable Warning Plates;
- Downspout Shoes (Boot, Inlet);
- Drainage Grates, Frames and Curb Inlets;
- Inlets;
- Junction Boxes;
- Lampposts;
- Manhole Covers, Rings and Frames, Risers;

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

20) What is ‘structural steel’?

Structural steel is rolled flanged shapes, having at least one dimension of their cross-section three inches or greater, which are used in the construction of bridges, buildings, ships, railroad rolling stock, and for numerous other constructional purposes. Such shapes are designated as wide-flange shapes, standard I-beams, channels, angles, tees and zees. Other shapes include H-piles, sheet piling, tie plates, cross ties, and those for other special purposes.

21) What is a ‘construction material’ for purposes of the AIS requirement?

Construction materials are those articles, materials, or supplies made primarily of iron and steel, that are permanently incorporated into the project, not including mechanical and/or electrical components, equipment and systems. Some of these products may overlap with what is also considered “structural steel”. This includes, but is not limited to, the following products: wire rod, bar, angles, concrete reinforcing bar, wire, wire cloth, wire rope and cables, tubing, framing, joists, trusses, fasteners (i.e., nuts and bolts), welding rods, decking, grating, railings, stairs, access ramps, fire escapes, ladders, wall panels, dome structures, roofing, ductwork, surface drains, cable hanging systems, manhole steps, fencing and fence tubing, guardrails, doors, and stationary screens.

22) What is not considered a ‘construction material’ for purposes of the AIS requirement?

Mechanical and electrical components, equipment and systems are not considered construction materials. Mechanical equipment is typically that which has motorized parts and/or is powered by a motor. Electrical equipment is typically any machine powered by electricity and includes components that are part of the electrical distribution system.

The following examples (including their appurtenances necessary for their intended use and operation) are NOT considered construction materials: pumps, motors, gear reducers, drives (including variable frequency drives (VFDs)), electric/pneumatic/manual accessories used to operate valves (such as electric valve actuators), mixers, gates, motorized screens (such as traveling screens), blowers/aeration equipment, compressors, meters, sensors, controls and switches, supervisory control and

data acquisition (SCADA), membrane bioreactor systems, membrane filtration systems, filters, clarifiers and clarifier mechanisms, rakes, grinders, disinfection systems, presses (including belt presses), conveyors, cranes, HVAC (excluding ductwork), water heaters, heat exchangers, generators, cabinetry and housings (such as electrical boxes/enclosures), lighting fixtures, electrical conduit, emergency life systems, metal office furniture, shelving, laboratory equipment, analytical instrumentation, and dewatering equipment.

23) If the iron or steel is produced in the US, may other steps in the manufacturing process take place outside of the US, such as assembly?

No. Production in the US of the iron or steel used in a listed product requires that all manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives.

24) What processes must occur in the US to be compliant with the AIS requirement for reinforced precast concrete?

While reinforced precast concrete may not be at least 50% iron or steel, in this particular case, the reinforcing bar and wire must be produced in the US and meet the same standards as for any other iron or steel product. Additionally, the casting of the concrete product must take place in the US. The cement and other raw materials used in concrete production are not required to be of domestic origin.

If the reinforced concrete is cast at the construction site, the reinforcing bar and wire are considered to be a construction material and must be produced in the US.

Compliance

25) How should an assistance recipient document compliance with the AIS requirement?

In order to ensure compliance with the AIS requirement, specific AIS contract language must be included in each contract, starting with the assistance agreement, all the way down to the purchase agreements. Sample language for assistance agreements and contracts can be found in Appendix 3 and 4.

EPA recommends the use of a step certification process, similar to one used by the Federal Highway Administration. The step certification process is a method to ensure that producers adhere to the AIS requirement and assistance recipients can verify that products comply with the AIS requirement. The process also establishes accountability and better enables States to take enforcement actions against violators.

Step certification creates a paper trail which documents the location of the manufacturing process involved with the production of steel and iron materials. A step certification is a process under which each handler (supplier, fabricator, manufacturer,

processor, etc) of the iron and steel products certifies that their step in the process was domestically performed. Each time a step in the manufacturing process takes place, the manufacturer delivers its work along with a certification of its origin. A certification can be quite simple. Typically, it includes the name of the manufacturer, the location of the manufacturing facility where the product or process took place (not its headquarters), a description of the product or item being delivered, and a signature by a manufacturer's responsible party. Attached, as Appendix 5, are sample certifications. These certifications should be collected and maintained by assistance recipients.

Alternatively, the final manufacturer that delivers the iron or steel product to the worksite, vendor, or contractor, may provide a certification asserting that all manufacturing processes occurred in the US. While this type of certification may be acceptable, it may not provide the same degree of assurance. Additional documentation may be needed if the certification is lacking important information. Step certification is the best practice.

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

In order to ensure compliance with the AIS requirement, States SRF programs must include specific AIS contract language in the assistance agreement. Sample language for assistance agreements can be found in Appendix 3.

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

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

If a potentially non-compliant product is identified, the State should notify the assistance recipient of the apparent unauthorized use of the non-domestic component, including a proposed corrective action, and should be given the opportunity to reply. If unauthorized use is confirmed, the State can take one or more of the following actions: request a waiver where appropriate; require the removal of the non-domestic item; or withhold payment for all or part of the project. Only EPA can issue waivers to authorize the use of a non-domestic item. EPA may use remedies available to it under the Clean Water Act, the Safe Drinking Water Act, and 40 CFR part 31 grant regulations, in the event of a violation of a grant term and condition.

It is recommended that the State work collaboratively with EPA to determine the appropriate corrective action, especially in cases where the State is the one who identifies the item in noncompliance or there is a disagreement with the assistance recipient.

If fraud, waste, abuse, or any violation of the law is suspected, the Office of Inspector General (OIG) should be contacted immediately. The OIG can be reached at 1-

888-546-8740 or OIG_Hotline@epa.gov. More information can be found at this website: <http://www.epa.gov/oig/hotline.htm>.

28) How do international trade agreements affect the implementation of the AIS requirements?

The AIS provision applies in a manner consistent with United States obligations under international agreements. Typically, these obligations only apply to direct procurement by the entities that are signatories to such agreements. In general, SRF assistance recipients are not signatories to such agreements, so these agreements have no impact on this AIS provision. In the few instances where such an agreement applies to a municipality, that municipality is under the obligation to determine its applicability and requirements and document the actions taken to comply for the State.

Waiver Process

The statute permits EPA to issue waivers for a case or category of cases where EPA finds (1) that applying these requirements would be inconsistent with the public interest; (2) iron and steel products are not produced in the US in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron and steel products produced in the US will increase the cost of the overall project by more than 25 percent.

In order to implement the AIS requirements, EPA has developed an approach to allow for effective and efficient implementation of the waiver process to allow projects to proceed in a timely manner. The framework described below will allow States, on behalf of the assistance recipients, to apply for waivers of the AIS requirement directly to EPA Headquarters. Only waiver requests received from states will be considered. Pursuant to the Act, EPA has the responsibility to make findings as to the issuance of waivers to the AIS requirements.

Definitions

The following terms are critical to the interpretation and implementation of the AIS requirements and apply to the process described in this memorandum:

Reasonably Available Quantity: The quantity of iron or steel products is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the project plans and design.

Satisfactory Quality: The quality of iron or steel products, as specified in the project plans and designs.

Assistance Recipient: A borrower or grantee that receives funding from a State CWSRF or DWSRF program.

Step-By-Step Waiver Process

Application by Assistance Recipient

Each local entity that receives SRF water infrastructure financial assistance is required by section 436 of the Act to use American made iron and steel products in the construction of its project. However, the recipient may request a waiver. Until a waiver is granted by EPA, the AIS requirement stands, except as noted above with respect to municipalities covered by international agreements.

The waiver process begins with the SRF assistance recipient. In order to fulfill the AIS requirement, the assistance recipient must in good faith design the project (where applicable) and solicit bids for construction with American made iron and steel products. It is essential that the assistance recipient include the AIS terms in any request for proposals or solicitations for bids, and in all contracts (see Appendix 3 for sample construction contract language). The assistance recipient may receive a waiver at any point before, during, or after the bid process, if one or more of three conditions is met:

1. Applying the American Iron and Steel requirements of the Act would be inconsistent with the public interest;
2. Iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
3. Inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

Proper and sufficient documentation must be provided by the assistance recipient. A checklist detailing the types of information required for a waiver to be processed is attached as Appendix 1.

Additionally, it is strongly encouraged that assistance recipients hold pre-bid conferences with potential bidders. A pre-bid conference can help to identify iron and steel products needed to complete the project as described in the plans and specifications that may not be available from domestic sources. It may also identify the need to seek a waiver prior to bid, and can help inform the recipient on compliance options.

In order to apply for a project waiver, the assistance recipient should email the request in the form of a Word document (.doc) to the State SRF program. It is strongly recommended that the State designate a single person for all AIS communications. The State SRF designee will review the application for the waiver and determine whether the necessary information has been included. Once the waiver application is complete, the State designee will forward the application to either of two email addresses. For CWSRF waiver requests, please send the application to: cwsrfwaiver@epa.gov. For DWSRF waiver requests, please send the application to: dwsrfwaiver@epa.gov.

Evaluation by EPA

After receiving an application for waiver of the AIS requirements, EPA Headquarters will publish the request on its website for 15 days and receive informal comment. EPA Headquarters will then use the checklist in Appendix 2 to determine whether the application properly and adequately documents and justifies the statutory basis cited for the waiver – that it is quantitatively and qualitatively sufficient – and to determine whether or not to grant the waiver.

In the event that EPA finds that adequate documentation and justification has been submitted, the Administrator may grant a waiver to the assistance recipient. EPA will notify the State designee that a waiver request has been approved or denied as soon as such a decision has been made. Granting such a waiver is a three-step process:

1. Posting – After receiving an application for a waiver, EPA is required to publish the application and all material submitted with the application on EPA’s website for 15 days. During that period, the public will have the opportunity to review the request and provide informal comment to EPA. The website can be found at: http://water.epa.gov/grants_funding/aisrequirement.cfm
2. Evaluation – After receiving an application for waiver of the AIS requirements, EPA Headquarters will use the checklist in Appendix 2 to determine whether the application properly and adequately documents and justifies the statutory basis cited for the waiver – that it is quantitatively and qualitatively sufficient – and to determine whether or not to grant the waiver.
3. Signature of waiver approval by the Administrator or another agency official with delegated authority – As soon as the waiver is signed and dated, EPA will notify the State SRF program, and post the signed waiver on our website. The assistance recipient should keep a copy of the signed waiver in its project files.

Public Interest Waivers

EPA has the authority to issue public interest waivers. Evaluation of a public interest waiver request may be more complicated than that of other waiver requests so they may take more time than other waiver requests for a decision to be made. An example of a public interest waiver that might be issued could be for a community that has standardized on a particular type or manufacturer of a valve because of its performance to meet their specifications. Switching to an alternative valve may require staff to be trained on the new equipment and additional spare parts would need to be purchased and stocked, existing valves may need to be unnecessarily replaced, and portions of the system may need to be redesigned. Therefore, requiring the community to install an alternative valve would be inconsistent with public interest.

EPA also has the authority to issue a public interest waiver that covers categories of products that might apply to all projects.

EPA reserves the right to issue national waivers that may apply to particular classes of assistance recipients, particular classes of projects, or particular categories of iron or steel products. EPA may develop national or (US geographic) regional categorical waivers through the identification of similar circumstances in the detailed justifications presented to EPA in a waiver request or requests. EPA may issue a national waiver based on policy decisions regarding the public's interest or a determination that a particular item is not produced domestically in reasonably available quantities or of a sufficient quality. In such cases, EPA may determine it is necessary to issue a national waiver.

If you have any questions concerning the contents of this memorandum, you may contact us, or have your staff contact Jordan Dorfman, Attorney-Advisor, State Revolving Fund Branch, Municipal Support Division, at dorfman.jordan@epa.gov or (202) 564-0614 or Kiri Anderer, Environmental Engineer, Infrastructure Branch, Drinking Water Protection Division, at anderer.kirsten@epa.gov or (202) 564-3134.

Attachments

Appendix 1: Information Checklist for Waiver Request

The purpose of this checklist is to help ensure that all appropriate and necessary information is submitted to EPA. EPA recommends that States review this checklist carefully and provide all appropriate information to EPA. This checklist is for informational purposes only and does not need to be included as part of a waiver application.

Items	✓	Notes
<p>General</p> <ul style="list-style-type: none"> • Waiver request includes the following information: <ul style="list-style-type: none"> — Description of the foreign and domestic construction materials — Unit of measure — Quantity — Price — Time of delivery or availability — Location of the construction project — Name and address of the proposed supplier — A detailed justification for the use of foreign construction materials • Waiver request was submitted according to the instructions in the memorandum • Assistance recipient made a good faith effort to solicit bids for domestic iron and steel products, as demonstrated by language in requests for proposals, contracts, and communications with the prime contractor 		
<p>Cost Waiver Requests</p> <ul style="list-style-type: none"> • Waiver request includes the following information: <ul style="list-style-type: none"> — Comparison of overall cost of project with domestic iron and steel products to overall cost of project with foreign iron and steel products — Relevant excerpts from the bid documents used by the contractors to complete the comparison — Supporting documentation indicating that the contractor made a reasonable survey of the market, such as a description of the process for identifying suppliers and a list of contacted suppliers 		
<p>Availability Waiver Requests</p> <ul style="list-style-type: none"> • Waiver request includes the following supporting documentation necessary to demonstrate the availability, quantity, and/or quality of the materials for which the waiver is requested: <ul style="list-style-type: none"> — Supplier information or pricing information from a reasonable number of domestic suppliers indicating availability/delivery date for construction materials — Documentation of the assistance recipient’s efforts to find available domestic sources, such as a description of the process for identifying suppliers and a list of contacted suppliers. — Project schedule — Relevant excerpts from project plans, specifications, and permits indicating the required quantity and quality of construction materials • Waiver request includes a statement from the prime contractor and/or supplier confirming the non-availability of the domestic construction materials for which the waiver is sought • Has the State received other waiver requests for the materials described in this waiver request, for comparable projects? 		

Appendix 2: HQ Review Checklist for Waiver Request

Instructions: To be completed by EPA. Review all waiver requests using the questions in the checklist, and mark the appropriate box as Yes, No or N/A. Marks that fall inside the shaded boxes may be grounds for denying the waiver. If none of your review markings fall into a shaded box, the waiver is eligible for approval if it indicates that one or more of the following conditions applies to the domestic product for which the waiver is sought:

1. The iron and/or steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.
2. The inclusion of iron and/or steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

Review Items	Yes	No	N/A	Comments
Cost Waiver Requests <ul style="list-style-type: none"> • Does the waiver request include the following information? <ul style="list-style-type: none"> – Comparison of overall cost of project with domestic iron and steel products to overall cost of project with foreign iron and steel products – Relevant excerpts from the bid documents used by the contractors to complete the comparison – A sufficient number of bid documents or pricing information from domestic sources to constitute a reasonable survey of the market • Does the Total Domestic Project exceed the Total Foreign Project Cost by more than 25%? 				
Availability Waiver Requests <ul style="list-style-type: none"> • Does the waiver request include supporting documentation sufficient to show the availability, quantity, and/or quality of the iron and/or steel product for which the waiver is requested? <ul style="list-style-type: none"> – Supplier information or other documentation indicating availability/delivery date for materials – Project schedule – Relevant excerpts from project plans, specifications, and permits indicating the required quantity and quality of materials • Does supporting documentation provide sufficient evidence that the contractors made a reasonable effort to locate domestic suppliers of materials, such as a description of the process for identifying suppliers and a list of contacted suppliers? • Based on the materials delivery/availability date indicated in the supporting documentation, will the materials be unavailable when they are needed according to the project schedule? (By item, list schedule date and domestic delivery quote date or other relevant information) • Is EPA aware of any other evidence indicating the non-availability of the materials for which the waiver is requested? Examples include: <ul style="list-style-type: none"> – Multiple waiver requests for the materials described in this waiver request, for comparable projects in the same State – Multiple waiver requests for the materials described in this waiver request, for comparable projects in other States – Correspondence with construction trade associations indicating the non-availability of the materials • Are the available domestic materials indicated in the bid documents of inadequate quality compared those required by the project plans, specifications, and/or permits? 				

Appendix 3: Example Loan Agreement Language

ALL ASSISTANCE AGREEMENT MUST HAVE A CLAUSE REQUIRING COMPLIANCE WITH THE AIS REQUIREMENT. THIS IS AN EXAMPLE OF WHAT COULD BE INCLUDED IN SRF ASSISTANCE AGREEMENTS. EPA MAKES NO CLAIMS REGARDING THE LEGALITY OF THIS CLAUSE WITH RESPECT TO STATE LAW:

Comply with all federal requirements applicable to the Loan (including those imposed by the 2014 Appropriations Act and related SRF Policy Guidelines) which the Participant understands includes, among other, requirements that all of the iron and steel products used in the Project are to be produced in the United States (“American Iron and Steel Requirement”) unless (i) the Participant has requested and obtained a waiver from the Agency pertaining to the Project or (ii) the Finance Authority has otherwise advised the Participant in writing that the American Iron and Steel Requirement is not applicable to the Project.

Comply with all record keeping and reporting requirements under the Clean Water Act/Safe Drinking Water Act, including any reports required by a Federal agency or the Finance Authority such as performance indicators of program deliverables, information on costs and project progress. The Participant understands that (i) each contract and subcontract related to the Project is subject to audit by appropriate federal and state entities and (ii) failure to comply with the Clean Water Act/Safe Drinking Water Act and this Agreement may be a default hereunder that results in a repayment of the Loan in advance of the maturity of the Bonds and/or other remedial actions.

Appendix 4: Sample Construction Contract Language

ALL CONTRACTS MUST HAVE A CLAUSE REQUIRING COMPLIANCE WITH THE AIS REQUIREMENT. THIS IS AN EXAMPLE OF WHAT COULD BE INCLUDED IN ALL CONTRACTS IN PROJECTS THAT USE SRF FUNDS. EPA MAKES NO CLAIMS REGARDING THE LEGALITY OF THIS CLAUSE WITH RESPECT TO STATE OR LOCAL LAW:

The Contractor acknowledges to and for the benefit of the City of _____ (“Purchaser”) and the _____ (the “State”) that it understands the goods and services under this Agreement are being funded with monies made available by the Clean Water State Revolving Fund and/or Drinking Water State Revolving Fund that have statutory requirements commonly known as “American Iron and Steel;” that requires all of the iron and steel products used in the project to be produced in the United States (“American Iron and Steel Requirement”) including iron and steel products provided by the Contractor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Purchaser and the State that (a) the Contractor has reviewed and understands the American Iron and Steel Requirement, (b) all of the iron and steel products used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Purchaser or the State. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Purchaser or State to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney’s fees) incurred by the Purchaser or State resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State or any damages owed to the State by the Purchaser). While the Contractor has no direct contractual privity with the State, as a lender to the Purchaser for the funding of its project, the Purchaser and the Contractor agree that the State is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the State.

Appendix 5: Sample Certifications

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

Date

Company Name

Company Address

City, State Zip

Subject: American Iron and Steel Step Certification for Project (XXXXXXXXXX)

I, (company representative), certify that the (melting, bending, coating, galvanizing, cutting, etc.) process for (manufacturing or fabricating) the following products and/or materials shipped or provided for the subject project is in full compliance with the American Iron and Steel requirement as mandated in EPA's State Revolving Fund Programs.

Item, Products and/or Materials:

1. XXXX
2. XXXX
3. XXXX

Such process took place at the following location:

If any of the above compliance statements change while providing material to this project we will immediately notify the prime contractor and the engineer.

Signed by company representative

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

Date

Company Name

Company Address

City, State Zip

Subject: American Iron and Steel Certification for Project (XXXXXXXXXXXX)

I, (company representative), certify that the following products and/or materials shipped/provided to the subject project are in full compliance with the American Iron and Steel requirement as mandated in EPA's State Revolving Fund Programs.

Item, Products and/or Materials:

1. XXXX
2. XXXX
3. XXXX

Such process took place at the following location:

If any of the above compliance statements change while providing material to this project we will immediately notify the prime contractor and the engineer.

Signed by company representative

SAMPLE
SECTION 01060

PERMITS AND REGULATORY REQUIREMENTS

PART 1 GENERAL

1.01 The Contractor is responsible for obtaining all federal, state and local permits required to complete the work and to comply with all regulatory requirements. The Contractor shall fill out all forms and furnish all drawings required to obtain the permits. A copy of the approved permit shall be submitted to the Engineer. All fees associated with these permits shall be paid by the Contractor as part of the project. Work shall not commence on any phase of the work requiring a permit until the permit is obtained.

1.02 PERMITS FOR WORK IN THE STREETS

A. (NOT USED)

PART 2 PRODUCTS (NOT USED)

PART 3 EXECUTION (NOT USED)

END OF SECTION

SECTION 01068

FEDERAL AND STATE REQUIREMENTS

PART 1 – GENERAL

1.1 GENERAL STATE AND FEDERAL REQUIREMENTS

- A. The Contractor shall comply with all applicable Federal and State Requirements. See Information for Bidders IB.22 for additional information.
- B. The following documents are included as part of this specification
 - 1. State Revolving Fund (SRF) Program Contract Specification Package.
 - 2. SRF Project Sign Requirements
 - 3. EPA Good Faith Efforts and EPA DBE Forms
 - 4. Davis-Bacon Prevailing Wage Requirements
 - 5. Prevailing Wage Rates
 - 6. American Iron and Steel (AIS) Requirements
 - 7. Water Infrastructure Finance and Innovation Act (WIFIA) Requirements

1.2 STATE REVOLVING FUND (SRF) PROGRAM

- A. State Revolving Fund (SRF) Program contract Specification Package (1 Page)
- B. Federal Requirements
 - 1. Employment Standards Administration Office of Federal Contract Compliance Programs - Executive Order 11246.
 - a. OFCCP fact sheet. (2 pages)
 - b. Equal Opportunity Clause and the Standard Federal Equal Employment Specifications. (6 pages)
 - c. Non-discrimination in employment notice. (1 page)
 - 2. Assurance of compliance with Title VI of the Civil Rights Act of 1964 and Section 13 of the FWPCA Amendments of 1972 (EPA form 4700-1). (1 page)
 - 3. Affirmative steps for soliciting MBE/WBE (40 CFR 31.36(e)) (1 page)
 - 4. Preservation of Open Competition and Government Neutrality Towards Government Contractor's Labor Relations on Federal and Federally Funded Construction Projects. (2 pages)
- C. State Requirements
 - 1. RIGL Title 37
 - a. Chapter 2.1 Domestic Steel (2 pages)

- b. Chapter 12 Contractor's Bonds (4 pages)
 - c. Chapter 12.1 Substitution of Security for Retained Earnings of Architects and Engineers (1 page)
 - d. Chapter 13 Labor and Payment of Debts by Contractors (9 pages)
 - e. Chapter 14.1 Minority Business Enterprise (7 pages)
 - f. Chapter 16 Public Works Arbitration (6 pages)
- 2. RIGL Title 45
 - a. Chapter 55 - Award of Municipal Contracts (7 pages)
 - 3. Project Signs (2 pages)
- D. EPA Good Faith Efforts
- 1. Good Faith Efforts (2 pages)
 - 2. EPA Form 6100-2 DBE Subcontractor Participation Form (2 pages)
 - 3. EPA Form 6100-3 DBE Subcontractor Performance Form (2 pages)
 - 4. EPA Form 6100-4 DBE Subcontractor Utilization Form (2 Pages)
- E. Davis-Bacon Prevailing Wage Requirements (9 pages)
- F. Prevailing wages (current wage rates – pages vary)
- G. Implementation of American Iron and Steel provisions of P.L. 113-76, Consolidated Appropriations Act, 2014 (20 pages)
- H. American Iron & Steel (AIS) Requirements of the Consolidated Appropriations Act of 2014 (Public Law 113-76) Q&A Part 2 Questions/Answers (7 pages)
- I. Debarment & Suspension Executive Order 1259 – Debarment and Suspension (2 pages)
- J. Certification Regarding Debarment & Suspension and Other Responsibility Matters (1 page)
- K. State Revolving Fund Sign (2 pages)
- 1.3 WATER INFRASTRUCTURE FINANCE AND INNOVATION ACT (WIFIA)
- A. WIFIA Requirements and Loan Agreement

END OF SECTION



**Rhode Island Department of Environmental Management
Office of Water Resources**

**Clean Water State Revolving Fund Program
Contract Specifications Package**

A. Federal

- 1) Equal Employment Opportunity and Affirmative Action (Executive Order 11246)
 - i) OFCCP fact sheet.
 - ii) Equal Opportunity Clause and the Standard Federal Equal Employment Specifications.
 - iii) Notice of Non-Discrimination in Employment.
- 2) Non-discrimination in employment notice.
- 3) Assurance of compliance with Title VI of the Civil Rights Act of 1964 and Section 13 of the FWPCA Amendments of 1972 (EPA form 4700-1).
- 4) Affirmative steps for soliciting MBE/WBE (40 CFR 31.36(e))
 - i) NOTICE to BIDDERS on Clean Water State Revolving Fund funded projects regarding use of expired EPA Forms 6100-4, 6100-3, and 6100-2
- 5) EPA Memo Re: Prohibition on Certain Telecommunication and Video Surveillance Services or Equipment

Applicable cross-cutting Federal authorities for projects funded through SRF programs are made available at http://water.epa.gov/grants_funding/dwsrf/xcuts.cfm. Additional information is provided in the United States Environmental Protection Agency's cross-cutting handbook available at <https://www.epa.gov/sites/default/files/2015-08/documents/crosscutterhandbook.pdf>

B. State of Rhode Island

- 1) RIGL 37-2.1, Domestic Steel
- 2) RIGL 37-12, Contractors Bonds
- 3) RIGL 37-12.1, Substitution of Security for Retained Earnings of Architects and Engineers.
- 4) RIGL 37-13, Labor and Payment of Debts by Contractors
 - i) Prevailing Wage Rates
 - ii) Contract Addendum w/ Signature Page for Municipal or State (inserted July 25, 2024)
- 5) RIGL 37-14.1, Minority Business Enterprise (updated July 25, 2024)
 - i) Regulations Governing Participation by Minority Business Enterprises in State Funded and Directed Public Construction Projects, Construction Contracts and Procurement Contracts Goods and Services.
- 6) RIGL 37-16, Public Works Arbitration
- 7) RIGL 45-55, Award of Municipal Contracts

NOTE: This package is prepared by RIDEM as a service of the CWSRF program. While every attempt at accuracy has been made, these are not certified true copies of the laws presented. **The responsibility for compliance with all applicable provisions of Federal and State laws and regulations relating to the bidding, award, and performance of contracts is the applicant's and the bidder's.** Certified true and complete copies of any Rhode Island laws and regulations may be obtained from the Office of the Secretary of State.

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Employment Standards Administration Office of Federal Contract Compliance Programs

Fact Sheet EXECUTIVE ORDER 11246

EEO and Affirmative Action Guidelines for Federal Contractors Regarding Race, Color, Gender, Religion, and National Origin.

BASIC PROVISIONS

Since 1965, the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) has been committed to ensuring that Government contractors comply with the equal employment opportunity (EEO) and the affirmative action provisions of their contracts.

OFCCP administers and enforces Executive Order 11246, as amended, which prohibits federal contractors and federally-assisted construction contractors and subcontractors, who do over \$10,000 in Government business in one year from discriminating in employment decisions on the basis of race, color, religion, sex, or national origin.

The Executive Order also requires Government contractors to take affirmative action to insure that equal opportunity is provided in all aspects of their employment.

AFFIRMATIVE ACTION REQUIREMENTS

Each Government contractor with 50 or more employees and \$50,000 or more in government contracts is required to develop a written affirmative action program (AAP) for each of its establishments.

A written affirmative action program helps the contractor identify and analyze potential problems in the participation and utilization of women and minorities in the contractor's workforce.

If there are problems, the contractor will specify in its AAP the specific procedures it will follow and the good faith efforts it will make to provide equal employment opportunity.

Expanded efforts in outreach, recruitment, training and other areas are some of the affirmative steps contractors can take to help members of the protected groups compete for jobs on equal footing with other applicants and employees.

Affirmative action is not preferential treatment. It does not mean that unqualified persons should be hired or promoted over other people. What affirmative action does mean is that positive steps must be taken to ensure equal employment opportunity for traditionally disadvantaged groups.

ENFORCEMENT AND COMPLIANCE

Compliance Reviews

OFCCP conducts compliance reviews to investigate the employment practices of Government contractors. During a compliance review, a compliance officer examines the contractor's affirmative action program; checks personnel, payroll, and other employment records; interviews employees and company officials; and investigates virtually all aspects of employment in the company.

The investigator also checks to see whether the contractor is making special efforts to achieve equal opportunity through affirmative action. If problems are discovered, OFCCP will recommend corrective action and suggest ways to achieve equal employment opportunity.

Complaint Investigations

Individuals may file complaints if they believe they have been discriminated against by federal contractors or subcontractors. Complaints also may be filed by organizations on behalf of the person or persons affected.

Complaints must be filed within 180 days from the date of the alleged discrimination, although filing time can be extended for a good reason.

If a complaint filed under Executive Order 11246 involves discrimination against only one person, OFCCP will normally refer it to the EEOC. Cases involving groups of people or indicating patterns of discrimination are generally investigated and resolved by OFCCP. Complaints may be filed directly with any of OFCCP's regional or district offices throughout the country, or with OFCCP in Washington, D.C.

Compliance Assistance

To help contractors understand their contractual obligations for EEO and affirmative action, OFCCP provides technical assistance. District office staff offers guidance to contractors on how to develop an affirmative program through company seminars, training programs held in conjunction with industry liaison groups, and one-on-one consultations on affirmative action practices and procedures.

Enforcing Contract Compliance

When a compliance review discloses problems, OFCCP attempts to work with the contractor, often entering into a conciliation agreement. A conciliation agreement may include back pay, job offers, seniority credit, promotions or other forms of relief for victims of discrimination. It may also involve new training programs, special recruitment efforts, or other affirmative action measures.

When conciliation efforts are unsuccessful, OFCCP refers the case to the Office of the Solicitor for enforcement through administrative enforcement proceedings. A contractor cited for violating EEO and affirmative action requirements may have a formal hearing before an administrative law judge.

If conciliation is not reached before or after the hearing, sanctions may be imposed. For example, a contractor could lose its government contracts or subcontracts or be debarred, i.e., declared ineligible for any future government contracts.

Further Information

For more information about contract compliance, filing complaints, or compliance assistance, contact any of OFCCP's regional or district offices. All offices are listed in telephone directories under U.S. Department of Labor, Employment Standards Administration, Office of Federal Contract Compliance Programs.

EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

Executive Order 11246

(Excerpts from 41 CFR 60 Parts 1 and 4)

41 CFR 60-1.4 - Equal opportunity clause

(b) Federally assisted construction contracts. Except as otherwise provided, each administering agency shall require the inclusion of the following language as a condition of any grant, contract, loan, insurance, or guarantee involving federally assisted construction which is not exempt from the requirements of the equal opportunity clause:

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

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

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened

with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

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

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

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

(d) Incorporation by reference. The equal opportunity clause may be incorporated by reference in all Government contracts and subcontracts, including Government bills of lading, transportation requests, contracts for deposit of Government funds, and contracts for issuing and paying U.S. savings bonds and notes, and such other contracts and subcontracts as the Director may designate.

(e) Incorporation by operation of the order. By operation of the order, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the order and the regulations in this part to include such a clause whether or not it is physically incorporated in such contracts and whether or not the contract between the agency and the contractor is written.

(f) Adaptation of language. Such necessary changes in language may be made in the equal opportunity clause as shall be appropriate to identify properly the parties and their undertakings.

41 CFR 60-4.3 - Equal opportunity clauses

(a) The equal opportunity clause published at 41 CFR 60-1.4(a) of this chapter is required to be included in, and is part of, all nonexempt Federal contracts and subcontracts, including construction contracts and subcontracts. The equal opportunity clause published at 41 CFR 60-1.4(b) is required to be included in, and is a part of, all nonexempt federally assisted construction contracts and subcontracts. In addition to the clauses described above, all Federal contracting officers, all applicants and all non-construction contractors, as applicable, shall include the specifications set forth in this section in all Federal and federally assisted construction contracts in excess of \$10,000 to be performed in geographical areas designated by the Director pursuant to 60-4.6 of this part and in construction subcontracts in excess of \$10,000 necessary in whole or in part to the performance of non-construction Federal contracts and subcontracts covered under the Executive order.

Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)

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

6. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
 - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
 - c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
 - d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
 - e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.
 - f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
 - g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
 - h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
 - i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.
 - k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
 - l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
 - m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
 - n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
 - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
 - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance
9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone

numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

(b) The notice set forth in 41 CFR 60-4.2 and the specifications set forth in 41 CFR 60-4.3 replace the New Form for Federal Equal Employment Opportunity Bid Conditions for Federal and Federally Assisted Construction published at 41 FR 32482 and commonly known as the Model Federal EEO Bid Conditions, and the New Form shall not be used after the regulations in 41 CFR Part 60-4 become effective.

[43 FR 49254, Oct. 20, 1978; 43 FR 51401, Nov. 3, 1978, as amended at 45 FR 65978, Oct. 3, 1980]

NOTICE TO LABOR UNIONS OR OTHER ORGANIZATIONS OF WORKERS

NON-DISCRIMINATION IN EMPLOYMENT

TO: _____
(Name of Union or Organization of Workers)

The undersigned currently holds contract(s) with _____
(Name of Applicant)

involving funds or credit of the U.S. Government of (a) subcontract(s) with a prime contractor holding such contract(s).

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

**HIRING, PLACEMENT, UPGRADING, TRANSFER, OR DEMOTION,
RECRUITMENT, ADVERTISING, OR SOLICITATION FOR EMPLOYMENT
TRAINING DURING EMPLOYMENT, RATES OF PAY OR OTHER FORMS OF
COMPENSATION, SELECTION FOR TRAINING INCLUDING
APPRENTICESHIP, LAYOFF, OR TERMINATION.**

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

COPIES OF THIS NOTICE WILL BE POSTED BY THE UNDERSIGNED IN CONSPICUOUS PLACES AVAILABLE TO EMPLOYEES OR APPLICANTS FOR EMPLOYMENT.

(Contractor or Subcontractor)

(Date)

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

**ASSURANCE OF COMPLIANCE
FOR
TITLE VI OF THE CIVIL RIGHTS ACT OF 1964
AND
SECTION 13 OF THE FWPCA AMENDMENTS OF 1972**

NAME AND ADDRESS OF APPLICANT/RECIPIENT (<i>Hereinafter called ASSUROR</i>)	GRANT IDENTIFICATION NUMBER <i>(To be completed by EPA)</i>	GRANT AMOUNT REQUESTED \$
	TYPE OF GRANT <input type="checkbox"/> DEMONSTRATION <input type="checkbox"/> RESEARCH <input type="checkbox"/> TRAINING <input type="checkbox"/> OTHER (<i>Specify</i>):	
	CHECK ONE: <input type="checkbox"/> NEW <input type="checkbox"/> CONTINUATION	

HEREBY AGREES THAT IT will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and all requirements of the U.S. Environmental Protection Agency (*hereinafter called "EPA"*) issued pursuant to that title, to the end that in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Assuror receives financial assistance from EPA and hereby gives assurance that it will now and hereafter take all necessary measures to effectuate this agreement.

HEREBY AGREES THAT IT will comply with all applicable requirements of Section 13 of the Federal Water Pollution Control Act Amendments of 1972 (P.L. 92-500) and all requirements of EPA issued pursuant to that section, to the end that in accordance with that section of that Act, no person in the United States shall, on the ground of sex be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity under the said Federal Water Pollution Control Act Amendments for which the Assuror receives assistance from EPA and hereby gives assurance that it will now and hereafter take all necessary measures to effectuate this agreement.

If any real property or structure thereon is provided or improved with the aid of financial assistance extended to the Assuror by EPA, this Assurance obligates the Assuror, or, in the case of any transfer of such property, any transferee for the period during which the real property or structure is used for a purpose involving the provisions of similar services or benefits. If any personal property is so provided, this Assurance obligates the Assuror for the period during which it retains ownership or possession of the property. In all other cases, this Assurance obligates the Assuror for the period during which the financial assistance is extended to it by EPA.

THE ASSURANCE is given in consideration of and for the purpose of obtained any and all Federal grants, loans, contracts, property discounts or other financial assistance extended after the date hereof to the Assuror by EPA including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The Assuror recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this Assurance and that the United States shall reserve the right to seek judicial enforcement of this Assurance. The Assurance is binding on the Assuror, its successors, transferees, and assignees, and the person or persons whose signature appear below are authorized to sign this Assurance on behalf of the Assuror.

The obligations assumed by the Assuror hereunder are in addition to any obligations which may be imposed to the Assuror by any applicable regulation now outstanding or which may hereafter be adopted by EPA to effectuate any provision or goal of the said Title VI and all applicable requirements of the said Section 13, and no part of this Assurance shall be read so as to in any way detract from or modify any obligation which may be imposed on the Assuror by any such regulation standing alone.

SIGNATURE OF ASSUROR BY PRESIDENT, CHAIRMAN OF BOARD OR COMPARABLE AUTHORIZED	DATE
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CONTRACTING WITH SMALL AND MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISE

40 CFR 31.36(e)

40 CFR 31.36(e) – Contracting with small and minority firms, women's business enterprise and labor surplus area firms.

- (1) The grantee and sub-grantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.
- (2) Affirmative steps shall include:
 - (i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - (ii) Assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;
 - (iii) Dividing the total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - (iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
 - (v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and
 - (vi) Requiring the prime contractor, if subcontracts are to be let, to take affirmative steps listed in paragraphs (e)(2)(i) through (v) of this section.

NOTICE to BIDDERS on Clean Water State Revolving Fund funded projects
Regarding use of Expired EPA Forms 6100-4, 6100-3, and 6100-2

The above referenced EPA forms are expired for EPA purposes.
The forms are required for RI CWSRF purposes.

The RI CWSRF program uses the EPA forms in the CWSRF contract documents package for bidders and prime contractors to demonstrate that the federally required 6 Good Faith Efforts have been conducted. EPA requires that this be documented. It is an easy way to show compliance.

These forms also help the bidder demonstrate that the RI MBE/WBE 15% participation requirement (7.5% and 7.5% respectively) has been incorporated into the bid with consent of subcontractors and estimated dollar amounts. The RI MBE/WBE requirements are very similar to the now expired EPA participation requirement. In place of an EPA DBE entity, you must seek participation from RI certified Minority Business Enterprises and/or Women-owned Business Enterprises. The RI MBE/WBE Program maintains a searchable database of eligible participants:
<https://dedi.ri.gov/divisions-units/minority-business-enterprise-compliance-office/minority-business-enterprise-mbe>

Having this information worked out for the bid allows the prime contractor to be able to submit to the RI MBE/WBE Compliance Office for RI Minority Business Enterprise Utilization Plan approval in a timely manner once the bid is awarded.

For questions on certified MBE/WBE participation, please contact the RI Division of Equity, Diversity and Inclusion Minority Business Enterprise Compliance Office at (401) 574-8670 or mbe.compliance@doa.ri.gov .

RI DEDI MBE Compliance Office Webpage:

<https://dedi.ri.gov/divisions-units/minority-business-enterprise-compliance-office/minority-business-enterprise-mbe-0>

Jennifer Paquet
Supervising Environmental Planner
RIDEM Office of Water Resources, Clean Water SRF Program
October 30, 2023



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

OFFICE OF WATER

MEMORANDUM

SUBJECT: Prohibition on Certain Telecommunication and Video Surveillance Services or Equipment in the SRF Programs

FROM: Kiri Anderer, P.E., Acting Associate Branch Chief
Infrastructure Branch, OGWDW

Michael Deane, Branch Chief
State Revolving Fund Branch, OWM

TO: SRF Branch Chiefs
Regions 1-10

Effective August 13, 2020, recipients and subrecipients of EPA funded assistance agreements, including borrowers under EPA funded revolving loan funds, must comply with regulations at [2 CFR 200.216](#), *Prohibition on certain telecommunication and video surveillance services or equipment*, implementing section 889 of [Public Law 115-232](#). The regulation prohibits the use of Federal funds to procure (enter into, extend, or renew contracts) or obtain equipment, systems, or services that use “covered telecommunications equipment or services” identified in the regulation as a substantial or essential component of any system, or as critical technology as part of any system. Prohibitions extend to the use of Federal funds by recipients and subrecipients to enter into a contract with an entity that “uses any equipment, system, or service that uses covered telecommunications equipment or services” as a substantial or essential component of any system, or as critical technology as part of any system. Certain equipment, systems, or services, including equipment, systems, or services produced or provided by entities subject to the prohibition are recorded in the [System for Award Management](#) exclusion list.

As described in section 889 of Public Law 115-232, covered telecommunications equipment or services includes:

- Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
- For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- Telecommunications or video surveillance services provided by such entities or using such equipment.

- Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Applicability in the State Revolving Fund (SRF) Programs

Clean Water and Drinking Water SRF (CWSRF and DWSRF) programs may not expend equivalency funds for these products on or after August 13, 2020. States must ensure that equivalency assistance agreements include the telecommunications prohibition condition [provided by EPA's Office of Grants and Debarment](#) (OGD) in OGD's most recent EPA General Terms and Conditions. The condition must also be in construction contracts associated with equivalency assistance agreements.

There is no exhaustive list of components and services that fall under the prohibition. State SRF managers and local assistance recipients should exercise due diligence and be particularly mindful of project components with internet or cellular connections. For example, recipients should be mindful of automatic meter reading (AMR) technology and advanced metering infrastructure (AMI), instrumentation control systems (e.g. process control systems, distributed control systems and programmable logic controls), and security cameras and other electronic security measures to ensure that those items are procured from a non-excluded entity. Items included in the prohibition are not eligible SRF costs, and the SRF programs cannot reimburse borrowers for these costs.

The prohibition also applies to the CWSRF administrative funds (if states are billing those costs to the federal CWSRF capitalization grant) and the four DWSRF set-asides. States should be mindful of items such as cell phones, computers, and mobile WiFi routers or hotspots funded by those accounts.

If you have questions on the implementation of this grant condition, please contact Michael Deane at Deane.Michael@epa.gov or Kiri Anderer at Anderer.Kirsten@epa.gov.

TITLE 37

CHAPTER 2.1 DOMESTIC STEEL

Section

37-2.1-1.	Short Title
37-2.1-2.	Purpose
37-2.1-3.	Purchase of steel and steel products
37-2.1-4	Payment
37-2.1-5.	Definitions

37-2.1-1. Short title.

This chapter shall be known and may be cited as the "Steel Products Procurement Act".

37-2.1-2. Purpose.

- (a) This chapter shall be deemed to be an exercise of the police powers of the state for the protection of the health, safety, and general welfare of the people of the state.
- (b) It is hereby determined by the general assembly of Rhode Island and declared as a matter of legislative findings that:
- (1) The United States is one of the leading countries in the production and use of steel and its allied products;
 - (2) The use of steel products constitutes a major industry of the United States and, as such, provides the jobs and family incomes of millions of persons in the United States;
 - (3) The taxes paid to Rhode Island and the United States by employers and employees engaged in the production and sale of steel products are one of the largest single sources of public revenues in this country;
 - (4) It has, for many years, been the policy of the state to aid and support the development and expansion of industry in the United States in order to foster the economic well-being of the state and its people; and
 - (5) The economy, general welfare, and national security of the United States, are inseparably related to the preservation and development of the steel industry in the United States.
- (c) The general assembly therefore declares it to be the policy of the state that all public officers and agencies should, at all times, aid and promote the development of the steel industry of the United States in order to stimulate and improve the economic well-being of the state and its people.

37-2.1-3. Purchase of steel and steel products.

- (a) Every public agency shall require that every contract document for the construction, reconstruction, alteration, repair, improvement, or maintenance of public works contain a provision that, if any steel products are to be used or supplied in the performance of the contract, only steel products as herein defined shall be used or supplied in the performance of the contract or any subcontracts thereunder.
- (b) This section shall not apply in any case where the head of the public agency, in writing, determines that steel products as herein defined are not produced in, or readily available in the United States or that such steel products shall not exceed fifteen percent (15%) of the costs of any other steel products obtainable nationally or internationally.

37-2.1-4. Payment.

No public agency shall authorize, provide for, or make any payments to any person under any contract containing the provision required by 37-2.1-3 unless the public agency is satisfied that such person has fully complied with that provision. Any such payments made to any person by any public agency which should not have been made, as a result of this section, shall be recoverable directly from the contractor or subcontractor who did not comply with 37-2.1-3 by either such public agency or the attorney general upon suit filed in the court of any county.

37-2.1-5. Definitions.

The following words and phrases when used in this chapter shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

- (a) "Person" means natural persons as well as corporations, partnerships, business units, and associations;
- (b) "Public agency" means (1) the state and its departments, boards, commissions and agencies, (2) cities, towns, school districts, and any other governmental unit or district, (3) any and all other public bodies, authorities, officers, agencies, or instrumentalities, whether exercising a governmental or proprietary function;
- (c) "Public works" means steel to construct, frame or reinforce any public structure, building, highway, waterway, street, bridge, transit system, airport, or other betterment, work or improvement, whether of a permanent or temporary nature, and whether for governmental or proprietary use;
- (d) "Steel products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated, or otherwise similarly processed, or processed by a combination of two or more of such operations, from steel made in the United States by the open hearth, basic oxygen, electric furnace, Bessemer, or other steel making process;
- (e) "United States" means the United States of America and includes all territory, continental or insular, subject to the jurisdiction of the United States.

TITLE 37

CHAPTER 12 CONTRACTORS' BONDS

Sections

- 37-12-1. Contractors required to give bond – Terms and conditions.
- 37-12-2. Rights of persons furnishing labor and materials.
- 37-12-3. Remedies of creditors and state – Priority of claims.
- 37-12-4. Intervention by creditor in suit brought by state.
- 37-12-5. Time limitation on creditors' actions.
- 37-12-6. Intervention in suit brought by creditor – Consolidation of suits.
- 37-12-7. Notice of Pendency of Suit
- 37-12-8. Certified copies of documents.
- 37-12-9. Payment into court by surety – Discharge.
- 37-12-10. Retainers relating to contracts for public works or sewer or water main construction.
- 37-12-11. Substitution of securities for retained earnings.

§ 37-12-1 Contractors required to give bond – Terms and conditions. – Every person (which word for the purposes of this chapter shall include a copartnership, a number of persons engaged in a joint enterprise, or a corporation), before being awarded a contract by the department of transportation or by the department of administration, as the case may be, and every person awarded such a contract as a general contractor or construction or project manager for the construction, improvement, completion, or repair of any public road or portion thereof or of any bridge in which the contract price shall be in excess of fifty thousand dollars (\$ 50,000), or for a contract for the construction, improvement, completion, or repair of any public building, or portion thereof, shall be required to furnish to the respective department a bond of that person to the state, with good and sufficient surety or sureties (hereafter in this chapter referred to as surety), acceptable to the respective department, in a sum not less than fifty percent (50%) and not more than one hundred percent (100%) of the contract price, conditioned that the contractor, principal in the bond, the person's executors, administrators, or successors, shall in all things, well and truly keep and perform the covenants, conditions, and agreements in the contract, and in any alterations thereof made as therein provided, on the person's part to be kept and performed, at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the state, the respective department, and all of its officers, agents, and employees, as therein stipulated, and shall also promptly pay for all such labor performed or furnished and for all such materials and equipment furnished, (which as to equipment shall mean payment of the reasonable rental value, as determined by the respective department, of its use during the period of its use), as shall be used in the carrying on of the work covered by the contract, or shall see that they are promptly paid for, whether or not the labor is directly performed for or furnished to the contractor or is even directly performed upon the work covered by the contract, and whether or not the materials are furnished to the contractor or become component parts of the work, and whether or not the equipment is furnished to the contractor or even directly used upon the work. The bond shall contain the provisions that it is subject to all such rights and powers of the respective department and such other provisions as are set forth in the contract and the plans, specifications, and proposal incorporated by reference in the contract, and that no extension of the time of performance of the contract or delay in the completion of the work thereunder or any alterations thereof, made as therein provided, shall invalidate the bond or release the liability of the surety thereunder. Waiver of the bonding requirements of this section is expressly prohibited.

37-12-2. Rights of persons furnishing labor and materials.

Every person who shall have performed labor and every person who shall have furnished or supplied labor, material, or equipment in the prosecution of the work provided for in the contract, in respect of which a payment bond is furnished under § 37-12-1, and who has not been paid in full therefor before the expiration of a period of ninety (90) days after the day on which the last of the labor was performed or furnished by him or her, or material or equipment furnished or supplied by him or her for which a claim is made, shall have the right to sue on the payment bond for the amount, or the balance thereof, unpaid at the time of institution of the suit and to prosecute the action to final execution and judgment for the sum or sums justly due him or her; provided, however, that any person having direct contractual relationship with a subcontractor but no contractual relationship express or implied with the contractor furnishing the payment bond shall have a right of action upon the payment bond upon giving written notice to the contractor within ninety (90) days from the date on which the person furnished or performed the last of the labor, or furnished or supplied the last of the material or

equipment for which the claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the labor was furnished or performed or the material or equipment was furnished or supplied. The notice shall be served by mailing the same by certified mail, postage prepaid, in an envelope addressed to the contractor at any place he or she maintains an office, conducts his or her business, or his or her residence.

37-12-3. Remedies of creditors and state - Priority of claims.

The remedy on the bond shall be by a civil action brought in the superior court for the counties of Providence and Bristol and in any suit brought on the bond the rights of the state shall be prior to those of all creditors. The rights of persons who shall have performed labor as aforesaid shall be prior to the rights of all other creditors, and there shall be no priorities among laborers or among other creditors under the bond. The state, either after having recovered a judgment against the contractor on the contract or without having recovered a judgment, may bring a suit on the bond against the contractor and surety on the bond, and may join as parties defendant in the suit any persons claiming to have rights under the bond as creditors; and, if it has not brought such a suit, it may at any time before a final and conclusive decree, intervene and become a party in any suit brought, as hereafter provided in this chapter, by any person claiming to be a creditor under the bond.

37-12-4. Intervention by creditor in suit brought by state.

Any person claiming to be a creditor under the bond may at any time intervene and become a party in any pending suit brought as aforesaid by the state on the bond, and by so intervening may have the rights to the person adjudicated in the suit.

37-12-5. Time limitation on creditors' actions.

No suit instituted under § 37-12-2 shall be commenced after the expiration of two (2) years, or under the maximum time limit as contained within any labor or material payment bond required under § 37-12-1, whichever period is longer, after the day on which the last of the labor was furnished or performed or material or equipment was furnished or supplied by any person claiming under the section.

37-12-6. Intervention in suit brought by creditor - Consolidation of suits.

When a suit has been so brought on the bond by a person claiming to be a creditor under the bond and is pending, any other person claiming to be a creditor under the bond may intervene and become a party in the first suit thus brought and pending and by so intervening may have the rights of the other person adjudicated in the suit. If two (2) or more of the suits be filed in the court on the same day, the one in which the larger sum shall be claimed shall be regarded as the earlier suit. All suits brought upon the bond as provided in this chapter shall be consolidated together by the court and heard as one suit.

37-12-7. Notice of pendency of suit.

In any suit brought under the provisions of this chapter such personal notice of the pendency of the suit as the court may order shall be given to all such known creditors and persons claiming to be creditors under the bond as shall not have entered their appearances in the suit and, in addition to the notice, notice of the pendency of the suit shall be given by publication in some newspaper published in this state of general circulation in the city or town or every city or town in which the work covered by the contract was carried on, once a week for three (3) successive weeks, in such form as the court may order. The court, however, may dispense with the notices if satisfied that sufficient notices shall have been given in some other suit brought under the provisions of this chapter.

37-12-8. Certified copies of documents.

Any person claiming to be a creditor under the bond and having filed a claim with the respective department, in accordance with the requirements of § 37-12-2, shall have the right, at any time when the person could under this chapter file a suit or intervene in a pending suit, to require the respective department to furnish to the person certified copies of the contract, proposal, plans specifications, and bond.

37-12-9. Payment into court by surety - Discharge.

The surety on the bond may pay into the registry of the court, for distribution among those who may be or become entitled thereto under the decree of the court, the penal sum named in the bond less any amount which the surety may have paid to the state in satisfaction of the liability of the surety to the state under the bond, and then shall be entitled to be discharged from all further liability under the bond.

37-12-10. Retainers relating to contracts for public works or sewer or water main construction.

(a) Upon substantial completion of the work required by a contract aggregating in amount less than five hundred thousand dollars (\$ 500,000) with any municipality, or any agency or political subdivision thereof, for the construction, reconstruction, alteration, remodeling, repair, or improvement of sewers and water mains, or any public works project defined in § 37-13-1, the awarding authority may deduct from its payment a retention to secure satisfactory performance of the contractual work not exceeding five percent (5%) of the contract price unless otherwise agreed to by the parties. Upon substantial completion of the work required by a contract aggregating in an amount of five hundred thousand dollars (\$ 500,000) or greater with any municipality, or any agency or political subdivision thereof, for the construction, reconstruction, alteration, remodeling, repair, or improvement of sewers and water mains, or any public works project defined in § 37-13-1, the awarding authority may deduct from its payment a retention to secure satisfactory performance of the contractual work not exceeding five percent (5%) of the contract price. In the case of periodic payments with respect to contracts less than the aggregate amount of five hundred thousand dollars (\$ 500,000), the awarding authority may deduct from its payment a retention to secure satisfactory performance of the contractual work not exceeding five percent (5%) of the approved amount of any periodic payment unless otherwise agreed to by the parties. In the case of periodic payments with respect to contracts in the aggregate amount of five hundred thousand dollars (\$ 500,000) or greater, the awarding authority may deduct from its payment a retention to secure satisfactory performance of the contractual work not exceeding five percent (5%) of the approved amount of any periodic payment.

(b) The retainage shall be paid to any contractor or subcontractor within ninety (90) days of the date the work is accepted by the awarding authority unless a dispute exists with respect to the work. If payment is not made within ninety (90) days for any reason other than a dispute, which, if resolved and it is not the fault of the contractor, interest shall be assessed at the rate of ten percent (10%) per annum on all money which is to be paid to the contractor or subcontractor.

(c) The retainage shall be paid to any contractor or subcontractor within ninety (90) days of the date his or her work is completed and accepted by the awarding authority. If payment is not made, interest shall be assessed at the rate of ten percent (10%) per annum.

(d) There shall also be deducted and retained from the contract price an additional sum sufficient to pay the estimated cost of municipal police traffic control on any public works project. Municipalities shall directly pay the officers working traffic details and shall bill and be reimbursed by the withholding authority for which the contract is being performed every thirty (30) days until the project is complete.

(e) Notwithstanding the foregoing, with respect to projects located within the town of Warren, the withholding authority shall hold an amount from the contract price which shall be reasonably sufficient to pay the estimated cost of municipal police traffic control. The withholding authority shall pay to the town of Warren within seventy-two (72) hours of written demand the actual costs of police traffic control associated with said project on an ongoing basis.

37-12-11. Substitution of securities for retained earnings.

(a) Where any public works contract as defined by § 37-13-1 provides for the retention of earned estimates by the state of Rhode Island, the contractor may, from time to time, withdraw the whole or any portion of the amount retained for payments to the contractor pursuant to the terms of the contract, upon depositing with the general treasurer either; (1) United States treasury bonds, United States treasury notes, United States treasury certificates of indebtedness, or United States treasury bills; (2) Bonds or notes of the state of Rhode Island; or (3) Bonds of any political subdivision in the state of Rhode Island.

(b) No amount shall be withdrawn in excess of the market value of the securities at the time of deposit or of the par value of the securities, whichever is lower. The general treasurer shall, on a regular basis, collect all interest or income on the obligations so deposited and shall pay the interest or income, when and as collected, to the contractor who deposited the obligations. If the deposit is in the form of coupon bonds, the general treasurer shall deliver each coupon as it matures to the contractor. Any amount deducted by the state, or by any public department or official thereof, pursuant to the terms of the contract, from the retained payments otherwise due the contractor, shall be deducted, first from that portion of the retained payments for which no security has been substituted, then from the proceeds of any deposited security. In the latter case, the contractor shall be entitled to receive interest, coupons, or income only from those securities which remain after the amount has been deducted. The securities so deposited shall be properly endorsed by the contractor in such manner so as to enable the general treasurer to carry out the provisions of this section.

TITLE 37

CHAPTER 12.1 SUBSTITUTION OF SECURITY FOR RETAINED EARNINGS OF ARCHITECTS AND ENGINEERS

Sections

- 37-12.1-1. Definition of Terms.
- 37-12.1-2. Substitution of security for retained earnings by designers.
- 37-12.1-3. Deduction from retained earnings.
- 37-12.1-4. Endorsement on securities.
- 37-12.1-5. Applicability.

37-12.1-1. Definition of terms.

Terms used in this chapter shall be construed as follows:

- (a) "Designers", means any person, firm or corporation duly authorized pursuant to the laws of this state to engage in the practice of architecture and/or engineering within this state.
- (b) "Public works contract" means a contract to perform design or planning services by a designer with the state or any agency or governmental subdivisions thereof.
- (c) "Retained earnings" means any moneys or earned estimates withheld from a designer pursuant to the terms of a public works contract.

37-12.1-2. Substitution of security for retained earnings by designers.

(a) Where any public works contract provides for the holding of retained earnings from a designer, the designer may from time to time withdraw the whole or any portion of the amount retained upon either depositing with the general treasurer:

- (1) United States treasury bonds, United States treasury notes, United States treasury certificates of indebtedness, or United States treasury bills;
- (2) Bonds or notes of the state of Rhode Island; or
- (3) Bonds of any political subdivision of the state of Rhode Island.

(b) With respect to the deposit of securities, the general treasurer shall, on a regular basis, collect all interest or income on the securities so deposited and shall pay the interest or income when and as collected to the designer depositing the securities. If the security is in the form of coupon bonds, the general treasurer shall deliver each coupon as it matures to the designer.

37-12.1-3. Deduction from retained earnings.

In the event that pursuant to the terms of the public works contract it is necessary to deduct any sum from retained earnings, the state or governmental unit or agency thereof shall first apply such deduction against sums not withdrawn and thereafter from the proceeds of the sale of any securities deposited or from the income earned on such securities, whichever is applicable.

37-12.1-4. Endorsement on securities.

All securities deposited with the general treasurer pursuant to this chapter shall be properly endorsed by the designer in such manner as to enable the general treasurer to carry out the provisions of this chapter.

37-12.1-5. Applicability.

This chapter shall apply to all retained earnings held pursuant to any public works contract as of [June 16, 1991].

TITLE 37

CHAPTER 13 LABOR AND PAYMENT OF DEBTS BY CONTRACTORS

Sections

- 37-13-1. "Public Works" defined
- 37-13-2. "Contractor" defined – information required.
- 37-13-3. Contractors subject to provisions – Weekly payment of employees.
- 37-13-3.1 State public works contract apprenticeship requirements
- 37-13-4. Provisions applicable to public works contracts – List of Subcontractors.
- 37-13-5. Payment for trucking or materials furnished – Withholding of sums due.
- 37-12-6. Ascertainment of prevailing rate of wages and other payments – Specification of rate in call for bids and in contract.
- 37-13-7. Specification in contract of amount and frequency of payment and wages.
- 37-13-8. Investigation and determination of prevailing wages – Filing of schedule.
- 37-13-9. Statutory provisions included in contracts.
- 37-13-10. Overtime compensation.
- 37-13-11. Posting of prevailing wage rates.
- 37-13-12. Wage records of contractors.
- 37-13-12.1. Obstruction of enforcement.
- 37-13-12.2. Subpoena powers.
- 37-13-12.3. Compelling obedience to subpoenas.
- 37-13-12.4. Penalty for violations.
- 37-13-13. Furnishing payroll record to director of labor.
- 37-13-13.1. Audits of wage records of out of state contractors and subcontractors.
- 37-13-14. Contractor's bond.
- 37-13-14.1. Enforcement – Hearings.
- 37-13-15. Review.
- 37-13-16. Termination of work on failure to pay agreed wages – Completion of work.
- 37-13-17. Private right of action to collect wages or benefits

37-13-1. "Public works" defined.

"Public works" as used in this chapter shall mean any public work consisting of grading, clearing, demolition, improvement, completion, repair, alteration, or construction of any public road or any bridge, or portion thereof, or any public building or portion thereof, or any heavy construction, or any public works projects of any nature or kind whatsoever.

37-13-2. "Contractor" defined - Information required.

The term "contractor" as used in this chapter shall mean the bidder whose bid has been accepted by an authorized agency or awarding authority as the bidder possessing the skills, ability, and integrity necessary to the faithful performance of the contract or work, and who shall certify that he or she is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the contract or work. Essential information in regard to qualifications shall be submitted in such form to the awarding authority and the director of labor and training as the director of labor and training shall require. The authorized agency or awarding authority shall reserve the right to reject all bids, if it be in the public interest to do so.

37-13-3. Contractors subject to provisions - Weekly payment of employees.

All contractors, who have been awarded contracts for public works by an awarding agency or authority of the state or of any city, town, committee, or by any person or persons therein, in which state or municipal funds are used and of which the contract price shall be in excess of one thousand dollars (\$1,000) whether payable at the time of the signing of the contract or at a later date, and their subcontractors, on such public works shall pay their employees at weekly intervals and shall comply with the provisions set forth in 37-13-4 - 37-13-14, inclusive, and 37-13-16.

37-13-3.1. State public works contract apprenticeship requirements.

Notwithstanding any laws to the contrary, all general contractors and subcontractors who perform work on any public works contract awarded by the state after passage of this act and valued at one million dollars (\$ 1,000,000) or more shall employ apprentices required for the performance of the awarded contract. The number of apprentices shall comply with the apprentice to journeyman ratio for each trade approved by the apprenticeship council of the department of labor and training.

37-13-4. Provisions applicable to public works contracts - Lists of subcontractors.

All public works shall be done by contract, subject to the same provisions of law relating thereto and to the letting thereof, which are applicable to similar contracts of the awarding authority or authorized agency, hereinafter called the "proper authority," in the general location where the work is to be performed and which are not contrary to the provisions of 37-13-1 - 37-13-14, and 37-13-16. Each contractor after the award of a contract for public works shall submit to the proper authority a list of his or her subcontractors of any part or all of the work. The list shall be submitted in such manner or form as the proper authority shall uniformly require from contractors in all public works.

37-13-5. Payment for trucking or materials furnished - Withholding of sums due.

A contractor or subcontractor on public works authorized by a proper authority shall pay any obligation or charge for trucking and material which have been furnished for the use of the contractor or subcontractor, in connection with the public works being performed by him or her, within ninety (90) days after the obligation or charge is incurred or the trucking service has been performed or the material has been delivered to the site of the work, whichever is later. When it is brought to the notice of the proper authority in a city or town, or the proper authority in the state having supervision of the contract, that the obligation or charge has not been paid by the contractor or subcontractor, the proper authority may deduct and hold for a period not exceeding sixty (60) days, from sums of money due to the contractor or subcontractor, the equivalent amount of such sums certified by a trucker or material

man creditor as due him or her, as provided in this section, and which the proper authority determines is reasonable for trucking performed or materials furnished for the public works.

37-13-6. Ascertainment of prevailing rate of wages and other payments - Specification of rate in call for bids and in contract.

Before awarding any contract for public works to be done, the proper authority shall ascertain from the director of labor and training the general prevailing rate of the regular, holiday, and overtime wages paid and the general prevailing payments on behalf of employees only, to lawful welfare, pension, vacation, apprentice training, and educational funds (payments to the funds must constitute an ordinary business expense deduction for federal income tax purposes by contractors) in the city, town, village, or other appropriate political subdivision of the state in which the work is to be performed, for each craft, mechanic, teamster, laborer, or type of worker needed to execute the contract for the public works. The proper authority shall, also, specify in the call for bids for the contract and in the contract itself the general prevailing rate of the regular, holiday, and overtime wages paid and the payments on behalf of employees only, to the welfare, pension, vacation, apprentice training, and education funds existing in the locality for each craft, mechanic, teamster, laborer, or type of worker needed to execute the contract or work.

37-13-7. Specification in contract of amount and frequency of payment of wages.

(a) Every call for bids for every contract in excess of one thousand dollars (\$ 1,000), to which the state of Rhode Island or any political subdivision thereof or any public agency or quasi-public agency is a party, for construction, alteration, and/or repair, including painting and decorating, of public buildings or public works of the state of Rhode Island or any political subdivision thereof, or any public agency or quasi-public agency and which requires or involves the employment of employees, shall contain a provision stating the minimum wages to be paid various types of employees which shall be based upon the wages that will be determined by the director of labor and training to be prevailing for the corresponding types of employees employed on projects of a character similar to the contract work in the city, town, village, or other appropriate political subdivision of the state of Rhode Island in which the work is to be performed. Every contract shall contain a stipulation that the contractor or his or her subcontractor shall pay all the employees employed directly upon the site of the work, unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates not less than those stated in the call for bids, regardless of any contractual relationships which may be alleged to exist between the contractor or subcontractor and the employees, and that the scale of wages to be paid shall be posted by the contractor in a prominent and easily accessible place at the site of the work; and the further stipulation that there may be withheld from the contractor so much of the accrued payments as may be considered necessary to pay to the employees employed by the contractor, or any subcontractor on the work, the difference between the rates of wages required by the contract to be paid the employees on the work and the rates of wages received by the employees and not refunded to the contractor, subcontractors, or their agents.

(b) The terms "wages" , "scale of wages" , "wage rates" , "minimum wages" , and "prevailing wages" shall include:

(1) The basic hourly rate of pay; and

(2) The amount of:

(A) The rate of contribution made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program; and

(B) The rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to employees pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the employees affected, for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other federal, state, or local law to provide any of the benefits ; provided, that the obligation of a contractor or subcontractor to make payment in accordance with the prevailing wage determinations of the director of labor and training insofar as this chapter of this title and other acts incorporating this chapter of this title by reference are concerned may be discharged by the making of payments in cash, by the making of contributions of a type referred to in subsection (b)(2), or by the assumption of an enforceable commitment to bear the costs of a plan or program of a type referred to in this subdivision, or any combination thereof, where the aggregate of any payments, contributions, and costs is not less than the rate of pay described in subsection (b)(1) plus the amount referred to in subsection (b)(2).

(c) The term "employees" , as used in this section, shall include employees of contractors or subcontractors performing jobs on various types of public works including mechanics, apprentices, teamsters, chauffeurs, and laborers engaged in the transportation of gravel or fill to the site of public works, the removal and/or delivery of gravel or fill or ready-mix concrete, sand, bituminous stone, or asphalt flowable fill from the site of public works, or the transportation or removal of gravel or fill from one location to another on the site of public works, and the employment of the employees shall be subject to the provisions of subsections (a) and (b) .

(d) The terms "public agency" and "quasi-public agency" shall include, but not be limited to, the Rhode Island industrial recreational building authority, the Rhode Island economic development corporation, the Rhode Island airport corporation, the Rhode Island industrial facilities corporation, the Rhode Island refunding bond authority, the Rhode Island housing and mortgage finance corporation, the Rhode Island resource recovery corporation, the Rhode Island public transit authority, the Rhode Island student loan authority, the water resources board corporate, the Rhode Island health and education building corporation, the Rhode Island higher education assistance authority, the Rhode Island turnpike and bridge authority, the Narragansett Bay water quality management district commission, Rhode Island telecommunications

authority, the convention center authority, the board of governors for higher education, the board of regents for elementary and secondary education, the capital center commission, the housing resources commission, the Quonset Point-Davisville management corporation, the Rhode Island children's crusade for higher education, the Rhode Island depositors economic protection corporation, the Rhode Island lottery commission, the Rhode Island partnership for science and technology, the Rhode Island public building authority, and the Rhode Island underground storage tank board.

37-13-8. Investigation and determination of prevailing wages - Filing of schedule.

The director of labor and training shall investigate and determine the prevailing wages and payments made to or on behalf of employees, as set forth in § 37-13-7, paid in the trade or occupation in the city, town, village, or other appropriate political subdivision of the state and keep a schedule on file in his or her office of the customary prevailing rate of wages and payments made to or on behalf of the employees which shall be open to public inspection. In making a determination, the director of labor may adopt and use such appropriate and applicable prevailing wage rate determinations as have been made by the secretary of labor of the United States of America in accordance with the Davis-Bacon Act, as amended, 40 U.S.C. § 276a; provided, however, that each contractor awarded a public works contract after July 1, 2007 shall contact the department of labor and training on or before July first of each year, for the duration of such contract to ascertain the prevailing wage rate of wages on a hourly basis and the amount of payment or contributions paid or payable on behalf of each mechanic, laborer or worker employed upon the work contracted to be done each year and shall make any necessary adjustments to such prevailing rate of wages and such payment or contributions paid or payable on behalf of each such employee every July first.

37-13-9. Statutory provisions included in contracts.

A copy of 37-13-5, 37-13-6, and 37-13-7 shall be inserted in all contracts for public works awarded by the state or any city or town, committee, an authorized agency or awarding authority thereof, or any person or persons in their behalf in which state or municipal funds are used if the contract price be in excess of one thousand dollars (\$1,000).

37-13-10. Overtime compensation.

Labor performed under the provisions of 37-13-1 - 37-13-16, inclusive, during the period of forty (40) hours in any one week and during the period of eight (8) hours in any one day, shall be considered a legal week's work or a legal day's work, as the case may be, and any number of hours of employment in any one week greater than the number of forty (40) hours or in any one day greater than the number of eight (8) hours shall be compensated at the prevailing rate of wages for overtime employment; provided, however, when the director of labor and training has determined in the investigation provided for in 37-13-7 and 37-13-8 that there is a prevailing practice in a city, town, or other appropriate political subdivision to pay an overtime rate of wages for work of any craft, mechanic, teamster, laborer, or type of worker needed to execute the work other than hours worked in any one week greater than the number of forty (40) or in hours worked in any one day greater than the number of eight (8), then the prevailing practice shall determine the legal workday and the legal workweek in the city or town for the work and the prevailing rate of overtime wages shall be paid for such work in excess of that legal workday or week, as the case may be.

37-13-11. Posting of prevailing wage rates.

Each contractor awarded a contract for public works with a contract price in excess of one thousand dollars (\$ 1,000), and each subcontractor who performs work on those public works, shall post in conspicuous places on the project, where covered workers are employed, posters which contain the current, prevailing rate of wages and the current, prevailing rate of payments to the funds required to be paid for each craft or type of worker employed to execute the contract as set forth in §§ 37-13-6 and 37-13- 7, and the rights and remedies of any employee described in § 37-13-17 for nonpayment of any wages earned pursuant to this chapter. Posters shall be furnished to contractors and subcontractors by the director of labor and training, who shall determine the size and context thereof from time to time, at the time a contract is awarded. A contractor or subcontractor who fails to comply with the provisions of this section shall be deemed guilty of a misdemeanor and shall pay to the director of labor and training one hundred dollars (\$ 100) for each calendar day of noncompliance as determined by him or her. Contracts set forth in this section shall not be awarded by the state, any city, town, or any agency thereof until the director of labor and training has prepared and delivered the posters to the division of purchases, if the state or any agency thereof is the proper authority, or to the city, town, or an agency thereof, if it is the proper authority, and the contractor to whom the contract is to be awarded.

37-13-12. Wage records of contractors.

Each contractor awarded a contract with a contract price in excess of one thousand dollars (\$1,000) for public works, and each subcontractor who performs work on those public works, shall keep an accurate record showing the name, occupation, and actual wages paid to each worker employed by him or her and the payments to all the employee funds specified in sections 37-13-6 and 37-13-7 by him or her in connection with the contract or work. The director and his or her authorized representatives shall have the right to enter any place of employment at all reasonable hours for the purpose of inspecting the wage records and seeing that all provisions of this chapter are complied with.

37-13-12.1. Obstruction of enforcement.

Any effort of any employer to obstruct the director and his or her authorized representatives in the performance of their duties shall be deemed a violation of this chapter and punishable as such.

37-13-12.2. Subpoena powers.

The director and his or her authorized representatives shall have power to administer oaths and examine witnesses under oath, issue subpoenas, subpoenas duces tecum, compel the attendance of witnesses, and the production of papers, books, accounts, records, payrolls, documents, and testimony, and to take depositions and affidavits in any proceeding before the director.

37-13-12.3. Compelling obedience to subpoenas.

In case of failure of any person to comply with any subpoena lawfully issued, or subpoena duces tecum, or on the refusal of any witness to testify to any matter regarding which he may be lawfully interrogated, it shall be the duty of the superior court, or any judge thereof, on application by the director, to compel obedience by proceedings in the nature of those for contempt.

37-13-12.4. Penalty for violations.

Except as otherwise provided in this chapter, any employer who shall violate or fail to comply with any of the provisions of this chapter shall be guilty of a misdemeanor and shall be punished by a fine of not less than five hundred dollars (\$ 500) nor more than one thousand dollars (\$ 1,000) for each separate offense, or by imprisonment for not less than ten (10) nor more than ninety (90) days, or by both fine and imprisonment. Each day of failure to pay wages due an employee at the time specified in this chapter shall constitute a separate and distinct violation.

37-13-13. Furnishing payroll record to director of labor.

(a) Every contractor and subcontractor awarded a contract for public works as defined by this chapter shall furnish a certified copy of his or her payroll records of his or her employees employed upon the project to the director of labor and training on a monthly basis for the preceding month's work.

(b) The director of labor and training may promulgate reasonable rules and regulations to enforce the provisions of this section.

(c) Any contractor or subcontractor who fails to comply with the provisions of this section shall be deemed guilty of a misdemeanor and shall pay to the director of labor and training five hundred dollars (\$ 500) for each calendar day of noncompliance as determined by the director of labor and training. Any of those revenues shall be deposited as general revenues. Any person, firm, or corporation found to have willfully made a false or fraudulent representation in connection with reporting their certified payroll records shall be required to pay a civil penalty to the department of labor and training in an amount of no less than one thousand dollars (\$ 1,000) and not greater than three thousand dollars (\$ 3,000) per representation. For purposes of this subsection "willfully" shall mean representations that are known to be false, or representations made with deliberate ignorance or reckless disregard for their truth or falsity.

37-13-13.1. Audits of wage records of out of state contractors and subcontractors.

Out of state contractors or subcontractors who perform work on public works in this state authorize the director of labor and training to conduct wage and hour audits of their payroll records pursuant to the provisions of chapter 14 of title 28.

37-13-14. Contractor's bond.

The state or any city, town, agency, or committee therein awarding contracts for public works shall require the contractor awarded a contract with a contract price in excess of fifty thousand dollars (\$ 50,000) for public works to file with the

proper authority good and sufficient bond with surety furnished by any surety company authorized to do business in the state, conditioned upon the faithful performance of the contract and upon the payment for labor performed and material furnished in connection therewith, a bond to contain the terms and conditions set forth in chapter 12 of this title, and to be subject to the provisions of that chapter. Waiver of the bonding requirements of this section is expressly prohibited.

37-13-14.1. Enforcement - Hearings.

(a) Before issuing an order or determination, the director of labor and training shall order a hearing thereon at a time and place to be specified, and shall give notice thereof, together with a copy of the complaint or the purpose thereof, or a statement of the facts disclosed upon investigation, which notice shall be served personally or by mail on any person, firm, or corporation affected thereby. The person, firm, or corporation shall have an opportunity to be heard in respect to the matters complained of at the time and place specified in the notice, which time shall be not less than five (5) days from the service of the notice personally or by mail. The hearing shall be held within ten (10) days from the order of hearing. The hearing shall be conducted by the director of labor and training or his or her designee. The hearing officer in the hearing shall be deemed to be acting in a judicial capacity, and shall have the right to issue subpoenas, administer oaths, and examine witnesses. The enforcement of a subpoena issued under this section shall be regulated by Rhode Island civil practice law and rules. The hearing shall be expeditiously conducted and upon such hearing the hearing officer shall determine the issues raised thereon and shall make a determination and enter an order within ten (10) days of the close of the hearing, and forthwith serve a copy of the order, with a notice of the filing thereof, upon the parties to the proceeding, personally or by mail. The order shall dismiss the charges or direct payment of wages or supplements found to be due, including interest at the rate of twelve percentum (12%) per annum from the date of the underpayment to the date of payment, and may direct payment of reasonable attorney's fees and costs to the complaining party.

(b) In addition to directing payment of wages or supplements including interest found to be due, the order shall also require payment of a further sum as a civil penalty in an amount up to three times the total amount found to be due. Further, if the amount of salary owed to an employee pursuant to this chapter but not paid to the employee in violation of thereof exceeds five thousand dollars (\$ 5,000), it shall constitute a misdemeanor and shall be referred to the office of the attorney general. The misdemeanor shall be punishable for a period of not more than one year in prison and/or fined not more than one thousand dollars (\$ 1,000). In assessing the amount of the penalty, due consideration shall be given to the size of the employer's business, the good faith of the employer, the gravity of the violation, the history of previous violations and the failure to comply with recordkeeping or other nonwage requirements. The surety of the person, firm, or corporation found to be in violation of the provisions of this chapter shall be bound to pay any penalties assessed on such person, firm, or corporation. The penalty shall be paid to the department of labor and training for deposit in the state treasury; provided, however, it is hereby provided that the general treasurer shall establish a dedicated "prevailing wages enforcement fund" for the purpose of depositing the penalties paid as provided herein. There is hereby appropriated to the annual budget of the department of labor and training the amount of the fund collected annually under this section, to be used at the direction of the director of labor and training for the sole purpose of enforcing prevailing wage rates as provided in this chapter.

(c) For the purposes of this chapter, each day or part thereof of violation of any provision of this chapter by a person, firm, or corporation, whether the violation is continuous or intermittent, shall constitute a separate and succeeding violation.

(d) In addition to the above, any person, firm, or corporation found in violation of any of the provisions of this chapter by the director of labor and training, an awarding authority, or the hearing officer, shall be ineligible to bid on or be awarded work by an awarding authority or perform any such work for a period of no less than eighteen (18) months and no more than thirty-six (36) months from the date of the order entered by the hearing officer. Once a person, firm, or corporation is found to be in violation of this chapter, all pending bids with any awarding authority shall be revoked, and any bid awarded by an awarding authority prior to the commencement of the work shall also be revoked.

(e) In addition to the above, any person, firm, or corporation found to have committed two (2) or more willful violations in any period of eighteen (18) months of any of the provisions of this chapter by the hearing officer, which violations are not arising from the same incident, shall be ineligible to bid on or be awarded work by an awarding authority or perform any work for a period of sixty (60) months from the date of the second violation.

(f) The order of the hearing officer shall remain in full force and effect unless stayed by order of the superior court.

(g) The director of labor and training, awarding authority, or hearing officer shall notify the bonding company of any person, firm, or corporation suspected of violating any section of this chapter. The notice shall be mailed certified mail, and shall enumerate the alleged violations being investigated.

(h) In addition to the above, any person, firm, or corporation found to have willfully made a false or fraudulent representation on certified payroll records shall be referred to the office of the attorney general. The false or fraudulent representation shall be considered a misdemeanor and shall be punishable for a period of not more than one year in prison and/or fined one thousand dollars (\$ 1,000). Further, any person, firm, or corporation found to have willfully made a false or fraudulent representation on certified payroll records shall be required to pay a civil penalty to the department of labor and training in an amount of no less than two thousand dollars (\$ 2,000) and not greater than fifteen thousand dollars (\$ 15,000) per representation.

37-13-15. Review.

(a) There is hereby created an appeals board which shall be comprised of three (3) members who shall be appointed by the governor; provided, however, that each member of the appeals board shall have at least five (5) years experience with prevailing wage rates as they apply to the construction industry. The members of such appeals board shall serve without compensation. The members of the appeals board shall be appointed for terms of three (3) years except that of the three (3) members originally appointed by each of the appointing authorities; one (1) shall be appointed for a term of one (1) year, one (1) shall be appointed for a term of two (2) years and one (1) for a term of three (3) years.

(b) Any person aggrieved by any action taken by the director of labor and training or his or her designated hearing officer under the authority of this chapter, or by the failure or refusal of the director of labor and training to take any action authorized by this chapter, may obtain a review thereof for the purpose of obtaining relief from the action or lack of action by filing a petition for administrative review and relief, to the appeals board as provided herein. The petition for administrative review shall be filed within twenty (20) days of the action taken by the director of labor and training or designated hearing officer: The petition for administrative review shall be heard within ten (10) days of the date of filing. An aggrieved person under this section shall include:

- (1) Any person who is required to pay wages to his or her employees or make payments to a fund on behalf of his or her employees, as provided in this chapter;
- (2) Any person who is required to be paid wages for his or her labor or on whose behalf payments are required to be paid to funds, as provided by this chapter;
- (3) The lawful collective bargaining representative of a person defined in subdivision (2) above;
- (4) A trade association of which a person defined in subdivision (1) above is a member;
- (5) A proper authority as defined in this chapter;
- (6) A contractor who submitted a bid for work to be or which has been awarded under the provisions of this chapter or a trade association of which he or her is a member, and
- (7) A labor organization which has one or more written collective bargaining agreements with one or more employers or a trade association which sets forth the hours, wages, and working conditions of a craft, mechanic, teamster, or type of worker needed to execute the work, as provided in this chapter to the extent that it would be affected by the action or the failure to act of the director of labor and training or the hearing officer.

(c) Any aggrieved person as defined herein may obtain a review of a decision of the appeals board by filing a petition in the superior court in Providence county pursuant to the provisions of the administrative procedures act, praying for review and relief and the petition shall follow the course of and be subject to the procedures for causes filed in the court.

(d) The director is hereby empowered to enforce his or her decision and/or the decision of the appeals board in the superior court for the county of Providence.

37-13-16. Termination of work on failure to pay agreed wages - Completion of work.

Every contract within the scope of this chapter shall contain the further provision that in the event it is found by the director of labor and training that any employee employed by the contractor or any subcontractor directly on the site of the work covered by the contract has been or is being paid a rate of wages less than the rate of wages required by the contract to be paid as aforesaid, the awarding party may, by written notice to the contractor or subcontractor, terminate his or her right as the case may be, to proceed with the work, or such part of the work as to which there has been a failure to pay the required wages, and shall prosecute the work to completion by contract or otherwise, and the contractor and his or her sureties shall be liable to the awarding party for any excess costs occasioned the awarding authority thereby.

37-13-17. Private right of action to collect wages or benefits

(a) An employee or former employee, or any organization representing such an employee or former employee, of a

contractor or subcontractor may bring a civil action for a violation of § 37-13-7 for appropriate injunctive relief, or actual damages, or both within three (3) years after the occurrence of the alleged violation. An action commenced pursuant to this section, may be brought in the superior court for the county where the alleged violation occurred, the county where the complainant resides, or the county where the person against whom in the civil complaint is filed resides or has their principal place of business. Any contractor or subcontractor who violates the provisions of § 37-13-7 shall be liable to the affected employee or employees in the amount of unpaid wages or benefits, plus interest. A civil action filed in court under this section may be instituted instead of, but not in addition to the director of labor and training enforcement procedures authorized by § 37-13-14.1, provided the civil action is filed prior to the date the director of labor and training issues notice of an administrative hearing.

(b) An employer's responsibility and liability is solely for its own employees.

(c) An action instituted pursuant to this section may be brought by one or more employees or former employees on behalf of himself/herself or themselves and other employees similarly situated, except that no employee shall be a party plaintiff to any such action unless he/she gives his/her consent in writing to become such a party and such consent is filed in the court in which such action is brought.

(d) In an action filed under this section in which the plaintiff prevails, the court shall, in addition to any judgment awarded to the plaintiff, require reasonable attorneys' fees and the costs of the action to be paid by the defendant.

(e) The court in an action filed under this section shall award affected employees or former employees liquidated damages in an amount equal to two (2) times the amount of unpaid wages or benefits owed. Unpaid fringe benefit contributions owed pursuant to this section in any form shall be paid to the appropriate benefit fund, however, in the absence of an appropriate fund the benefit shall be paid directly to the individual.

(f) The filing of a civil action under this section shall not preclude the director of labor and training from referring a matter to the attorney general as provided in § 37-13-14.1(b), from prohibiting a contractor or subcontractor from bidding on or otherwise participating in contracts as provided in § 37-13-14.1(d), (e) and (h), or from prohibiting termination of work on failure to pay agreed wages pursuant to § 37-13-16.

(g) Any person, firm, or corporation found to have willfully made a false or fraudulent representation in connection with wage obligations owed on a contract shall be required to pay a civil penalty to the department of labor and training in an amount of no less than one thousand dollars (\$ 1,000) and not greater than three thousand dollars (\$ 3,000) per representation. Such penalties shall be recoverable in civil actions filed pursuant to this section. For purposes of this subsection "willfully" shall mean representations that are known to be false, or representations made with deliberate ignorance or reckless disregard for their truth or falsity.

(h) An employer shall not discharge, threaten, or otherwise discriminate against an employee, or former employee, regarding compensation terms, conditions, locations or privileges of employment because the employee or former employee, or a person or organization acting on his or her behalf: (1) Reports or makes a complaint under this section; or otherwise asserts his or her rights under this section; and/or (2) Participates in any investigation, hearing or inquiry held by the director of labor and training under § 37-13-14.1. In the event a contractor or subcontractor retaliates or discriminates against an employee in violation of this section, the affected employee may file an action in any court of competent jurisdiction and the court shall order reinstatement and/or restitution of the affected employee, as appropriate, with back pay to the date of the violation, and an additional amount in liquidated damages equal to two (2) times the amount of back pay and reasonable attorneys' fees and costs.

(i) If any one or more subsections of this section shall for any reason be adjudged unconstitutional or otherwise invalid, the judgment shall not affect, impair, or invalidate the remaining subsections.

PREVAILING WAGE RATES

(Appropriate wage rate to be inserted by bidder in specifications)

For a copy of the appropriate wage rate, contact:

**R.I. Department of Labor
Division of Labor Standards
610 Manton Avenue
Providence, RI 02909**

STATE CONTRACT ADDENDUM
RHODE ISLAND DEPARTMENT OF LABOR AND TRAINING
PREVAILING WAGE REQUIREMENTS
(37-13-1 ET SEQ.)

The prevailing wage requirements are generally set forth in RIGL 37-13-1 et seq. These requirements refer to the prevailing rate of pay for regular, holiday, and overtime wages to be paid to each craftsmen, mechanic, teamster, laborer, or other type of worker performing work on public works projects when state or municipal funds exceed one thousand dollars (\$1,000).

All Prevailing Wage Contractors and Subcontractors are required to:

1. Submit to the Awarding Authority a list of the contractor's subcontractors for any part or all of the prevailing wage work in accordance with RIGL § 37-13-4;
2. Pay all prevailing wage employees at least once per week and in accordance with RIGL §37-13-7;
3. Post the prevailing wage rate scale and the Department of Labor and Training's prevailing wage poster in a prominent and easily accessible place on the work site in accordance with RIGL §37-13-11; posters may be downloaded at <https://dlt.ri.gov/requiredposters/> or obtained from the Department of Labor and Training, Center General Complex, 1511 Pontiac Avenue, Cranston, Rhode Island;
4. Access the Department of Labor and Training website, at <https://dlt.ri.gov> on or before July 1st of each year, until such time as the contract is completed, to ascertain the current prevailing wage rates and the amount of payment or contributions for each covered prevailing wage employee and make any necessary adjustments to the covered employee's prevailing wage rates effective July 1st of each year in compliance with RIGL §37-13-8;
5. Attach a copy of this CONTRACT ADDENDUM and its attachments as a binding obligation to any and all contracts between the contractor and any subcontractors and their assignees for prevailing wage work performed pursuant to this contract;
6. Provide for the payment of overtime for prevailing wage employees who work in excess of eight (8) hours in any one day or forty (40) hours in any one week as provided by RIGL §37-13-10;

7. Maintain accurate prevailing wage employee payroll records on a Rhode Island Certified Weekly Payroll form available for download at <https://dlt.ri.gov/wrs/prevailingwage/> as required by RIGL §37-13-13, and make those records available to the Department of Labor and Training upon request;
8. Furnish the fully executed RI Certified Weekly Payroll Form to the awarding authority on a monthly basis for all work completed in the preceding month.
9. For general or primary contracts one million dollars (\$1,000,000) or more, shall maintain on the work site a fully executed RI Certified Prevailing Wage Daily Log listing the contractor's employees employed each day on the public works site; the RI Certified Prevailing Wage Daily Log shall be available for inspection on the public works site at all times; this rule shall not apply to road, highway, or bridge public works projects. Where applicable, furnish both the Rhode Island Certified Prevailing Wage Daily Log together with the Rhode Island Weekly Certified Payroll to the awarding authority.
10. Any violation of RIGL 37-13-13 of Certified Weekly Payroll Forms and Daily Logs will result in the department imposing a penalty on the contractor of a minimum of one hundred dollars (\$100) for each calendar day of noncompliance.
11. Assure that all covered prevailing wage employees on construction projects with a total project cost of one hundred thousand dollars (\$100,000) or more has a OSHA ten (10) hour construction safety certification in compliance with RIGL § 37-23-1;
12. Employ apprentices for the performance of the awarded contract when the contract is valued at one million dollars (\$1,000,000) or more, and comply with the apprentice to journey-person ratio for each trade approved by the apprenticeship council of the Department of Labor and Training in compliance with RIGL §37-13-3.1;
13. Assure that all prevailing wage employees who perform work which requires a Rhode Island trade license possess the appropriate Rhode Island trade license in compliance with Rhode Island law; and
14. Comply with all applicable provisions of RIGL §37-13-1, et. seq;

Any questions or concerns regarding this CONTRACT ADDENDUM should be addressed to the contractor or subcontractor's attorney. Additional Prevailing Wage information may be obtained from the Department of Labor and Training at <https://dlt.ri.gov/wrs/prevailingwage/>.

CERTIFICATION

I hereby certify that I have reviewed this CONTRACT
ADDENDUM and understand my obligations as stated above.

By: _____

Title: _____

Subscribed and sworn before me this ____ day of _____, 20__.

Notary Public
My commission expires: _____

MUNICIPAL CONTRACT ADDENDUM
RHODE ISLAND DEPARTMENT OF LABOR AND TRAINING
PREVAILING WAGE REQUIREMENTS
(37-13-1 ET SEQ.)

The prevailing wage requirements are generally set forth in RIGL 37-13-1 et seq. These requirements refer to the prevailing rate of pay for regular, holiday, and overtime wages to be paid to each craftsmen, mechanic, teamster, laborer, or other type of worker performing work on public works projects when state or municipal funds exceed one thousand dollars (\$1,000).

All Prevailing Wage Contractors and Subcontractors are required to:

1. Submit to the Awarding Authority a list of the contractor's subcontractors for any part or all of the prevailing wage work in accordance with RIGL § 37-13-4;
2. Pay all prevailing wage employees at least once per week and in accordance with RIGL §37-13-7;
3. Post the prevailing wage rate scale and the Department of Labor and Training's prevailing wage poster in a prominent and easily accessible place on the work site in accordance with RIGL §37-13-11; posters may be downloaded at <https://dlt.ri.gov/requiredposters/> or obtained from the Department of Labor and Training, Center General Complex, 1511 Pontiac Avenue, Cranston, Rhode Island;
4. Access the Department of Labor and Training website, at <https://dlt.ri.gov> on or before July 1st of each year, until such time as the contract is completed, to ascertain the current prevailing wage rates and the amount of payment or contributions for each covered prevailing wage employee and make any necessary adjustments to the covered employee's prevailing wage rates effective July 1st of each year in compliance with RIGL §37-13-8;
5. Attach a copy of this CONTRACT ADDENDUM and its attachments as a binding obligation to any and all contracts between the contractor and any subcontractors and their assignees for prevailing wage work performed pursuant to this contract;
6. Provide for the payment of overtime for prevailing wage employees who work in excess of eight (8) hours in any one day or forty (40) hours in any one week as provided by RIGL §37-13-10;

7. Maintain accurate prevailing wage employee payroll records on a Rhode Island Certified Weekly Payroll form available for download at <https://dlt.ri.gov/wrs/prevailingwage/> as required by RIGL §37-13-13, and make those records available to the Department of Labor and Training upon request;
8. Furnish the fully executed RI Certified Weekly Payroll Form to the awarding authority on a monthly basis for all work completed in the preceding month.
9. For general or primary contracts one million dollars (\$1,000,000) or more, shall maintain on the work site a fully executed RI Certified Prevailing Wage Daily Log listing the contractor's employees employed each day on the public works site; the RI Certified Prevailing Wage Daily Log shall be available for inspection on the public works site at all times; this rule shall not apply to road, highway, or bridge public works projects. Where applicable, furnish both the Rhode Island Certified Prevailing Wage Daily Log together with the Rhode Island Weekly Certified Payroll to the awarding authority.
10. Any violation of RIGL 37-13-13 of Certified Weekly Payroll Forms and Daily Logs will result in the department imposing a penalty on the contractor of a minimum of one hundred dollars (\$100) for each calendar day of noncompliance.
11. Assure that all covered prevailing wage employees on construction projects with a total project cost of one hundred thousand dollars (\$100,000) or more has a OSHA ten (10) hour construction safety certification in compliance with RIGL § 37-23-1;
12. Assure that all prevailing wage employees who perform work which requires a Rhode Island trade license possess the appropriate Rhode Island trade license in compliance with Rhode Island law; and
13. Comply with all applicable provisions of RIGL §37-13-1, et. seq;

Any questions or concerns regarding this CONTRACT ADDENDUM should be addressed to the contractor or subcontractor's attorney. Additional Prevailing Wage information may be obtained from the Department of Labor and Training at <https://dlt.ri.gov/wrs/prevailingwage/>.

CERTIFICATION

I hereby certify that I have reviewed this CONTRACT ADDENDUM and understand my obligations as stated above.

By: _____

Title: _____

Subscribed and sworn before me this ____ day of _____, 20__.

Notary Public

My commission expires: _____

State of Rhode Island General Laws Title 37
Public Property and Works Chapter 14.1
Minority Business Enterprise

§ 37-14.1-1. Purpose.

The purpose of this chapter is to carry out the state's policy of supporting the fullest possible participation of firms owned and controlled by minorities and women (MBE's) in state funded and state directed public construction programs and projects and in state purchases of goods and services. This includes assisting MBE's throughout the life of contracts in which they participate.

§ 37-14.1-2. Applicability.

This chapter shall apply to any and all state purchasing, including, but not limited to, the procurement of goods, services, construction projects, or contracts funded in whole or in part by state funds, or funds which, in accordance with a federal grant or otherwise, the state expends or administers or in which the state is a signatory to the construction contract.

§ 37-14.1-3. Definitions.

(a) "Affirmative action" means taking specific steps to eliminate discrimination and its effects, to ensure nondiscriminatory results and practices in the future, and to involve minority business enterprises fully in contracts and programs funded by the state.

(b) "Compliance" means the condition existing when a contractor has met and implemented the requirements of this chapter.

(c) "Contract" means a mutually binding legal relationship or any modification thereof obligating the seller to furnish supplies or services, including construction, and the buyer to pay for them. For purposes of this chapter, a lease is a contract.

(d) "Contractor" means one who participates, through a contract or subcontract, in any procurement or program covered by this chapter and includes lessees and material suppliers.

(e) "Minority" means a person who is a citizen or lawful permanent resident of the United States and who is:

(1) Black (a person having origins in any of the black racial groups of Africa);

(2) Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);

(3) Portuguese (a person of Portuguese, Brazilian, or other Portuguese culture or origin, regardless of race);

(4) Asian American (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands);

(5) American Indian and Alaskan Native (a person having origins in any of the original peoples of North America); or

(6) Members of other groups or other individuals found to be economically and socially disadvantaged by the Small Business Administration under § 8(a) of the Small Business Act, as amended, 15 U.S.C. § 637(a).

(f) "Minority business enterprise" or "MBE" means a small business concern, as defined pursuant to § 3 of the federal Small Business Act, 15 U.S.C. § 632, and implementing regulations, which is owned and controlled by one or more minorities or women. For the purposes of this chapter, owned and controlled means a business:

(1) Which is at least fifty-one percent (51%) owned by one or more minorities or women or, in the case of a publicly owned business, at least fifty-one percent (51%) of the stock of which is owned by one or more minorities or women; and

(2) Whose management and daily business operations are controlled by one or more such individuals.

(g) “MBE coordinator” means the official designated to have overall responsibility for promotion of minority business enterprise in his or her departmental element.

(h) “Noncompliance” means the condition existing when a recipient or contractor has failed to implement the requirements of this chapter.

§ 37-14.1-4. Policy.

It is the policy of the state of Rhode Island that minority business enterprises (MBE’s) shall have the maximum opportunity to participate in the performance of procurements and projects outlined in § 37-14.1-2.

§ 37-14.1-5. Discrimination prohibited.

No person shall be excluded from participation in, denied the benefits of, or otherwise discriminated against in connection with the award and performance of any project covered by this chapter on the grounds of race, color, national origin, or sex.

§ 37-14.1-6. Minority business enterprise participation.

(a) Minority business enterprises shall be included in all procurements and construction projects under this chapter and shall be awarded a minimum of fifteen percent (15%) of the dollar value of the entire procurement or project. Of that fifteen percent (15%), minority business enterprises owned and controlled by a minority owner, as defined in § 37-14.1-3, shall be awarded a minimum of seven and one-half percent (7.5%), and minority business enterprises owned and controlled by a woman shall be awarded a minimum of seven and one-half percent (7.5%). Annually, by October 1, the department of administration shall submit a report to the general assembly on the status of achieving the aforementioned participation requirements in the most recent fiscal year. The director of the department of administration is further authorized to establish by rules and regulation the certification process and formulas for giving minority business enterprises a preference in contract and subcontract awards.

(b) Any minority business enterprise currently certified by the U.S. Small Business Administration as an 8(a) firm governed by 13 C.F.R. part 124 shall be deemed to be certified by the department of administration as a minority business enterprise and shall only be required to submit evidence of federal certification of good standing.

(c) The provisions of this chapter shall not be waived, including, but not limited to, during a declared state of emergency.

(d) The state of Rhode Island will arrange for a disparity study to evaluate the need for the development of programs to enhance the participation in state contracts of business enterprises owned by women and minorities, to be repeated every five (5) years, beginning in fiscal year 2025.

History of Section.

P.L. 2023, ch. 79, art. 3, § 7, effective June 16, 2023.

§ 37-14.1-7. Establishment of criteria and guidelines.

The director of the department of administration shall establish, by rule and regulations adopted in accordance with chapter 35 of title 42, standards which shall determine whether a construction project is covered by this chapter, compliance formulas, procedures for implementation, and procedures for enforcement which are not inconsistent with 49 CFR 23 of the federal regulations. As to Rhode Island department of transportation contracts, the director of administration may delegate this authority to the director of transportation.

§ 37-14.1-8. Sanctions.

(a) The director of the department of administration shall have the power to impose sanctions upon contractors not in compliance with this chapter and shall include but not be limited to:

(1) Suspension of payments;

(2) Termination of the contract;

(3) Recovery by the state of ten percent (10%) of the contract award price as liquidated damages; and

(4) Denial of right to participate in future projects for up to three (3) years.

(b) As to Rhode Island department of transportation contracts, the director of the department of administration may delegate this authority to the director of transportation.

**REGULATIONS GOVERNING PARTICIPATION BY MINORITY BUSINESS
ENTERPRISES IN STATE FUNDED AND DIRECTED PUBLIC CONSTRUCTION
PROJECTS, CONSTRUCTION CONTRACTS AND PROCUREMENT CONTRACTS FOR
GOODS AND SERVICES**

TITLE 220 – DEPARTMENT OF ADMINISTRATION
CHAPTER 80 – DIVERSITY, EQUITY AND OPPORTUNITY
SUBCHAPTER 10 – MINORITY BUSINESS ENTERPRISE

PART 2 – Regulations Governing Participation by Small Business Enterprises in State Purchase of Goods and Services and in Public Works Projects

2.1 Authority

The Regulations published herein have been approved and established by the Director of Administration pursuant to R.I. Gen. Laws §§ 37-14.1-6, 37-14.1-7, and 37-2.2-3.1 and have been promulgated by the Department of Administration in accordance with the “Administrative Procedures Act”, R.I. Gen. Laws Chapter 42-35.

2.2 Purpose

To support the fullest possible participation of businesses owned and controlled by individuals who are minorities, individuals who are women, and individuals with disabilities in State public works projects and in State purchases of goods and services.

2.3 Scope

All State Agencies as defined herein shall comply with these Regulations; provided, however, that pursuant to R.I. Gen. Laws §§ 37-14.1-7 and 37-14.1-8 the Director of the Department of Transportation has received delegated authority to adopt regulations consistent with R.I. Gen. Laws Chapter 37-14.1 thereby exempting the Department of Transportation from the requirements of these Regulations.

2.4 Waivers

The Director of Administration may waive strict application of these Regulations when it has been determined in writing that the Proposer or Bidder must satisfy

requirements of federal law which achieve the goals and purpose of these Regulations. The Director must provide written notice of any waiver to the ODEO and the Governor’s Commission on Disabilities. All such notices shall be available for public inspection.

2.5 Severability

If any part or provision of these Regulations or the application of any part or provision to any person, entity, or circumstances is judged invalid by any court of competent jurisdiction, the judgment shall be confined in its operation to the part or provision of or application directly involved in the controversy in which the judgment has been rendered and shall not affect or impair the validity of the remainder of these Regulations or its applications to other persons, entities, or circumstances.

2.6 Definitions

A. The following words and terms shall have the following meanings whenever used in these Regulations.

1. “Aggregate Utilization Rate” means the overall percentage goal of the State’s total dollar value of procurement contracts and public works projects being made directly or indirectly to MBEs/WBEs.

2. “Associate Director of ODEO” means the head of the ODEO as established by R.I. Gen. Laws § 42-11-2.7(b).
3. “Bidder” means any individual, organization, corporation, partnership, sole proprietorship, joint stock company, joint venture, or any other legal entity through which business is conducted that is submitting a quote or bid in response to a solicitation issued by the Division of Purchases or any other State Agency.
4. “Disability Business Enterprise” means a small business concern that is owned and controlled by one or more individuals with disabilities as defined by R.I. Gen. Laws § 37-2.2-2. To be recognized under these Regulations as a Disability Business Enterprise, the business must be certified as a Disability Business Enterprise by the Governor’s Commission on Disabilities.
5. “Director” means the Director of the Department of Administration. The Director may delegate his or her duties under these Regulations to a designee provided that the issuance of any waivers from or amendments to these Regulations must be approved in writing by the Director.
6. “Division” means the Department of Administration’s Division of Purchases. If the solicitation is not issued by the Division of Purchases, then Division shall mean the division or department within the State Agency that is issuing the solicitation.
7. “ISBE” means a small business enterprise that is owned and controlled by one or more individuals who are women or minorities as defined by R.I. Gen. Laws § 37-14.1-3 or a small business enterprise that is owned and controlled by one or more individuals with disabilities as defined by R.I. Gen. Laws § 37-2.2-2. To be recognized under these Regulations as an ISBE, the business must be certified as either:
 - a. an MBE by the ODEO;
 - b. a WBE by the ODEO; or
 - c. a Disability Business Enterprise by the Governor’s Commission on Disabilities
8. “ISBE Participation Rate” means the ratio of the amount of work performed in connection with a State procurement contract or public works project by ISBEs to the amount of work performed by all contractors and subcontractors.
9. “MBE/WBE Compliance Plan” is a Bidder’s plan to achieve the Aggregate Utilization Rate in connection with a State procurement contract or public works project.
10. “MBE/WBE Coordinator” means a State Agency’s MBE coordinator as defined by R.I. Gen. Laws § 37-14.1-3(g). The MBE/WBE Coordinator is to have overall responsibility for promotion of MBEs and WBEs within his or her department.
11. “MBECO” means the Minority Business Enterprise Compliance Office within the ODEO.
12. “Minority Business Enterprise” or “MBE” means a small business enterprise that is owned and controlled by one or more individuals who are minorities as defined by R.I. Gen. Laws § 37-14.1-3. To be recognized under these Regulations as an MBE, the business must be certified as an MBE by the ODEO.
13. “ODEO” means the Office of Diversity, Equity and Opportunity that has been established as a division with the Department of Administration pursuant to R.I. Gen. Laws § 42-11-2.7.
14. “Proposer” means any individual, organization, corporation, partnership, sole proprietorship, joint stock company, joint venture, or any other legal entity through which business is conducted that is submitting a proposal in response to a solicitation issued by the Division of Purchases or any other State agency.
15. “Regulations” means the regulations published herein which are entitled Regulations Governing Participation by ISBEs in State Purchases of Goods and Services and Public Works Projects.

16. “Request for Proposals” or “RFP” means a solicitation for competitive offers where lowest price is not the sole or primary consideration to be used in determining an award or any other solicitation that is identified and classified by the Division as a request for proposals.
17. “Request for Quotes” or “RFQ” means a solicitation for competitive offers where lowest price is the sole or primary consideration to be used in determining an award or any other solicitation that is identified and classified by the Division as a request for quotes.
18. “State” means the state of Rhode Island and any of its departments or agencies and public agencies.
19. “State Agency” includes any state department, board, bureau, agency, or public agency as defined by R.I. Gen. Laws § 37-2-7(16).
20. “Sub Goal” means a percentage goal of the total dollar value of a State procurement contract or public works project being made directly or indirectly to a subcategory of MBEs/WBEs.
21. “Using Agency” means any state government entity which utilizes any supplies, services, or construction purchased under R.I. Gen. Laws Chapter 37-2.
22. “Woman Business Enterprise” or “WBE” means a small business enterprise that is owned and controlled by one or more individuals who are women as defined by R.I. Gen. Laws § 37-14.1-3. To be recognized under these Regulations as a WBE, the business must be certified as a WBE by the ODEO.

2.7 Request for Proposals

A. This section applies whenever the Division or a State Agency seeks to procure goods, services, and/or public works projects through the issuance of an RFP.

B. ISBE Participation Criterion

1. Criterion. All RFP solicitations for goods, services, and/or public works projects must include a criterion for ISBE participation.

2. Weight. The standard weight for the ISBE participation criteria shall be 6 points out of a total of 106 evaluation points available to the Proposers.

3. Periodic Review. The ODEO shall periodically review the standard weight for the ISBE participation criterion.

C. Calculation of ISBE Participation Rate

1. ISBE Participation Rate for Proposer That Is Not an ISBE. The ISBE Participation Rate for a Proposer that is not an ISBE shall be expressed as a percentage and shall be calculated by dividing the Proposer’s total contract price that is subcontracted to ISBEs for work performed by ISBEs by the Proposer’s total contract price. For example if the Proposer’s total contract price is \$100,000.00 and it subcontracts a total of \$12,000.00 to ISBEs, the Proposer’s ISBE Participation Rate would be 12%. In the event an RFP does not request a total contract price, the ISBE Participation Rate for a Proposer that is not an ISBE shall be expressed as a percentage and shall be determined as specified by the RFP.

2. ISBE Participation Rate for Proposer That Is an ISBE. The ISBE Participation Rate for a Proposer that is an ISBE shall be expressed as a percentage and shall be calculated by dividing the sum of the Proposer’s total contract price that is subcontracted to ISBEs for work performed by ISBEs and the Proposer’s total contract price that is performed by the Proposer itself by the Proposer’s total contract price. For example if the Proposer’s total contract price is \$100,000.00 and it subcontracts a total of \$12,000.00 to ISBEs and will perform a total of \$8,000.00 of the work itself as an ISBE, the Proposer’s ISBE Participation Rate would be 20%. In the event an RFP does not request a total contract price, the ISBE Participation Rate for a Proposer that is an ISBE shall be expressed as a percentage and shall be determined as specified by the RFP.

D. MBE/WBE Coordinator. For each RFP issued, the Using Agency shall designate an MBE/WBE Coordinator no later than the time the RFP is issued. For each RFP assigned to him or her, the MBE/WBE Coordinator shall be responsible for

compliance oversight and tracking and recordkeeping all data and information that is required to be reported by each State Agency under § 2.11 of this Part.

E. Proposer's Responsibilities

1. Proposal of ISBE Participation Rate. Unless otherwise indicated in the RFP, a Proposer must submit its proposed ISBE Participation Rate in a sealed envelope or via sealed electronic submission at the time it submits its proposed total contract price. The Proposer shall be responsible for completing and submitting all standard forms adopted pursuant to § 2.9 of this Part and submitting all substantiating documentation as reasonably requested by either the Using Agency's MBE/WBE Coordinator, Division, ODEO, or Governor's Commission on Disabilities including but not limited to the names and contact information of all proposed subcontractors and the dollar amounts that correspond with each proposed subcontract.

2. Failure to Submit ISBE Participation Rate. Any Proposer that fails to submit a proposed ISBE Participation Rate or any requested substantiating documentation in a timely manner shall receive zero (0) ISBE participation points.

3. Execution of Proposed ISBE Participation Rate. Proposers shall be evaluated and scored based on the amounts and rates submitted in their

proposals. If awarded the contract, Proposers shall be required to achieve their proposed ISBE Participation Rates. During the life of the contract, the Proposer shall be responsible for submitting all substantiating documentation as reasonably requested by the Using Agency's MBE/WBE Coordinator, Division, ODEO, or Governor's Commission on Disabilities including but not limited to copies of purchase orders, subcontracts, and cancelled checks.

4. Change Orders. If during the life of the contract, a change order is issued by the Division, the Proposer shall notify the ODEO of the change as soon as reasonably possible. Proposers are required to achieve their proposed ISBE Participation Rates on any change order amounts.

5. Notice of Change to Proposed ISBE Participation Rate. If during the life of the contract, the Proposer becomes aware that it will be unable to achieve its proposed ISBE Participation Rate, it must notify the Division and ODEO as soon as reasonably possible. The Division, in consultation with ODEO and Governor's Commission on Disabilities, and the Proposer may agree to a modified ISBE Participation Rate provided that the change in circumstances was beyond the control of the Proposer or the direct result of an unanticipated reduction in the overall total project cost.

F. Awarding ISBE Participation Points

1. Technical Viability. A Proposer's proposed ISBE participation shall only be considered when the Proposer's proposed price is considered. A Proposer that does not have its proposed price considered because it failed to attain the requisite minimum technical score or otherwise failed to meet all technical requirements shall not have its proposed ISBE participation considered.

2. Points for ISBE Participation Rate. The Proposer with the highest ISBE Participation Rate shall receive the maximum ISBE participation points. All other Proposers shall receive ISBE participation points by applying the following formula:

The Proposer's ISBE Participation Rate ÷ The highest ISBE Participation Rate X The maximum ISBE participation points

a. For example, assuming the weight given by the RFP to ISBE participation is 6 points, if Proposer A has the highest ISBE Participation Rate at 20% and Proposer B's ISBE Participation Rate is 12%, Proposer A will receive the maximum 6 points and Proposer B will receive $(12\% \div 20\%) \times 6$ which equals 3.6 points.

G. Compliance. A Proposer that achieves its contractual proposed ISBE Participation Rate shall be deemed to be in compliance with R.I. Gen. Laws Chapters 37-14.1 and 37-2.2. A Proposer that fails to achieve its contractual proposed ISBE Participation Rate, refuses to submit a proposed ISBE Participation Rate, or otherwise fails to comply with these Regulations shall be in non-compliance with R.I. Gen. Laws Chapters 37-14.1 and 37-2.2 and shall be subject to the sanctions as prescribed in R.I. Gen. Laws § 37-14.1-8.

2.8 Request for Quotes

A. This section applies whenever the Division or a State Agency seeks to procure goods, services, and/or public works projects through the issuance of an RFQ.

B. Aggregate Utilization Rate. The Aggregate Utilization Rate is ten percent (10%) provided that, in the event the percentage set forth by R.I. Gen. Laws § 37-14.1-6 is amended, the Aggregate Utilization Rate herein shall also be amended so that it always reflects the percentage set forth by R.I. Gen. Laws § 37-14.1-6.

C. Sub Goals. With the approval of the Director, the ODEO may establish Sub Goals. Sub Goals shall not be approved unless the ODEO demonstrates that the Sub Goals are consistent with underutilization data received through a disparity study and/or pertinent analytic data derived from the recordkeeping of State Agencies.

D. State Agency Responsibilities

1. MBE/WBE Coordinator. For each RFQ issued, the Using Agency shall designate an MBE/WBE Coordinator no later than the time the RFQ is issued. For each RFQ assigned to him or her, the MBE/WBE Coordinator shall be responsible for compliance oversight and tracking and recordkeeping all data and information that is required to be reported by each State Agency under § 2.11 of this Part.

2. Agency Procedures. Each State Agency shall attempt to achieve the Aggregate Utilization Rate by applying one of the two methods as described in §§ 2.8(D)(3) and (4) of this Part.

3. Prime Contractor Method. For each procurement where Bidders will be serving as a prime contractor, the Using Agency shall ensure that it tries to achieve, at a minimum, the Aggregate Utilization Rate. The Using Agency shall ensure that the Bidder either meets or exceeds this requirement or has been granted a good faith waiver.

4. No Prime Contractors. In lieu of using the prime contractor method described in § 2.8(D)(3) of this Part above, the Using Agency may meet the Aggregate Utilization Rate by ensuring that the rate is met in the aggregate for each fiscal year. MBEs/WBEs may be solicited directly to accomplish this requirement.

5. Compliance with Sub Goals. In the event Sub Goals are established by the ODEO, State Agencies must track all data and keep records relating to the established Sub Goals.

E. Bidder Responsibilities

1. Acknowledgement. A Bidder shall include with its bid or quote, a statement acknowledging the provisions of R.I. Gen. Laws Chapter 37-

14.1 and its obligation to meet the Aggregate Utilization Rate. Satisfying this requirement means that a minimum of the Aggregate Utilization Rate of the total dollar value of work to be performed in relation to the procurement will be performed by certified MBEs/WBEs. If a Bidder is an MBE/WBE, it may satisfy this requirement by performing a minimum of the Aggregate Utilization Rate of the total dollar value of work itself.

2. Submission of MBE/WBE Compliance Plan. Bidders must submit an MBE/WBE Compliance Plan to the Division. The MBE/WBE Compliance

Plan shall identify each MBE/WBE name, each subcontract dollar amount and type, and each subcontract that the Bidder projects will be awarded to MBEs/WBEs over the period of the project. Unless otherwise indicated in the solicitation, the Bidder must submit this MBE/WBE Compliance Plan within five business days of receipt of a tentative award issued by the Division.

3. MBE/WBE Liaison Officer. The chief executive officer of each Bidder shall designate an MBE/WBE liaison officer who shall be responsible for coordinating with the ODEO, Division and the Using Agency through the life of the contract.

F. Approval or Disapproval of MBE/WBE Plan

1. Review. The MBECO shall review MBE/WBE Compliance Plans. Any MBE/WBE Compliance Plan that reasonably ensures compliance with the Aggregate Utilization Rate requirement shall be approved.

2. **Impossibility of Compliance.** Where the Bidder has proved that for reasons beyond its control, compliance with the Aggregate Utilization Rate requirement is impossible, the MBECO may approve an MBE/WBE Compliance Plan that ensures compliance with an MBE/WBE utilization rate of less than the Aggregate Utilization Rate. To prove impossibility of compliance, the Bidder must demonstrate the following:

- a. The Bidder is making all appropriate good faith efforts as listed in § 2.8(G)(4) of this Part to increase MBE/WBE participation to the Aggregate Utilization Rate level.
- b. Despite the Bidder's efforts, the Bidder's MBE/WBE Compliance Plan represents a reasonable exception to the Aggregate Utilization Rate due to valid reasons such as the lack of availability and/or willingness of qualified MBEs/WBEs to work on the contract.

3. **Revised Plan.** If the MBECO does not approve the MBE/WBE Compliance Plan that the Bidder has initially submitted, the Bidder, after consulting with the MBECO, shall present a revised plan to the MBECO for review.

4. **Reconsideration.** Within five business days of having its MBE/WBE Compliance Plan denied by the MBECO, the Bidder may appeal to the Associate Director of ODEO for reconsideration. All appeals must be in writing and addressed to the Associate Director of ODEO, One Capitol Hill, 3rd Floor, Providence, RI 02908. A written reconsideration decision will be issued by the Associate Director of ODEO within thirty (30) business days of receipt provided that the Associate Director of ODEO may extend such time upon good cause.

5. **Failure to Have an Approved Plan.** A Bidder's failure to have an approved MBE/WBE Compliance Plan constitutes non-compliance with the provisions of R.I. Gen. Laws Chapter 37-14.1.

G. Continuing Disclosure

1. **On-Site Inspections.** The Division, ODEO and the Using Agency's MBE/WBE Coordinator are permitted to periodically conduct on-site inspections to determine compliance with the provisions of R.I. Gen. Laws Chapter 37-14.1 and § 2.8 of this Part. The Division, ODEO, or the Using Agency's MBE/WBE Coordinator may require a Bidder to furnish copies of purchase orders, subcontracts, cancelled checks, and other records needed to substantiate a Bidder's compliance with its approved MBE/WBE Compliance Plan.

2. **Change Orders.** If during the life of the contract or project, a change order is issued by the Division, the Proposer shall notify the ODEO of the change as soon as reasonably possible. Proposers must submit to the ODEO a revised MBE/WBE Compliance Plan consistent with achieving the Aggregate Utilization Rate on any change order amounts.

3. **Notice of Failure.** If a Bidder fails to meet the requirements outlined in its approved MBE/WBE Compliance Plan, it shall explain to the Division, in writing, why the requirements could not be met and why meeting the requirement was beyond the Bidder's control.

4. **Good Faith Waivers.** The Division in consultation with the ODEO may issue a good faith waiver which shall exempt the Bidder from meeting its MBE/WBE requirements. To determine whether a Bidder has a good faith

reason for failing to meet its requirements, the Division may consider, among other factors:

- a. Whether the Bidder attended any pre-solicitation or pre-bid meetings that were scheduled by the Division to inform MBEs/WBEs of contracting or subcontracting opportunities;
- b. Whether the Bidder advertised in general circulation, trade association, and minority focus media concerning the subcontracting opportunities;
- c. Whether the Bidder provided written notice to a reasonable number of specific MBEs/WBEs that their interest in a contract was being solicited, in sufficient time to allow the MBEs/WBEs to participate;
- d. Whether the Bidder followed up with MBEs/WBEs that showed an initial interest by contacting the firms to determine whether they were interested;

- e. Whether the Bidder selected portions of work to be performed by MBEs/WBEs in order to increase the likelihood of meeting MBE/WBE participation requirements (including, where appropriate, breaking down contracts into economically feasible units to facilitate MBE/WBE participation);
- f. Whether the Bidder provided interested MBEs/WBEs with adequate information about the plans, specifications and requirements of the contract;
- g. Whether the Bidder negotiated in good faith with interested MBEs/WBEs;
- h. Whether the Bidder made suggestions to interested MBEs/WBEs to assist them in obtaining bonding, lines of credit, or insurance required by the Bidder;
- i. Whether the Bidder effectively used the services of available minority community organizations, minority contractors' groups, local, state, and federal minority business assistance offices; and other organizations that provide assistance in the recruitment and placement of MBEs/WBEs.

5. Remedial Action. If the Bidder does not make such an explanation, or if the Division determines that the Bidder's explanation does not justify its failure to meet the requirements in its approved MBE/WBE Compliance Plan, the Division may direct the Bidder to take appropriate remedial action. Failure to take remedial action directed by the Division constitutes non-compliance with the provisions of R.I. Gen. Laws Chapter 37-14.1 and the Bidder shall be subject to the sanctions as prescribed in R.I. Gen. Laws § 37-14.1-8.

H. Concurrent Compliance with Federal Law. The Aggregate Utilization Rate requirements set forth in § 2.8 of this Part can be satisfied concurrently with similar requirements mandated under federal law.

I. Exceeding Lowest Bid by Five Percent. Nothing in § 2.8 of this Part shall be construed to require the award of a contract to an MBE/WBE whose bid exceeds the lowest bid by five percent (5%). Nothing in § 2.8 of this Part shall be construed to require the acceptance of non-conforming goods or services.

2.9 Standard Forms

The ODEO in consultation with the Division and the Governor's Commission on Disabilities is authorized to develop, adopt, and publish uniform documents and standard forms as the ODEO deems appropriate to ensure consistency in effectuating these Regulations.

2.10 RFP/RFQ Language

All solicitations covered by these Regulations should include language that references R.I. Gen. Laws Chapters 37-14.1 and 37-2.2.

2.11 Recordkeeping

State Agencies shall keep records relating to the utilization of ISBEs for each of their solicitations and resulting contracts. The records shall include at a minimum the name of the Proposer or Bidder that is awarded the contract, the name of each ISBE that subcontracts with the Proposer or Bidder, the subcategory of each ISBE (i.e. WBE, MBE, Disability Business Enterprise), any additional

MBE/WBE subcategories that have established Sub Goals, the dollar value that corresponds with each subcontract, the Proposer's proposed ISBE Participation Rate, the Bidder's proposed MBE/WBE utilization rate as indicated in the Bidder's approved MBE/WBE Compliance Plan, the Proposer's actual ISBE Participation Rate, and the Bidder's actual MBE/WBE utilization rate. State agencies shall complete and submit all standard forms adopted pursuant to § 2.9 of this Part and shall report such information to the ODEO and the Governor's Commission on Disabilities on an annual basis or as requested by the ODEO or the Governor's Commission on Disabilities.

2.12 Amendments

The Regulations may be rescinded or amended from time to time with the approval of the Director. Any amendments must be promulgated by the Department of Administration on behalf of the Director in accordance with the “Administrative Procedures Act”, R.I. Gen. Laws Chapter 42-35.

TITLE 37

CHAPTER 16 PUBLIC WORKS ARBITRATION

Sections

37-16-1.	Short Title.
37-16-2.	Contract provisions for arbitration.
37-16-3.	Application for subcontracts.
37-16-4.	Stay of legal proceedings pending arbitration.
37-16-5.	Jurisdiction of superior court to enforce arbitration provisions and awards.
37-16-6.	Trial upon evidence of substantial issue.
37-16-7.	Method of appointing arbitrators.
37-16-8.	Scheduling and notice of arbitration hearing – Adjournment.
37-16-9.	Power of court to direct prompt hearing.
37-16-10.	Arbitrator’s oath – Waiver.
37-16-11.	Powers of arbitrators.
37-16-12.	Fees.
37-16-13.	Validity of awards.
37-16-14.	Arbitration under chapter deemed special proceeding – Jurisdiction of superior court.
37-16-15.	Procedure for hearing of application to court.
37-16-16.	Form of award.
37-16-17.	Court order confirming award.
37-16-18.	Court order vacating award.
37-16-19.	Rehearing after vacation of award.
37-16-20.	Court order modifying or correcting award.
37-16-21.	Notice of motion to vacate, modify, or correct an award.
37-16-22.	Entry of judgment – Costs
37-16-23.	Filing of papers after judgment.
37-16-24.	Effect of judgment.
37-16-25.	Appeals.
37-16-26.	Satisfaction of award.
37-16-27.	Application of sureties.

37-16-1. Short title.

This chapter shall be known as the "Public Works Arbitration Act".

37-16-2. Contract provision for arbitration.

(a) A provision in a written contract executed on or after January 1, 1962, for the construction, alteration, repair, or painting of any public building, sewer, highway, bridge, water treatment or disposal projects one party to which is the state, a city, a town, or an authority, a board, a public corporation, or any similar body created by statute or ordinance or any committee, agency, or subdivision of any of them, to settle by arbitration any dispute or claim arising out of or concerning the performance or interpretation of the contract shall be valid, irrevocable, and enforceable, save upon grounds existing in law or equity for the revocation of the contract.

(b) (1) Every contract for the construction, alteration, repair, painting, or demolition of any public building, sewer, water treatment or disposal project, highway, or bridge one party to which is the state, a city, a town, or an authority, a board, a public corporation, or any similar body created by statute or ordinance or any committee, agency, or subdivision of any of them which has a contract price of ten thousand dollars (\$ 10,000) or more and which is executed on or after July 1, 1967, shall contain a provision for arbitration of disputes and claims arising out of or concerning the performance or interpretation of the contract as follows:

(2) "All claims, disputes, and other matters in question arising out of or relating to this contract or the performance or interpretation thereof shall be submitted to arbitration. Arbitration shall be commenced by a demand in writing made by one party to the contract upon the other within a reasonable time after the dispute, claim, or other matter in question arose but in no event after payment in full of the contract price has been made and accepted. The written demand shall contain a

statement of the question to be arbitrated and a detailed statement of each item or matter in dispute and the name of the arbitrator appointed by that party. The other party to the contract within ten (10) days of the receipt of the written demand shall appoint an arbitrator and give notice in writing thereof to the party who commenced arbitration. The two (2) arbitrators appointed by the parties shall within ten (10) days of the date of the appointment of the second arbitrator select a third arbitrator who shall be designated as chairperson and who immediately shall give written notice to the parties of his or her appointment. The third arbitrator shall select a time, date, and place for hearing and give each party five (5) days notice in writing thereof. The date for hearing shall not be more than fifteen (15) days after the date of appointment of the third arbitrator. The award shall be made promptly by the arbitrators and, unless otherwise agreed by the parties or specified by law, no later than thirty (30) days from the date of closing the hearing, or, if oral hearings have been waived, from the date of the transmittal of the final statements and proofs to the arbitrators. The award shall be in writing and shall be signed by a majority of the arbitrators. It shall be executed in the manner required by law. The arbitrator shall provide a written explanation of the reasoning for the award. In the event the party of whom arbitration is demanded shall fail to appoint his or her arbitrator within the time specified or the two (2) arbitrators appointed by the parties are unable to agree on an appointment of the third arbitrator within the time specified, either party may petition the presiding justice of the superior court to appoint a single arbitrator who shall hear the parties and make an award as provided herein. The petitioner shall give five (5) days notice in writing to the other party before filing his or her petition."

(c) Any dispute involving claims less than one hundred thousand dollars (\$ 100,000) and associated with construction of a highway or bridge as referred to in subsection (b) shall be submitted to arbitration. Any dispute involving claims of one hundred thousand dollars (\$ 100,000) or more and associated with construction of a highway or bridge as referred to in subsection (b) shall only be arbitrated with the consent of the parties. If the parties fail to consent to arbitration and the state of Rhode Island is a party to the dispute, then the claim will proceed in accordance with § 37-13.1-1.

(d) For the purposes of this section, the term "claims" shall not mean the aggregate amount sought under the contract or in the arbitration, but shall refer specifically to each item or matter in dispute for which additional compensation is sought or for each item for which a credit is sought.

(e) Notwithstanding subsection (a) or (b) of this section, if any contract except for highway and bridge contracts provides for an arbitration procedure, and a method of appointment of an arbitrator or arbitrators, that method shall be followed instead of the method provided in subsection (b) of this section.

(f) This section shall apply to all written contracts executed on or after January 1, 1986.

37-16-3. Application to subcontracts.

When a contract described in 37-16-2 is in effect and any party thereto has entered into a subcontract to perform part of the work and/or furnish any materials in connection with the work described in the contract and the terms of the subcontract provide for arbitration of a dispute or claim concerning the performance or interpretation thereof, or the subcontract, expressly or by reference to the terms of the contract, provides that the parties to the subcontract shall comply with the arbitration provisions of the contract, the following shall apply when a request is made or an order of court is entered for arbitration either under the terms of the contract or subcontract.

(a) When arbitration under the contract may adversely affect the interest of a party thereto because of the effect of an award of the arbitrator or arbitrators upon the performance or interpretation of the terms of a subcontract to which he or she is also a party, he or she may require any other party or all other parties to the subcontract to become a party or parties to the arbitration.

(b) When a party to a subcontract makes a demand or an order of court is entered for arbitration under the terms of the subcontract which comply with the provision of this chapter, any party thereto who is also a party to the contract and whose rights under the contract may be adversely affected by the effect of an award of the arbitrator or arbitrators upon the performance or interpretation of the contract, may require any other party to the contract to become a party to the arbitration.

(c) When a party to a contract or to a subcontract is made a party to arbitration by virtue of the provisions of this section, he or she shall have all the rights of a party to arbitration as provided in this chapter except the appointment of an arbitrator. Provided, however, he or she may object to the arbitrators appointed by the parties in which event a single arbitrator shall be appointed as provided in 37-16-2 in the petition of either of the original parties to arbitration. The award of the arbitrator or arbitrators shall be valid and shall be binding on him or her to the extent that it affects the

performance or interpretation of the contract and/or subcontract to which he or she is a party. The award of the arbitrator or arbitrators may be enforced, modified, or vacated as this chapter provides an award made in an arbitration of a contract described in 37-16-2 may be enforced, modified, or vacated.

37-16-4. Stay of legal proceedings pending arbitration.

If any suit or proceedings be brought upon any issue referable to arbitration under contract in writing providing for arbitration, the court in which the suit is pending upon being satisfied that the issue involved in the suit or proceedings is referable to arbitration under the contract, shall on application of one of the parties, stay the trial of the action until arbitration has been held.

37-16-5. Jurisdiction of superior court to enforce arbitration provision and awards.

The entering into a contract in writing providing for arbitration shall be deemed a consent of all parties, including those enumerated in 37-16-2, thereto to the jurisdiction of the superior court of this state to enforce the arbitration provision and any award made pursuant to that provision. A party aggrieved by the failure, neglect, or refusal of another to perform under a contract providing for arbitration, may petition the superior court, or a judge thereof, for an order directing that arbitration proceed in the manner provided for in the contract. Five (5) days' notice in writing of the application shall be served upon the party in default. Service thereof shall be made in the manner specified in the contract, and if no manner specified therein, then in the manner provided by law for personal service of a summons, within or without the state, or substituted service of a summons, or upon satisfactory proof that the party aggrieved has been or will be unable with due diligence to make service in any of the foregoing manners, then notice shall be served in such manner as the court or judge may direct. A judge of the superior court shall hear the parties and upon being satisfied that there is no substantial issue as to the making of the contract or the failure to comply therewith, the court, or the judge thereof, hearing the application, shall make an order directing the parties to proceed to arbitration in accordance with the terms of the contract.

37-16-6. Trial upon evidence of substantial issue.

If evidentiary facts are set forth raising a substantial issue as to the making of the contract or the failure to comply therewith, the court, or the judge thereof, shall proceed immediately to the trial of the issues. Whenever an immediate trial is ordered, the order therefor shall provide that, if the court finds that a written contract providing for arbitration was made, and that there was a failure to comply therewith, the parties shall proceed with the arbitration in accordance with the terms of the contract and the order shall provide that if the court finds that there was no contract or failure to comply with the contract, then the proceeding shall be dismissed.

37-16-7. Method of appointing arbitrators or umpire.

If in the contract providing for arbitration, provision is made for a method of naming or appointing an arbitrator or arbitrators or an umpire, that method shall be followed, but if no method be provided therein, then the parties to the contract shall agree to the method of naming or appointing an arbitrator or arbitrators or an umpire and if the parties shall fail to agree, then the court or the judge thereof upon application of either of the parties after due notice to the other party shall appoint an arbitrator to hear the dispute.

37-16-8. Scheduling and notice of arbitration hearing - Adjournment.

Subject to the terms of the contract, if any are specified therein, the arbitrators selected as prescribed in this chapter must appoint a time and place for the hearing of the matters submitted to them, and must cause notice thereof to be given to each of the parties. They, or a majority of them, may adjourn the hearing from time to time upon the application of either party for good cause shown or upon their own motion, but not beyond the day fixed if a date in the contract, if any, for rendering their award, unless the time so fixed is extended by the written consent of the parties to the contract or their attorney, or the parties have continued with the arbitration without objection to such adjournment.

37-16-9. Power of court to direct prompt hearing.

The court shall have power to direct the arbitrators to proceed promptly with the hearing and determination of the dispute, claim, or matter in question.

37-16-10. Arbitrator's oath - Waiver.

Before hearing any testimony, arbitrators selected as prescribed in this chapter must be sworn, by an officer authorized by law to administer an oath, faithfully and fairly to hear and examine the claim, dispute, or matter in question and to make a just award according to the best of their understanding, unless the oath is waived by the written consent of the parties to the contract or their attorneys or the parties have continued with the arbitration without objection to the failure of the arbitrators to take the oath.

37-16-11. Powers of arbitrators.

The arbitrator or arbitrators selected as prescribed in this chapter, may require any person to attend before them as a witness; and he or she and they have, and each of them has, the same powers with respect to all the proceedings before them which are conferred upon a board or a member of a board authorized by law to hear testimony. All the arbitrators selected as prescribed in this chapter must meet together and hear all the allegations and proofs of the parties; but an award by a majority of them is valid.

37-16-12. Fees.

In any proceeding under this chapter, unless the parties agree as to the arbitrator's or arbitrators' fees, such fees shall be fixed by the court or the judges thereof who shall require the payment equally by both parties of the arbitrators' fees.

37-16-13. Validity of awards.

An award shall be valid and enforceable according to its terms and under the provisions of this chapter, without previous adjudication of the existence of a contract to arbitrate, subject, nevertheless, to the provisions of this section:

- (a) A party who has participated in any of the proceedings before the arbitrator or arbitrators may object to the confirmation of the award only on one or more of the grounds hereinafter specified (provided that he did not continue with the arbitration with notice of the facts or defects upon which his objection is based) because of a failure to comply with 37-16-8 or with 37-16-10 or because of the improper manner of the selection of the arbitrators.
- (b) A party who has not participated in any of the proceedings had before the arbitrator or arbitrators and who has not made or been served with an application to compel arbitration under 37-16-5 may also put in issue the making of the contract or the failure to comply therewith, either by a motion for a stay of the arbitration or in opposition to the confirmation of the award. If a notice shall have been personally served upon such party of an intention to conduct the arbitration pursuant to the provisions of a contract specified in the notice, then the issues specified in this subdivision may be raised only by a motion for a stay of the arbitration, notice of which motion must be served within ten (10) days after the service of the notice of intention to arbitrate. The notice must state in substance that unless within ten (10) days after its service, the party served therewith shall serve a notice of motion to stay the arbitration, he or she shall thereafter be barred from putting in issue the making of the contract or the failure to comply therewith. The arbitration hearing shall be adjourned upon service of the notice pending the determination of the motion. Where the opposing party, either on a motion for a stay or in opposition to the confirmation of an award, sets forth evidentiary facts raising a substantial issue as to the making of the contract or the failure to comply therewith, an immediate trial of the same shall be had. In the event that the party is unsuccessful he or she may, nevertheless, participate in the arbitration if the same is still being carried on.

37-16-14. Arbitration under chapter deemed special proceeding - Jurisdiction of superior court.

Arbitration of a claim, dispute, or matter in question under a contract described in this chapter shall be deemed a special proceeding, of which the superior court for Providence County shall have jurisdiction.

37-16-15. Procedure for hearing of application to court.

Any application to the court, or a judge thereof, hereunder shall be made and heard in the manner provided by law for the making and hearing of motions, except as otherwise herein expressly provided.

37-16-16. Form of award.

To entitle the award to be enforced, as prescribed in this chapter, it must be in writing; and, within the time limited in the contract, if any, subscribed by the arbitrator or arbitrators making it and either filed in the office of the clerk of the court having jurisdiction as provided in 37-16-14 or delivered to one of the parties or his or her attorney.

37-16-17. Court order confirming award.

At any time within one year after the award is made, as prescribed in 37-16-16, any party to the contract by the terms of which arbitration was had, may apply to the court having jurisdiction as provided in 37-16-14 for an order confirming the award. Thereupon the court must grant the order unless the award is vacated, modified, or corrected, as prescribed in 37-16-18 and 37-16-19 or unless the award is unenforceable under the provisions of 37-16-13. Notice of the motion must be served upon the adverse party or parties or his or her or their attorneys, as prescribed by law for service of notice of a motion upon an attorney in an action in the same court.

37-16-18. Court order vacating award.

In any of the following cases, the court must make an order vacating the award, upon the application of any party to the controversy which was arbitrated

- (a) When the award was procured by fraud.
- (b) Where the arbitrator or arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final, and definite award upon the subject matter submitted was not made.
- (c) If there was no valid contract, and the objection has been raised under the conditions set forth in 37-16-13.

37-16-19. Rehearing after vacation of award.

Where an award is vacated, the court, in its discretion may direct a rehearing either before the same arbitrator or arbitrators or before a new arbitrator or arbitrators to be chosen in the manner provided in the contract for the selection of the original arbitrator or arbitrators or as provided for in 37-16-7 and any provision limiting the time in which the arbitrator or arbitrators may make a decision shall be deemed applicable to the new arbitration and to commence from the date of the court's order.

37-16-20. Court order modifying or correcting award.

In any of the following cases, the court must make an order modifying or correcting the award, upon the application of any party to the contract by the terms of which the arbitration was held.

- (a) Where there was an evident miscalculation of figures or an evident mistake in the description of any persons, thing, or property referred to in the award.
- (b) Where the arbitrator or arbitrators have awarded upon a matter not submitted to them, not affecting the merits of the decision upon the matter submitted.
- (c) Where the award is imperfect in a matter of form not affecting the merits of the controversy, and, if it had been a master's report the defect could have been amended or disregarded by the court.

37-16-21. Notice of motion to vacate, modify, or correct an award.

Notice of a motion to vacate, modify, or correct an award must be served upon all adverse parties, or their attorneys, within sixty (60) days after the award is filed or delivered, as prescribed by law for service of notice of a motion upon an attorney in an action; except that in opposition to a motion to confirm an award, any of the grounds specified in 37-16-18 may be set up. For the purpose of the motion, any judge who might make an order, to stay the proceedings in an action brought in the same court may make an order, to be served with the notice of motion, staying the proceedings of an adverse party or parties to enforce the award.

37-16-22. Entry of judgment - Costs.

Upon the granting of an order confirming, modifying, or correcting an award, judgment may be entered in conformity therewith, except as is otherwise prescribed in this chapter. Costs of the application and of the proceedings subsequent thereto, not exceeding twenty-five dollars (\$25.00) and disbursements, may be awarded by the court in its discretion. If awarded, the amount thereof must be included in the judgment.

37-16-23. Filing of papers after judgment.

(a) Immediately after entering judgment, the clerk must attach together and file the following papers:

- (1) The contract, and each written extension of the time, if any, within which to make the award.
- (2) The award.
- (3) Each notice, affidavit or other paper used upon an application to confirm, modify, or correct the award, and a copy of each order of the court upon the application.
- (4) A copy of the judgment.

(b) The judgment may be docketed as if it was rendered in an action.

37-16-24. Effect of judgment.

The judgment so entered has the same force and effect, in all respects as, and is subject to all the provisions of law relating to a judgment in an action. The judgment may be enforced as if it had been rendered in an action in the court in which it is entered.

37-16-25. Appeals.

An appeal may be taken from an order made in a proceeding under this chapter, or from a judgment entered upon an award. The proceedings upon the appeal, including the judgment thereupon and the enforcement of the judgment, are governed by the provisions of statute and rule regulating appeal in actions as far as they are applicable.

37-16-26. Satisfaction of award.

- (a) An award which requires the payment of a sum of money by a city, town, or the state or any body described in 37-16-2 created or organized by or through the authority of any of them, shall be satisfied to the extent of payment of that sum by payment thereof to the party to whom the award was made by the treasurer or officer exercising the duties of a treasurer thereof from its general funds.
- (b) An award which requires the payment of a sum of money to a city, a town, or the state or any body described in 37-16-2 created or organized by or through the authority of any of them shall be satisfied to the extent of payment of that sum by payment thereof to its treasurer or officer exercising the duties of a treasurer thereof who shall deposit the same in its general funds.

37-16-27. Application to sureties.

- (a) If a contractor principal on a bond furnished to guarantee performance or payment on a construction contract and the claimant are parties to a written contract with a provision to submit to arbitration any controversy thereafter arising under the contract, or subject to arbitration as provided in 37-16-2(b), the arbitration provisions shall apply to the surety for all disputes involving questions of the claimant's right of recovery against the surety. Either the claimant, the contractor principal, or surety may demand arbitration in accordance with the written contract or as provided in 37-16-2(b) if applicable in one arbitration proceeding, provided that the provisions of 37-16-3 shall be applicable to any such demand for arbitration. The arbitration award shall decide all controversies subject to arbitration between the claimant, on the one hand, and the contractor principal and surety on the other hand, including all questions involving liability of the contractor principal and surety on the bond, but a claimant must file suit for recovery against the surety within the time limits set forth in 37-12-2 and 37-12-5. The arbitration shall be in accordance with this chapter and the court shall enter judgment thereon as provided therein.
- (b) The arbitrator or arbitrators, if more than one, shall make findings of fact as to the compliance with the requirements for recovery against the surety, and those findings of fact shall be a part of the award binding on all parties to the arbitration.

TITLE 45

CHAPTER 55 AWARD OF MUNICIPAL CONTRACTS

SECTIONS

- 45-55-1 Legislative findings
- 45-55-2. Method of source selection
- 45-55-3. Purchasing agent - Appointment - Duties.
- 45-55-4. Definitions.
- 45-55-5. Competitive sealed bidding.
- 45-55-5.1. Business exempt.
- 45-55-5.2. Town of North Smithfield - Exemption.
- 45-55-6. Competitive negotiation.
- 45-55-7. Negotiations after unsuccessful competitive sealed bidding
- 45-55-8. Sole source procurement and emergency procurements.
- 45-55-8.1 Qualification based selection of architects and engineers.
- 45-55-9. Small purchases.
- 45-55-10. Cancellation of invitation for bids and requests for proposals.
- 45-55-11. Responsibilities of bidders and offerors
- 45-55-12. Prequalification of contractors - General.
- 45-55-13. Exclusion of state mandated costs.
- 45-55-13.1. Exclusion of multi-cities or towns insurance corporations and cooperative risk management programs.
- 45-55-13.2. Exclusion of multi-cities or towns energy aggregation programs.
- 45-55-13.3. [Exclusion of multi-school district combined purchasing consortia](#)
- 45-55-14. Staff consultants.
- 45-55-15. Severability.
- 45-55-16 Prohibition against the use of lead based paints.

45-55-1. Legislative findings.

It is hereby declared that a need exists to establish a uniform system for the award of contracts by municipalities, utilizing open cooperative bids.

45-55-2. Method of source selection.

Except as otherwise authorized by law, all municipal contracts shall be awarded by:

- (1) Competitive sealed bidding, pursuant to 45-55-5;
- (2) Competitive negotiations, pursuant to 45-55-6;
- (3) Non-competitive negotiations, pursuant to 45-55-7 and 45-55-8;
- (4) Small purchase procedures, pursuant to 45-55-9.
- (5) Qualification based selection (QBS) process for architects/engineers pursuant to 45-55-8.1

45-55-3. Purchasing agent - Appointment - Duties.

Within each city or town or quasi public agency there shall be designated a person or persons to act as purchasing officer to exercise the powers and duties as set forth in this chapter.

45-55-4. Definitions.

The words defined in this section have the following meanings whenever they appear in this chapter, unless the context in which they are used clearly requires a different meaning or a different definition is prescribed for a particular section, group of sections or provision.

- (1) "Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity through which business is conducted.
- (2) "Change order" means a written order signed by the purchasing agent, or contractor directing or allowing the contractor to make changes which the changes clause of the contract authorizes the purchasing agent or contractor to order without the consent of the contractor or purchasing agent.
- (3) "Construction" means the process of building, altering, repairing, improving, or demolishing any public structures or building, or other public improvements of any kind to any public real property. It does not include the routine maintenance or repair of existing structures, buildings, or real property performed by salaried employees of the municipality in the usual course of their job.
- (4) "Contract" means all types of agreements, including grants and orders, for the purchase or disposal of supplies, services, construction, or any other item. It includes awards; contracts of a fixed-price, cost, cost-plus-a-fixed-fee, or incentive type; contracts providing for the issuance of job or task orders; leases; letter contracts, purchase orders, and construction management contracts. It also includes supplemental agreements with respect to any of the preceding. "Contract" does not include labor contracts with employees of the municipality.
- (5) "Contract modification" means any written alteration in the specifications, delivery point, rate of delivery, contract period, price, quantity, or other contract provisions of any existing contract, whether accomplished by unilateral action in accordance with a contract provision, or by mutual action of the parties to the contract. It includes bilateral actions, as supplemental agreements, and unilateral actions, as change orders, administrative changes, notices of termination, and notices of the exercise of a contract option.
- (6) "Contractor" means any person having a contract with a municipality.
- (8) "Data" means recorded information, regardless of form or characteristic.
- (8) "Designee" means a duly authorized representative of a person holding a superior position.
- (9) "Employee" means an individual drawing a salary from a municipality, whether elected or not, and any nonsalaried individual performing personal services for any municipality.
- (10) "May" means permissive.
- (11) "Municipality" means the individual cities and towns of the state of Rhode Island.
- (12) "Negotiation" means contracting by either of the methods described in §§ 45-55-6, 45-55-7, and 45-55-8.
- (13) "Person" means any business, individual, organization, or group of individuals.
- (14) "Procurement" means the purchasing, buying, renting, leasing, or otherwise obtaining of any supplies, services, or construction. It also includes all functions that pertain to the obtaining of any supply, service, or construction item, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.
- (15) "Purchasing officer" means the person designated in each municipality or quasi public agency pursuant to section 45-55-3.
- (16) "Regulations" means rules and regulations adopted by the individual cities or towns, concerning the implementation of the provisions of this chapter.

(17) "Services" means the rendering, by a contractor, of its time and effort rather than the furnishing of a specific end product, other than reports which are merely incidental to the required performance of services. "Services" does not include labor contracts with employees of governmental agencies.

(18) "Shall" means imperative.

(19) "Supplemental agreement" means any contract modification which is accomplished by the mutual action of the parties.

(20) "Supplies" means all property, including, but not limited, to leases of real property, printing and insurance, except land or permanent interest in land.

45-55-5. Competitive sealed bidding.

(a) Contracts exceeding the amount provided by 45-55-9 shall be awarded by competitive bidding unless they are professional engineering/architectural services pursuant to 45-55-8.1 and it is determined in writing that this method is not practicable. Factors to be considered in determining whether competitive sealed bidding is practicable shall include whether:

- (1) Specifications can be prepared that permit award on the basis of either the lowest qualified bid price or the lowest qualified evaluated bid price; and
 - (2) The available sources, the time and place of performance, and other relevant circumstances as are appropriate for the use of competitive sealed bidding.
- (b) The invitation for bids shall state whether award shall be made on the basis of the lowest bid price or the lowest evaluated or responsive bid price. If the latter basis is used, the objective measurable criteria to be utilized shall be stated in the invitation for bids, if available.
- (c) Adequate public notice of the invitation for bids shall be given a sufficient time prior to the date stated in the notice for the opening of bids. Notice may include publication in a newspaper of general circulation in the state as determined by the purchasing officer for the municipality not less than seven (7) days nor more than twenty-one (21) days before the date set for opening of the bids. The purchasing officer may make a written determination that the twenty-one (21) day limitation needs to be waived. The written determination shall state the reason why the twenty-one (21) day limitation is being waived and shall state the number of days, giving a minimum and maximum, before the date set for the opening of bids when public notice is to be given.
- (4) Bids shall be opened publicly in full view of the public at the time and place designated in the invitation for bids. Each bid, together with the name of the bidder, shall be recorded and an abstract made available for public inspection. Subsequent to the awarding of the bid, all documents pertinent to the awarding of the bid shall be made available and open to public inspection and retained in the bid file.
- (5) The contract shall be awarded with reasonable promptness by written notice to the responsive and responsible bidder whose bid is either the lowest bid price, or lowest evaluated or responsive bid price.
- (6) Correction or withdrawal of bids may be allowed only to the extent permitted by regulations issued by the purchasing officer.

45-55-5.1. Business exempt.

The North Kingstown Bus Contractors Association and the Scituate School Bus Owners Club shall be exempt from the provisions of this chapter.

45-55-5.2. Town of North Smithfield - Exemption.

The town of North Smithfield is exempt from the provisions of this chapter with regard to the contracting for fire and rescue services with the Primrose Volunteer Fire Department and/or North Smithfield Fire Department and/or their respective successors and assigns.

45-55-6. Competitive negotiation.

- (a) When, under regulations adopted by the city or town council, the purchasing agent determines in writing that the use of competitive sealed bidding is not practicable, and except as provided in 45-55-8, 45-55-9, and 45-55-10 a contract may be awarded by competitive negotiation.
- (b) Adequate public notice of the request for proposals shall be given in the same manner as provided in 45-55-5(c).
- (c) Contracts may be competitively negotiated when it is determined, in writing, by the purchasing agent that the bid prices received by competitive sealed bidding either are unreasonable as to all or part of the requirements, or were not independently reached in open competition, and for which:
 - (1) Each competitive bidder has been notified of the intention to negotiate and is given reasonable opportunity to negotiate; and
 - (2) The negotiated price is lower than the lowest rejected bid by any competitive bidder; and
 - (3) The negotiated price is the lowest negotiated price offered by a competitive offeror.
- (d) The request for proposals shall indicate the relative importance of price and other evaluation factors.
- (e) Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the municipality taking into consideration price and the evaluation factors set forth in the request for proposals.
- (f) Written or oral discussions shall be conducted with all responsible offerors who submit proposals determined, in writing, to be reasonably susceptible of being selected for award. Discussions shall not disclose any information derived from proposals submitted by competing offerors. Discussions need not be conducted:
 - (1) With respect to prices, where such prices are fixed by law or regulation, except that consideration shall be given to competitive terms and conditions; or
 - (2) Where time of delivery or performance will not permit discussions; or
 - (3) Where it can be clearly demonstrated and documented from the existence of adequate competition or accurate prior cost experience with the particular supply, service, or construction item, that acceptance of an initial offer without discussion would result in fair and reasonable prices, and the request for proposals notifies all offerors of the possibility that award may be made on the basis of the initial offers.

45-55-7. Negotiations after unsuccessful competitive sealed bidding.

- (a) In the event that all bids submitted pursuant to competitive sealed bidding under 45-55-5 result in bid prices in excess of the funds available for the purchase, and the purchasing officer determines in writing:
 - (1) That there are no additional funds available from any source so as to permit an award to the lowest responsive and responsible bidder, and
 - (2) The best interest of the municipality will not permit the delay attendant to a resolicitation under revised specifications, or for revised quantities, under competitive sealed bidding as provided in 45-55-5, then a negotiated award may be made as stated in subsection (b) or (c) of this section.
- (b) Where there is more than one bidder, competitive negotiations pursuant to 45-55-6, shall be conducted with the three (3) (two (2) if there are only two (2)) bidders determined in writing, to be the lowest responsive and responsible bidders to the competitive sealed bid invitation. Competitive negotiations shall be conducted under the following restrictions:
 - (1) If discussions pertaining to the revision of the specifications or quantities are held with any potential offeror, all other potential offerors shall be afforded an opportunity to take part in the discussions; or

(2) A request for proposals, based upon revised specifications or quantities, shall be issued as promptly as possible, shall provide for an expeditious response to the revised requirements, and shall be awarded upon the basis of the lowest bid price, or lowest evaluated bid price submitted by any responsive and responsible offeror.

(c) When after competitive sealed bidding, it is determined in writing, that there is only one responsive and responsible bidder, a noncompetitive negotiated award may be made with such bidder in accordance with 45-55-8.

45-55-8. Sole source procurement and emergency procurements.

(a) A contract may be awarded for a supply, service, or construction item without competition when, under published regulations, the purchasing officer determines, in writing, that there is only one source for the required supply, service, or construction item.

(b) Notwithstanding any other provision of this chapter, the purchasing agent may make or authorize others to make emergency procurements when there exists a threat to public health, welfare, or safety under emergency conditions as defined in regulations or where the procurement will be in the best interest of the city as established by properly promulgated rules and regulations; provided, that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency, and for the selection of the particular contractor, shall be included in the contract file.

45-55-8.1. Qualification based selection of architects and engineers.

When the purchasing agent determines that the city or town needs the services of a professional architect or engineer, the purchasing agent shall follow the qualification based selection process for the procurement of architectural and engineering consulting services.

45-55-9. Small purchases.

Procurements, not to exceed an aggregate amount of ten thousand dollars (\$10,000) for construction and five thousand dollars (\$5,000) for all other purchases may be made in accordance with small purchase regulations promulgated by the municipality. These amounts shall be increased or decreased annually hereafter at the same rate as the Boston Regional Consumer Price Index. Procurement requirements shall not be artificially divided so as to constitute a small purchase under this section. A municipality may further reduce the aggregate purchase amount, as provided for in this section by ordinance.

45-55-10. Cancellation of invitation for bids and requests for proposals.

An invitation for bids, a request for proposals, or other solicitation may be canceled, or all bids or proposals rejected, if it is determined, in writing, that such action if taken is not in the best interest of the municipality and approved by the chief purchasing officer.

45-55-11. Responsibilities of bidders and offerors.

(1) A written determination of responsibility of a bidder or offeror shall be made and it shall be made in accordance with regulations issued by the municipality.

A reasonable inquiry to determine the responsibility of a bidder or offeror may be conducted. The failure of a bidder or offeror to promptly supply information in connection with a reasonable inquiry may be grounds for a determination of nonresponsibility with respect to a bidder or offeror.

(2) Except as otherwise provided, by law, information furnished by a bidder or offeror pursuant to this section may not be disclosed outside of the purchasing department administering the contract without prior written consent of the bidder or offeror.

45-55-12. Prequalification of contractors - General.

The municipality may provide for prequalification of suppliers as responsible prospective contractors for particular types of supplies, services, and construction. Municipalities which choose to provide for prequalification of suppliers shall adopt regulations for prequalification in the same manner provided for in the adoption of ordinances in the manner provided for in the legislative or home rule charter of the municipality. Solicitation mailing lists of potential contractors of supplies, services, and construction shall include but need not be limited to prequalified contractors. Prequalification shall not foreclose a written determination:

(1) Between the time of the bid opening or receipt of offers and the making of an award, that a prequalified supplier is not responsible; or

(2) That a supplier who is not prequalified at the time of bid opening or receipt of offers is responsible.

45-55-13. Exclusion of state mandated costs.

The provisions of 45-13-7 through 45-13-10 do not apply to this section.

45-55-13.1. Exclusion of multi-cities or towns insurance corporations and cooperative risk management programs.

The provisions of this chapter shall not apply to entities organized pursuant to section 45-5-20.1. Those entities are exempt from all of the provisions of this chapter .

45-55-13.2. Exclusion of multi-cities or towns energy aggregation programs.

The provisions of this chapter do not apply to entities organized for the purpose of negotiating the purchase of electric power pursuant to § 39-3-1.1, or energy or energy related services. Those entities are exempt from all provisions of this chapter.

45-55-13.3. Exclusion of multi-school district combined purchasing consortia

The provisions of this chapter do not apply to purchases and contracts entered into by those consortia established pursuant to § 16-2-9.2, and such entities shall be exempt from all provisions of this chapter.

45-55-14. Staff consultants.

The procurement of the service of an attorney, physician or dentist by a municipality, is exempt from the provisions of this chapter.

45-55-15. Severability.

If any one or more sections, clauses, sentences or parts of this chapter are for any reason be adjudged unconstitutional or otherwise invalid in any court, that judgment shall not affect, impair or invalidate the remaining provisions of this chapter but shall be confined in its operation to the specific provisions so held unconstitutional or invalid and the inapplicability or invalidity of any section, clause or provisions of this chapter in any one or more instances or circumstances shall not be taken to affect or prejudice in any way its applicability or validity in any other instance.

45-55-16. Prohibition against the use of lead based paints.

When purchasing paint products or contracting or subcontracting for painting, construction, improvement, completion, or repair of any public buildings, public road, public bridge, or public construction, all municipalities, as defined by 45-55-4(11), shall be prohibited from the use of lead based paint.

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**INVESTING IN
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Good Faith Efforts

What is the Purpose of the Good Faith Efforts?

The Good Faith Efforts are methods employed by all EPA financial assistance agreement recipients to ensure that disadvantaged business enterprises (DBEs) have the opportunity to compete for procurements funded by EPA financial assistance funds.

What Are the Good Faith Efforts?

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

What are the New Contract Administration Provisions?

When the DBE rule goes into effect, there are a number of new provisions designed to prevent unfair practices that adversely affect DBEs. Those provisions are as follows:

- ❖ A recipient must require its prime contractor to pay its subcontractor for satisfactory performance no more than 30 days from the prime contractor's receipt of payment from the recipient.
- ❖ A recipient must be notified in writing by its prime contractor prior to any

termination of a DBE subcontractor for convenience by the prime contractor.

- ❖ If a DBE subcontractor fails to complete work under the subcontract for any reason, the recipient must require the prime contractor to employ the Six Good Faith Efforts if soliciting a replacement subcontractor.
- ❖ A recipient must require its prime contractor to employ the Six Good Faith Efforts even if the prime contractor has achieved its fair share objectives.

What are the New Forms Associated With the New Contract Administration Provisions?

EPA Form 6100-2 - DBE Program Subcontractor Participation Form. This form gives a DBE subcontractor the opportunity to describe the work the DBE subcontractor received from the prime contractor, how much the DBE subcontractor was paid and any other concerns the DBE subcontractor might have.

EPA Form 6100-3 - DBE Program Subcontractor Performance Form. This form captures an intended subcontractor's description of work to be performed for the prime contractor and the price of the work submitted to the prime.

EPA Form 6100-4 – DBE Program Subcontractor Utilization Form. This form captures the prime's intended use of an identified DBE subcontractor, and the estimated dollar amount of the subcontract.

Form	Requirement	Provided By	Completed By	Submitted To
EPA Form 6100-2	Recipients required to have prime contractors provide form to Subcontractors	Prime Contractors	DBE Subcontractors	EPA DBE Coordinator
EPA Form 6100-3	Recipients required to have prime contractors provide form to Subcontractors	Prime Contractors	DBE Subcontractors	Recipients as part of bid or proposal package
EPA Form 6100-4	Recipients required to have prime contractors complete the form	Recipients	Prime Contractors	Recipients as part of bid or proposal package

NOTICE to BIDDERS on Clean Water State Revolving Fund funded projects
Regarding use of Expired EPA Forms 6100-4, 6100-3, and 6100-2

The above referenced EPA forms are expired for EPA purposes.
The forms are required for RI CWSRF purposes.

The RI CWSRF program uses the EPA forms in the CWSRF contract documents package for bidders and prime contractors to demonstrate that the federally required 6 Good Faith Efforts have been conducted. EPA requires that this be documented. It is an easy way to show compliance.

These forms also help the bidder demonstrate that the RI MBE/WBE 15% participation requirement (7.5% and 7.5% respectively) has been incorporated into the bid with consent of subcontractors and estimated dollar amounts. The RI MBE/WBE requirements are very similar to the now expired EPA participation requirement. In place of an EPA DBE entity, you must seek participation from RI certified Minority Business Enterprises and/or Women-owned Business Enterprises. The RI MBE/WBE Program maintains a searchable database of eligible participants: <https://dedi.ri.gov/divisions-units/minority-business-enterprise-compliance-office/minority-business-enterprise-mbe>

Having this information worked out for the bid allows the prime contractor to be able to submit to the RI MBE/WBE Compliance Office for RI Minority Business Enterprise Utilization Plan approval in a timely manner once the bid is awarded.

For questions on certified MBE/WBE participation, please contact the RI Division of Equity, Diversity and Inclusion Minority Business Enterprise Compliance Office at (401) 574-8670 or mbe.compliance@doa.ri.gov .

RI DEDI MBE Compliance Office Webpage:

<https://dedi.ri.gov/divisions-units/minority-business-enterprise-compliance-office/minority-business-enterprise-mbe-0>

Jennifer Paquet
Supervising Environmental Planner
RIDEM Office of Water Resources, Clean Water SRF Program
October 30, 2023

**Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Participation Form**

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

Subcontractor Name		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Prime Contractor Name		Issuing/Funding Entity:	

Contract Item Number	Description of Work Received from the Prime Contractor Involving Construction, Services, Equipment or Supplies	Amount Received by Prime Contractor

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

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

**Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Performance Form**

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

Subcontractor Name		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Prime Contractor Name		Issuing/Funding Entity:	

Contract Item Number	Description of Work Submitted to the Prime Contractor Involving Construction, Services, Equipment or Supplies	Price of Work Submitted to the Prime Contractor
DBE Certified By: <input type="checkbox"/> DOT <input type="checkbox"/> SBA <input type="checkbox"/> Other: _____		Meets/ exceeds EPA certification standards? <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> Unknown

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

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

**Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Performance Form**

I certify under penalty of perjury that the forgoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. I am aware of that in the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302 (c).

Prime Contractor Signature	Print Name
Title	Date

Subcontractor Signature	Print Name
Title	Date

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

Disadvantaged Business Enterprise (DBE) Program DBE Subcontractor Utilization Form

This form is intended to capture the prime contractor's actual and/or anticipated use of identified certified DBE¹ subcontractors² and the estimated dollar amount of each subcontract. An EPA Financial Assistance Agreement Recipient must require its prime contractors to complete this form and include it in the bid or proposal package. Prime contractors should also maintain a copy of this form on file.

Prime Contractor Name		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Issuing/Funding Entity:			

I have identified potential DBE certified subcontractors	__ YES	__ NO	
If yes, please complete the table below. If no, please explain:			
Subcontractor Name/ Company Name	Company Address/ Phone/ Email	Est. Dollar Amt	Currently DBE Certified?

_____ Continue on back if needed _____

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

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

**Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Utilization Form**

I certify under penalty of perjury that the forgoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. I am aware of that in the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302 (c).

Prime Contractor Signature	Print Name
Title	Date

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

DAVIS-BACON PREVAILING WAGE REQUIREMENTS

(a) GENERAL CONTRACT AND SUBCONTRACT PROVISIONS

For any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF or a construction project under the DWSRF financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in §5.1 or the FY 2010 appropriation, the following clauses shall be inserted in full:

(1) Minimum Wages

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

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

Wage determinations may be obtained from the U.S. Department of Labor's website, www.dol.gov.

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

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

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

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

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

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

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

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

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

(2) Withholding

The Owner, shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this

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

(3) Payrolls and Basic Records

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

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Owner, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the Owner shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the owner for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of

compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the Owner.

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

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

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

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

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

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

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

(4) Apprentices and Trainees

(i) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of

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

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

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

(5) Compliance with Copeland Act Requirements

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

(6) Subcontracts

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

(7) Contract Termination: Debarment

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

(8) Compliance with Davis-Bacon and Related Act Requirements

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes Concerning Labor Standards

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

(10) Certification of Eligibility

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

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

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

(b) CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

For 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, the following clauses set forth in paragraphs (b) (1), (2), (3) and (4) of this section shall be inserted in full. These clauses shall be inserted in addition to the clauses required in Section (a), above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime Requirements

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

(2) Violation; Liability for Unpaid Wages; Liquidated Damages

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

(3) Withholding for Unpaid Wages and Liquidated Damages

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

(4) Subcontracts

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

(c) MAINTENANCE OF RECORDS

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

(d) COMPLIANCE VERIFICATION

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

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

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

(4) The Owner shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees

and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

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



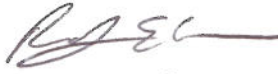
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

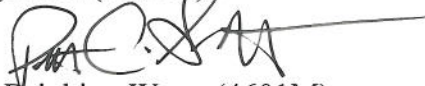
MAR 20 2014

OFFICE OF WATER

MEMORANDUM

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

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

Peter C. Grevatt, Director 
Office of Ground Water and Drinking Water (4601M)

TO: Water Management Division Directors
Regions I - X

P.L. 113-76, Consolidated Appropriations Act, 2014 (Act), includes an “American Iron and Steel (AIS)” requirement in section 436 that requires Clean Water State Revolving Loan Fund (CWSRF) and Drinking Water State Revolving Loan Fund (DWSRF) assistance recipients to use iron and steel products that are produced in the United States for projects for the construction, alteration, maintenance, or repair of a public water system or treatment works if the project is funded through an assistance agreement executed beginning January 17, 2014 (enactment of the Act), through the end of Federal Fiscal Year 2014.

Section 436 also sets forth certain circumstances under which EPA may waive the AIS requirement. Furthermore, the Act specifically exempts projects where engineering plans and specifications were approved by a State agency prior to January 17, 2014.

The approach described below explains how EPA will implement the AIS requirement. The first section is in the form of questions and answers that address the types of projects that must comply with the AIS requirement, the types of products covered by the AIS requirement, and compliance. The second section is a step-by-step process for requesting waivers and the circumstances under which waivers may be granted.

Implementation

The Act states:

Sec. 436. (a)(1) None of the funds made available by a State water pollution control revolving fund as authorized by title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) or made available by a drinking water treatment revolving loan fund as authorized by section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12) shall be used for a project for the construction, alteration, maintenance, or repair of a public water system or treatment works unless all of the iron and steel products used in the project are produced in the United States.

(2) In this section, the term “iron and steel products” means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.

(b) Subsection (a) shall not apply in any case or category of cases in which the Administrator of the Environmental Protection Agency (in this section referred to as the “Administrator”) finds that—

(1) applying subsection (a) would be inconsistent with the public interest;

(2) iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(3) inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

(c) If the Administrator receives a request for a waiver under this section, the Administrator shall make available to the public on an informal basis a copy of the request and information available to the Administrator concerning the request, and shall allow for informal public input on the request for at least 15 days prior to making a finding based on the request. The Administrator shall make the request and accompanying information available by electronic means, including on the official public Internet Web site of the Environmental Protection Agency.

(d) This section shall be applied in a manner consistent with United States obligations under international agreements.

(e) The Administrator may retain up to 0.25 percent of the funds appropriated in this Act for the Clean and Drinking Water State Revolving Funds for carrying out

the provisions described in subsection (a)(1) for management and oversight of the requirements of this section.

(f) This section does not apply with respect to a project if a State agency approves the engineering plans and specifications for the project, in that agency's capacity to approve such plans and specifications prior to a project requesting bids, prior to the date of the enactment of this Act.

The following questions and answers provide guidance for implementing and complying with the AIS requirements:

Project Coverage

1) What classes of projects are covered by the AIS requirement?

All treatment works projects funded by a CWSRF assistance agreement, and all public water system projects funded by a DWSRF assistance agreement, from the date of enactment through the end of Federal Fiscal Year 2014, are covered. The AIS requirements apply to the entirety of the project, no matter when construction begins or ends. Additionally, the AIS requirements apply to all parts of the project, no matter the source of funding.

2) Does the AIS requirement apply to nonpoint source projects or national estuary projects?

No. Congress did not include an AIS requirement for nonpoint source and national estuary projects unless the project can also be classified as a 'treatment works' as defined by section 212 of the Clean Water Act.

3) Are any projects for the construction, alteration, maintenance, or repair of a public water system or treatment works excluded from the AIS requirement?

Any project, whether a treatment works project or a public water system project, for which engineering plans and specifications were approved by the responsible state agency prior to January 17, 2014, is excluded from the AIS requirements.

4) What if the project does not have approved engineering plans and specifications but has signed an assistance agreement with a CWSRF or DWSRF program prior to January 17, 2014?

The AIS requirements do not apply to any project for which an assistance agreement was signed prior to January 17, 2014.

5) What if the project does not have approved engineering plans and specifications, but bids were advertised prior to January 17, 2014 and an assistance agreement was signed after January 17, 2014?

If the project does not require approved engineering plans and specifications, the bid advertisement date will count in lieu of the approval date for purposes of the exemption in section 436(f).

6) What if the assistance agreement that was signed prior to January 17, 2014, only funded a part of the overall project, where the remainder of the project will be funded later with another SRF loan?

If the original assistance agreement funded any construction of the project, the date of the original assistance agreement counts for purposes of the exemption. If the original assistance agreement was only for planning and design, the date of that assistance agreement will count for purposes of the exemption only if there is a written commitment or expectation on the part of the assistance recipient to fund the remainder of the project with SRF funds.

7) What if the assistance agreement that was signed prior to January 17, 2014, funded the first phase of a multi-phase project, where the remaining phases will be funded by SRF assistance in the future?

In such a case, the phases of the project will be considered a single project if all construction necessary to complete the building or work, regardless of the number of contracts or assistance agreements involved, are closely related in purpose, time and place. However, there are many situations in which major construction activities are clearly undertaken in phases that are distinct in purpose, time, or place. In the case of distinct phases, projects with engineering plans and specifications approval or assistance agreements signed prior to January 17, 2014 would be excluded from AIS requirements while those approved/signed on January 17, 2014, or later would be covered by the AIS requirements.

8) What if a project has split funding from a non-SRF source?

Many States intend to fund projects with “split” funding, from the SRF program and from State or other programs. Based on the Act language in section 436, which requires that American iron and steel products be used in any project for the construction, alteration, maintenance, or repair of a public water system or treatment works receiving SRF funding between and including January 17, 2014 and September 30, 2014, any project that is funded in whole or in part with such funds must comply with the AIS requirement. A “project” consists of all construction necessary to complete the building or work regardless of the number of contracts or assistance agreements involved so long as all contracts and assistance agreements awarded are closely related in purpose, time and place. This precludes the intentional splitting of SRF projects into separate and smaller contracts or assistance agreements to avoid AIS coverage on some portion of a larger

project, particularly where the activities are integrally and proximately related to the whole. However, there are many situations in which major construction activities are clearly undertaken in separate phases that are distinct in purpose, time, or place, in which case, separate contracts or assistance agreement for SRF and State or other funding would carry separate requirements.

9) What about refinancing?

If a project began construction, financed from a non-SRF source, prior to January 17, 2014, but is refinanced through an SRF assistance agreement executed on or after January 17, 2014 and prior to October 1, 2014, AIS requirements will apply to all construction that occurs on or after January 17, 2014, through completion of construction, unless, as is likely, engineering plans and specifications were approved by a responsible state agency prior to January 17, 2014. There is no retroactive application of the AIS requirements where a refinancing occurs for a project that has completed construction prior to January 17, 2014.

10) Do the AIS requirements apply to any other EPA programs, besides the SRF program, such as the Tribal Set-aside grants or grants to the Territories and DC?

No, the AIS requirement only applies to funds made available by a State water pollution control revolving fund as authorized by title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) or made available by a drinking water treatment revolving loan fund as authorized by section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12)

Covered Iron and Steel Products

11) What is an iron or steel product?

For purposes of the CWSRF and DWSRF projects that must comply with the AIS requirement, an iron or steel product is one of the following made primarily of iron or steel that is permanently incorporated into the public water system or treatment works:

- Lined or unlined pipes or fittings;
- Manhole Covers;
- Municipal Castings (defined in more detail below);
- Hydrants;
- Tanks;
- Flanges;
- Pipe clamps and restraints;
- Valves;
- Structural steel (defined in more detail below);
- Reinforced precast concrete; and
- Construction materials (defined in more detail below).

12) What does the term ‘primarily iron or steel’ mean?

‘Primarily iron or steel’ places constraints on the list of products above. For one of the listed products to be considered subject to the AIS requirements, it must be made of greater than 50% iron or steel, measured by cost. The cost should be based on the material costs.

13) Can you provide an example of how to perform a cost determination?

For example, the iron portion of a fire hydrant would likely be the bonnet, body and shoe, and the cost then would include the pouring and casting to create those components. The other material costs would include non-iron and steel internal workings of the fire hydrant (i.e., stem, coupling, valve, seals, etc). However, the assembly of the internal workings into the hydrant body would not be included in this cost calculation. If one of the listed products is not made primarily of iron or steel, United States (US) provenance is not required. An exception to this definition is reinforced precast concrete, which is addressed in a later question.

14) If a product is composed of more than 50% iron or steel, but is not listed in the above list of items, must the item be produced in the US? Alternatively, must the iron or steel in such a product be produced in the US?

The answer to both question is no. Only items on the above list must be produced in the US. Additionally, the iron or steel in a non-listed item can be sourced from outside the US.

15) What is the definition of steel?

Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements. Metallic elements such as chromium, nickel, molybdenum, manganese, and silicon may be added during the melting of steel for the purpose of enhancing properties such as corrosion resistance, hardness, or strength. The definition of steel covers carbon steel, alloy steel, stainless steel, tool steel and other specialty steels.

16) What does ‘produced in the United States’ mean?

Production in the United States of the iron or steel products used in the project requires that all manufacturing processes, including application of coatings, must take place in the United States, with the exception of metallurgical processes involving refinement of steel additives. All manufacturing processes includes processes such as melting, refining, forming, rolling, drawing, finishing, fabricating and coating. Further, if a domestic iron and steel product is taken out of the US for any part of the manufacturing process, it becomes foreign source material. However, raw materials such as iron ore, limestone and iron and steel scrap are not covered by the AIS requirement, and the

material(s), if any, being applied as a coating are similarly not covered. Non-iron or steel components of an iron and steel product may come from non-US sources. For example, for products such as valves and hydrants, the individual non-iron and steel components do not have to be of domestic origin.

17) Are the raw materials used in the production of iron or steel required to come from US sources?

No. Raw materials, such as iron ore, limestone, scrap iron, and scrap steel, can come from non-US sources.

18) If an above listed item is primarily made of iron or steel, but is only at the construction site temporarily, must such an item be produced in the US?

No. Only the above listed products made primarily of iron or steel, permanently incorporated into the project must be produced in the US. For example trench boxes, scaffolding or equipment, which are removed from the project site upon completion of the project, are not required to be made of U.S. Iron or Steel.

19) What is the definition of ‘municipal castings’?

Municipal castings are cast iron or steel infrastructure products that are melted and cast. They typically provide access, protection, or housing for components incorporated into utility owned drinking water, storm water, wastewater, and surface infrastructure. They are typically made of grey or ductile iron, or steel. Examples of municipal castings are:

- Access Hatches;
- Ballast Screen;
- Benches (Iron or Steel);
- Bollards;
- Cast Bases;
- Cast Iron Hinged Hatches, Square and Rectangular;
- Cast Iron Riser Rings;
- Catch Basin Inlet;
- Cleanout/Monument Boxes;
- Construction Covers and Frames;
- Curb and Corner Guards;
- Curb Openings;
- Detectable Warning Plates;
- Downspout Shoes (Boot, Inlet);
- Drainage Grates, Frames and Curb Inlets;
- Inlets;
- Junction Boxes;
- Lampposts;
- Manhole Covers, Rings and Frames, Risers;

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

20) What is ‘structural steel’?

Structural steel is rolled flanged shapes, having at least one dimension of their cross-section three inches or greater, which are used in the construction of bridges, buildings, ships, railroad rolling stock, and for numerous other constructional purposes. Such shapes are designated as wide-flange shapes, standard I-beams, channels, angles, tees and zees. Other shapes include H-piles, sheet piling, tie plates, cross ties, and those for other special purposes.

21) What is a ‘construction material’ for purposes of the AIS requirement?

Construction materials are those articles, materials, or supplies made primarily of iron and steel, that are permanently incorporated into the project, not including mechanical and/or electrical components, equipment and systems. Some of these products may overlap with what is also considered “structural steel”. This includes, but is not limited to, the following products: wire rod, bar, angles, concrete reinforcing bar, wire, wire cloth, wire rope and cables, tubing, framing, joists, trusses, fasteners (i.e., nuts and bolts), welding rods, decking, grating, railings, stairs, access ramps, fire escapes, ladders, wall panels, dome structures, roofing, ductwork, surface drains, cable hanging systems, manhole steps, fencing and fence tubing, guardrails, doors, and stationary screens.

22) What is not considered a ‘construction material’ for purposes of the AIS requirement?

Mechanical and electrical components, equipment and systems are not considered construction materials. Mechanical equipment is typically that which has motorized parts and/or is powered by a motor. Electrical equipment is typically any machine powered by electricity and includes components that are part of the electrical distribution system.

The following examples (including their appurtenances necessary for their intended use and operation) are NOT considered construction materials: pumps, motors, gear reducers, drives (including variable frequency drives (VFDs)), electric/pneumatic/manual accessories used to operate valves (such as electric valve actuators), mixers, gates, motorized screens (such as traveling screens), blowers/aeration equipment, compressors, meters, sensors, controls and switches, supervisory control and

data acquisition (SCADA), membrane bioreactor systems, membrane filtration systems, filters, clarifiers and clarifier mechanisms, rakes, grinders, disinfection systems, presses (including belt presses), conveyors, cranes, HVAC (excluding ductwork), water heaters, heat exchangers, generators, cabinetry and housings (such as electrical boxes/enclosures), lighting fixtures, electrical conduit, emergency life systems, metal office furniture, shelving, laboratory equipment, analytical instrumentation, and dewatering equipment.

23) If the iron or steel is produced in the US, may other steps in the manufacturing process take place outside of the US, such as assembly?

No. Production in the US of the iron or steel used in a listed product requires that all manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives.

24) What processes must occur in the US to be compliant with the AIS requirement for reinforced precast concrete?

While reinforced precast concrete may not be at least 50% iron or steel, in this particular case, the reinforcing bar and wire must be produced in the US and meet the same standards as for any other iron or steel product. Additionally, the casting of the concrete product must take place in the US. The cement and other raw materials used in concrete production are not required to be of domestic origin.

If the reinforced concrete is cast at the construction site, the reinforcing bar and wire are considered to be a construction material and must be produced in the US.

Compliance

25) How should an assistance recipient document compliance with the AIS requirement?

In order to ensure compliance with the AIS requirement, specific AIS contract language must be included in each contract, starting with the assistance agreement, all the way down to the purchase agreements. Sample language for assistance agreements and contracts can be found in Appendix 3 and 4.

EPA recommends the use of a step certification process, similar to one used by the Federal Highway Administration. The step certification process is a method to ensure that producers adhere to the AIS requirement and assistance recipients can verify that products comply with the AIS requirement. The process also establishes accountability and better enables States to take enforcement actions against violators.

Step certification creates a paper trail which documents the location of the manufacturing process involved with the production of steel and iron materials. A step certification is a process under which each handler (supplier, fabricator, manufacturer,

processor, etc) of the iron and steel products certifies that their step in the process was domestically performed. Each time a step in the manufacturing process takes place, the manufacturer delivers its work along with a certification of its origin. A certification can be quite simple. Typically, it includes the name of the manufacturer, the location of the manufacturing facility where the product or process took place (not its headquarters), a description of the product or item being delivered, and a signature by a manufacturer's responsible party. Attached, as Appendix 5, are sample certifications. These certifications should be collected and maintained by assistance recipients.

Alternatively, the final manufacturer that delivers the iron or steel product to the worksite, vendor, or contractor, may provide a certification asserting that all manufacturing processes occurred in the US. While this type of certification may be acceptable, it may not provide the same degree of assurance. Additional documentation may be needed if the certification is lacking important information. Step certification is the best practice.

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

In order to ensure compliance with the AIS requirement, States SRF programs must include specific AIS contract language in the assistance agreement. Sample language for assistance agreements can be found in Appendix 3.

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

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

If a potentially non-compliant product is identified, the State should notify the assistance recipient of the apparent unauthorized use of the non-domestic component, including a proposed corrective action, and should be given the opportunity to reply. If unauthorized use is confirmed, the State can take one or more of the following actions: request a waiver where appropriate; require the removal of the non-domestic item; or withhold payment for all or part of the project. Only EPA can issue waivers to authorize the use of a non-domestic item. EPA may use remedies available to it under the Clean Water Act, the Safe Drinking Water Act, and 40 CFR part 31 grant regulations, in the event of a violation of a grant term and condition.

It is recommended that the State work collaboratively with EPA to determine the appropriate corrective action, especially in cases where the State is the one who identifies the item in noncompliance or there is a disagreement with the assistance recipient.

If fraud, waste, abuse, or any violation of the law is suspected, the Office of Inspector General (OIG) should be contacted immediately. The OIG can be reached at 1-

888-546-8740 or OIG_Hotline@epa.gov. More information can be found at this website: <http://www.epa.gov/oig/hotline.htm>.

28) How do international trade agreements affect the implementation of the AIS requirements?

The AIS provision applies in a manner consistent with United States obligations under international agreements. Typically, these obligations only apply to direct procurement by the entities that are signatories to such agreements. In general, SRF assistance recipients are not signatories to such agreements, so these agreements have no impact on this AIS provision. In the few instances where such an agreement applies to a municipality, that municipality is under the obligation to determine its applicability and requirements and document the actions taken to comply for the State.

Waiver Process

The statute permits EPA to issue waivers for a case or category of cases where EPA finds (1) that applying these requirements would be inconsistent with the public interest; (2) iron and steel products are not produced in the US in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron and steel products produced in the US will increase the cost of the overall project by more than 25 percent.

In order to implement the AIS requirements, EPA has developed an approach to allow for effective and efficient implementation of the waiver process to allow projects to proceed in a timely manner. The framework described below will allow States, on behalf of the assistance recipients, to apply for waivers of the AIS requirement directly to EPA Headquarters. Only waiver requests received from states will be considered. Pursuant to the Act, EPA has the responsibility to make findings as to the issuance of waivers to the AIS requirements.

Definitions

The following terms are critical to the interpretation and implementation of the AIS requirements and apply to the process described in this memorandum:

Reasonably Available Quantity: The quantity of iron or steel products is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the project plans and design.

Satisfactory Quality: The quality of iron or steel products, as specified in the project plans and designs.

Assistance Recipient: A borrower or grantee that receives funding from a State CWSRF or DWSRF program.

Step-By-Step Waiver Process

Application by Assistance Recipient

Each local entity that receives SRF water infrastructure financial assistance is required by section 436 of the Act to use American made iron and steel products in the construction of its project. However, the recipient may request a waiver. Until a waiver is granted by EPA, the AIS requirement stands, except as noted above with respect to municipalities covered by international agreements.

The waiver process begins with the SRF assistance recipient. In order to fulfill the AIS requirement, the assistance recipient must in good faith design the project (where applicable) and solicit bids for construction with American made iron and steel products. It is essential that the assistance recipient include the AIS terms in any request for proposals or solicitations for bids, and in all contracts (see Appendix 3 for sample construction contract language). The assistance recipient may receive a waiver at any point before, during, or after the bid process, if one or more of three conditions is met:

1. Applying the American Iron and Steel requirements of the Act would be inconsistent with the public interest;
2. Iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
3. Inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

Proper and sufficient documentation must be provided by the assistance recipient. A checklist detailing the types of information required for a waiver to be processed is attached as Appendix 1.

Additionally, it is strongly encouraged that assistance recipients hold pre-bid conferences with potential bidders. A pre-bid conference can help to identify iron and steel products needed to complete the project as described in the plans and specifications that may not be available from domestic sources. It may also identify the need to seek a waiver prior to bid, and can help inform the recipient on compliance options.

In order to apply for a project waiver, the assistance recipient should email the request in the form of a Word document (.doc) to the State SRF program. It is strongly recommended that the State designate a single person for all AIS communications. The State SRF designee will review the application for the waiver and determine whether the necessary information has been included. Once the waiver application is complete, the State designee will forward the application to either of two email addresses. For CWSRF waiver requests, please send the application to: cwsrfwaiver@epa.gov. For DWSRF waiver requests, please send the application to: dwsrfwaiver@epa.gov.

Evaluation by EPA

After receiving an application for waiver of the AIS requirements, EPA Headquarters will publish the request on its website for 15 days and receive informal comment. EPA Headquarters will then use the checklist in Appendix 2 to determine whether the application properly and adequately documents and justifies the statutory basis cited for the waiver – that it is quantitatively and qualitatively sufficient – and to determine whether or not to grant the waiver.

In the event that EPA finds that adequate documentation and justification has been submitted, the Administrator may grant a waiver to the assistance recipient. EPA will notify the State designee that a waiver request has been approved or denied as soon as such a decision has been made. Granting such a waiver is a three-step process:

1. Posting – After receiving an application for a waiver, EPA is required to publish the application and all material submitted with the application on EPA’s website for 15 days. During that period, the public will have the opportunity to review the request and provide informal comment to EPA. The website can be found at: http://water.epa.gov/grants_funding/aisrequirement.cfm
2. Evaluation – After receiving an application for waiver of the AIS requirements, EPA Headquarters will use the checklist in Appendix 2 to determine whether the application properly and adequately documents and justifies the statutory basis cited for the waiver – that it is quantitatively and qualitatively sufficient – and to determine whether or not to grant the waiver.
3. Signature of waiver approval by the Administrator or another agency official with delegated authority – As soon as the waiver is signed and dated, EPA will notify the State SRF program, and post the signed waiver on our website. The assistance recipient should keep a copy of the signed waiver in its project files.

Public Interest Waivers

EPA has the authority to issue public interest waivers. Evaluation of a public interest waiver request may be more complicated than that of other waiver requests so they may take more time than other waiver requests for a decision to be made. An example of a public interest waiver that might be issued could be for a community that has standardized on a particular type or manufacturer of a valve because of its performance to meet their specifications. Switching to an alternative valve may require staff to be trained on the new equipment and additional spare parts would need to be purchased and stocked, existing valves may need to be unnecessarily replaced, and portions of the system may need to be redesigned. Therefore, requiring the community to install an alternative valve would be inconsistent with public interest.

EPA also has the authority to issue a public interest waiver that covers categories of products that might apply to all projects.

EPA reserves the right to issue national waivers that may apply to particular classes of assistance recipients, particular classes of projects, or particular categories of iron or steel products. EPA may develop national or (US geographic) regional categorical waivers through the identification of similar circumstances in the detailed justifications presented to EPA in a waiver request or requests. EPA may issue a national waiver based on policy decisions regarding the public's interest or a determination that a particular item is not produced domestically in reasonably available quantities or of a sufficient quality. In such cases, EPA may determine it is necessary to issue a national waiver.

If you have any questions concerning the contents of this memorandum, you may contact us, or have your staff contact Jordan Dorfman, Attorney-Advisor, State Revolving Fund Branch, Municipal Support Division, at dorfman.jordan@epa.gov or (202) 564-0614 or Kiri Anderer, Environmental Engineer, Infrastructure Branch, Drinking Water Protection Division, at anderer.kirsten@epa.gov or (202) 564-3134.

Attachments

Appendix 1: Information Checklist for Waiver Request

The purpose of this checklist is to help ensure that all appropriate and necessary information is submitted to EPA. EPA recommends that States review this checklist carefully and provide all appropriate information to EPA. This checklist is for informational purposes only and does not need to be included as part of a waiver application.

Items	✓	Notes
<p>General</p> <ul style="list-style-type: none"> • Waiver request includes the following information: <ul style="list-style-type: none"> — Description of the foreign and domestic construction materials — Unit of measure — Quantity — Price — Time of delivery or availability — Location of the construction project — Name and address of the proposed supplier — A detailed justification for the use of foreign construction materials • Waiver request was submitted according to the instructions in the memorandum • Assistance recipient made a good faith effort to solicit bids for domestic iron and steel products, as demonstrated by language in requests for proposals, contracts, and communications with the prime contractor 		
<p>Cost Waiver Requests</p> <ul style="list-style-type: none"> • Waiver request includes the following information: <ul style="list-style-type: none"> — Comparison of overall cost of project with domestic iron and steel products to overall cost of project with foreign iron and steel products — Relevant excerpts from the bid documents used by the contractors to complete the comparison — Supporting documentation indicating that the contractor made a reasonable survey of the market, such as a description of the process for identifying suppliers and a list of contacted suppliers 		
<p>Availability Waiver Requests</p> <ul style="list-style-type: none"> • Waiver request includes the following supporting documentation necessary to demonstrate the availability, quantity, and/or quality of the materials for which the waiver is requested: <ul style="list-style-type: none"> — Supplier information or pricing information from a reasonable number of domestic suppliers indicating availability/delivery date for construction materials — Documentation of the assistance recipient's efforts to find available domestic sources, such as a description of the process for identifying suppliers and a list of contacted suppliers. — Project schedule — Relevant excerpts from project plans, specifications, and permits indicating the required quantity and quality of construction materials • Waiver request includes a statement from the prime contractor and/or supplier confirming the non-availability of the domestic construction materials for which the waiver is sought • Has the State received other waiver requests for the materials described in this waiver request, for comparable projects? 		

Appendix 2: HQ Review Checklist for Waiver Request

Instructions: To be completed by EPA. Review all waiver requests using the questions in the checklist, and mark the appropriate box as Yes, No or N/A. Marks that fall inside the shaded boxes may be grounds for denying the waiver. If none of your review markings fall into a shaded box, the waiver is eligible for approval if it indicates that one or more of the following conditions applies to the domestic product for which the waiver is sought:

1. The iron and/or steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.
2. The inclusion of iron and/or steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

Review Items	Yes	No	N/A	Comments
Cost Waiver Requests <ul style="list-style-type: none"> • Does the waiver request include the following information? <ul style="list-style-type: none"> — Comparison of overall cost of project with domestic iron and steel products to overall cost of project with foreign iron and steel products — Relevant excerpts from the bid documents used by the contractors to complete the comparison — A sufficient number of bid documents or pricing information from domestic sources to constitute a reasonable survey of the market • Does the Total Domestic Project exceed the Total Foreign Project Cost by more than 25%? 				
Availability Waiver Requests <ul style="list-style-type: none"> • Does the waiver request include supporting documentation sufficient to show the availability, quantity, and/or quality of the iron and/or steel product for which the waiver is requested? <ul style="list-style-type: none"> — Supplier information or other documentation indicating availability/delivery date for materials — Project schedule — Relevant excerpts from project plans, specifications, and permits indicating the required quantity and quality of materials • Does supporting documentation provide sufficient evidence that the contractors made a reasonable effort to locate domestic suppliers of materials, such as a description of the process for identifying suppliers and a list of contacted suppliers? • Based on the materials delivery/availability date indicated in the supporting documentation, will the materials be unavailable when they are needed according to the project schedule? (By item, list schedule date and domestic delivery quote date or other relevant information) • Is EPA aware of any other evidence indicating the non-availability of the materials for which the waiver is requested? Examples include: <ul style="list-style-type: none"> — Multiple waiver requests for the materials described in this waiver request, for comparable projects in the same State — Multiple waiver requests for the materials described in this waiver request, for comparable projects in other States — Correspondence with construction trade associations indicating the non-availability of the materials • Are the available domestic materials indicated in the bid documents of inadequate quality compared those required by the project plans, specifications, and/or permits? 				

Appendix 3: Example Loan Agreement Language

ALL ASSISTANCE AGREEMENT MUST HAVE A CLAUSE REQUIRING COMPLIANCE WITH THE AIS REQUIREMENT. THIS IS AN EXAMPLE OF WHAT COULD BE INCLUDED IN SRF ASSISTANCE AGREEMENTS. EPA MAKES NO CLAIMS REGARDING THE LEGALITY OF THIS CLAUSE WITH RESPECT TO STATE LAW:

Comply with all federal requirements applicable to the Loan (including those imposed by the 2014 Appropriations Act and related SRF Policy Guidelines) which the Participant understands includes, among other, requirements that all of the iron and steel products used in the Project are to be produced in the United States (“American Iron and Steel Requirement”) unless (i) the Participant has requested and obtained a waiver from the Agency pertaining to the Project or (ii) the Finance Authority has otherwise advised the Participant in writing that the American Iron and Steel Requirement is not applicable to the Project.

Comply with all record keeping and reporting requirements under the Clean Water Act/Safe Drinking Water Act, including any reports required by a Federal agency or the Finance Authority such as performance indicators of program deliverables, information on costs and project progress. The Participant understands that (i) each contract and subcontract related to the Project is subject to audit by appropriate federal and state entities and (ii) failure to comply with the Clean Water Act/Safe Drinking Water Act and this Agreement may be a default hereunder that results in a repayment of the Loan in advance of the maturity of the Bonds and/or other remedial actions.

Appendix 4: Sample Construction Contract Language

ALL CONTRACTS MUST HAVE A CLAUSE REQUIRING COMPLIANCE WITH THE AIS REQUIREMENT. THIS IS AN EXAMPLE OF WHAT COULD BE INCLUDED IN ALL CONTRACTS IN PROJECTS THAT USE SRF FUNDS. EPA MAKES NO CLAIMS REGARDING THE LEGALITY OF THIS CLAUSE WITH RESPECT TO STATE OR LOCAL LAW:

The Contractor acknowledges to and for the benefit of the City of _____ (“Purchaser”) and the _____ (the “State”) that it understands the goods and services under this Agreement are being funded with monies made available by the Clean Water State Revolving Fund and/or Drinking Water State Revolving Fund that have statutory requirements commonly known as “American Iron and Steel;” that requires all of the iron and steel products used in the project to be produced in the United States (“American Iron and Steel Requirement”) including iron and steel products provided by the Contractor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Purchaser and the State that (a) the Contractor has reviewed and understands the American Iron and Steel Requirement, (b) all of the iron and steel products used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Purchaser or the State. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Purchaser or State to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney’s fees) incurred by the Purchaser or State resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State or any damages owed to the State by the Purchaser). While the Contractor has no direct contractual privity with the State, as a lender to the Purchaser for the funding of its project, the Purchaser and the Contractor agree that the State is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the State.

Appendix 5: Sample Certifications

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

Date

Company Name

Company Address

City, State Zip

Subject: American Iron and Steel Step Certification for Project (XXXXXXXXXX)

I, (company representative), certify that the (melting, bending, coating, galvanizing, cutting, etc.) process for (manufacturing or fabricating) the following products and/or materials shipped or provided for the subject project is in full compliance with the American Iron and Steel requirement as mandated in EPA's State Revolving Fund Programs.

Item, Products and/or Materials:

1. XXXX
2. XXXX
3. XXXX

Such process took place at the following location:

If any of the above compliance statements change while providing material to this project we will immediately notify the prime contractor and the engineer.

Signed by company representative

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

Date

Company Name

Company Address

City, State Zip

Subject: American Iron and Steel Certification for Project (XXXXXXXXXXXX)

I, (company representative), certify that the following products and/or materials shipped/provided to the subject project are in full compliance with the American Iron and Steel requirement as mandated in EPA's State Revolving Fund Programs.

Item, Products and/or Materials:

1. XXXX
2. XXXX
3. XXXX

Such process took place at the following location:

If any of the above compliance statements change while providing material to this project we will immediately notify the prime contractor and the engineer.

Signed by company representative



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF WATER

MEMORANDUM

SUBJECT: Prohibition on Certain Telecommunication and Video Surveillance Services or Equipment in the SRF Programs

FROM: Kiri Anderer, P.E., Acting Associate Branch Chief
Infrastructure Branch, OGWDW

**KIRSTEN
ANDERER**

Digitally signed by KIRSTEN
ANDERER
Date: 2020.12.11 07:55:52
-05'00'

Michael Deane, Branch Chief
State Revolving Fund Branch, OWM

MICHAEL DEANE

Digitally signed by MICHAEL
DEANE
Date: 2020.12.11 17:56:38 -05'00'

TO: SRF Branch Chiefs
Regions 1-10

Effective August 13, 2020, recipients and subrecipients of EPA funded assistance agreements, including borrowers under EPA funded revolving loan funds, must comply with regulations at [2 CFR 200.216](#), *Prohibition on certain telecommunication and video surveillance services or equipment*, implementing section 889 of [Public Law 115-232](#). The regulation prohibits the use of Federal funds to procure (enter into, extend, or renew contracts) or obtain equipment, systems, or services that use “covered telecommunications equipment or services” identified in the regulation as a substantial or essential component of any system, or as critical technology as part of any system. Prohibitions extend to the use of Federal funds by recipients and subrecipients to enter into a contract with an entity that “uses any equipment, system, or service that uses covered telecommunications equipment or services” as a substantial or essential component of any system, or as critical technology as part of any system. Certain equipment, systems, or services, including equipment, systems, or services produced or provided by entities subject to the prohibition are recorded in the [System for Award Management](#) exclusion list.

As described in section 889 of Public Law 115-232, covered telecommunications equipment or services includes:

- Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
- For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- Telecommunications or video surveillance services provided by such entities or using such equipment.

- Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Applicability in the State Revolving Fund (SRF) Programs

Clean Water and Drinking Water SRF (CWSRF and DWSRF) programs may not expend equivalency funds for these products on or after August 13, 2020. States must ensure that equivalency assistance agreements include the telecommunications prohibition condition [provided by EPA's Office of Grants and Debarment](#) (OGD) in OGD's most recent EPA General Terms and Conditions. The condition must also be in construction contracts associated with equivalency assistance agreements.

There is no exhaustive list of components and services that fall under the prohibition. State SRF managers and local assistance recipients should exercise due diligence and be particularly mindful of project components with internet or cellular connections. For example, recipients should be mindful of automatic meter reading (AMR) technology and advanced metering infrastructure (AMI), instrumentation control systems (e.g. process control systems, distributed control systems and programmable logic controls), and security cameras and other electronic security measures to ensure that those items are procured from a non-excluded entity. Items included in the prohibition are not eligible SRF costs, and the SRF programs cannot reimburse borrowers for these costs.

The prohibition also applies to the CWSRF administrative funds (if states are billing those costs to the federal CWSRF capitalization grant) and the four DWSRF set-asides. States should be mindful of items such as cell phones, computers, and mobile WiFi routers or hotspots funded by those accounts.

If you have questions on the implementation of this grant condition, please contact Michael Deane at Deane.Michael@epa.gov or Kiri Anderer at Anderer.Kirsten@epa.gov.

DEBARMENT & SUSPENSION

Executive Order 12549--Debarment and Suspension

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

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

Section 1. (a) To the extent permitted by law and subject to the limitations in Section 1(c), Executive departments and agencies shall participate in a system for debarment and suspension from programs and activities involving Federal financial and nonfinancial assistance and benefits. Debarment or suspension of a participant in a program by one agency shall have government-wide effect.

(b) Activities covered by this Order include but are not limited to: grants, cooperative agreements, contracts of assistance, loans, and loan guarantees.

(c) This Order does not cover procurement programs and activities, direct Federal statutory entitlements or mandatory awards, direct awards to foreign governments or public international organizations, benefits to an individual as a personal entitlement, or Federal employment.

Sec. 2. To the extent permitted by law, Executive departments and agencies shall:

(a) Follow government-wide criteria and government-wide minimum due process procedures when they act to debar or suspend participants in affected programs.

(b) Send to the agency designated pursuant to Section 5 identifying information concerning debarred and suspended participants in affected programs, participants who have agreed to exclusion from participation, and participants declared ineligible under applicable law, including Executive Orders. This information shall be included in the list to be maintained pursuant to Section 5.

(c) Not allow a party to participate in any affected program if any Executive department or agency has debarred, suspended, or otherwise excluded (to the extent specified in the exclusion agreement) that party from participation in an affected program. An agency may grant an exception permitting a debarred, suspended, or excluded party to participate in a particular transaction upon a written determination by the agency head or authorized designee stating the reason(s) for deviating from this Presidential policy. However, I intend that exceptions to this policy should be granted only infrequently.

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

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

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

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

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

Implementation in the SRF Programs

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

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

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

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

Additional References

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

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

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

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

Name and Title of Authorized Agent

Date

Signature of Authorized Agent

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

WIFIA LOAN AGREEMENT FLOW DOWN (PASS THROUGH) PROVISIONS

Attached is the loan agreement (certain exhibits omitted) between the Narragansett Bay Commission (the “NBC”) and the Environment Protection Agency (the WIFIA Loan Agreement”).

Be advised that sections of the WIFIA Loan Agreement including, but not necessarily limited to sections 12(j), 12(q), 12 (r), 14 (h) and Exhibit E of the WIFIA Loan Agreement provide that the NBC, and each of its contractors and subcontractors at all tiers, have and will comply with all applicable federal laws, rules, regulations and requirements relating to [operation and management of the NBC’s wastewater treatment system and] the project being bid, including:

(i) 40 U.S.C. §§ 3141-3144, 3146, and 3147 and regulations relating thereto (Davis-Bacon Act Requirements),

(ii) 33 U.S.C. § 3914 (relating to American iron and steel products), and

(iii) those set forth in **Exhibit E** (*Compliance With Laws*).

To ensure such compliance, the NBC will include in all contracts with respect to the project requirements that its contractor(s) shall comply with such applicable federal laws, rules, regulations, and requirements and follow applicable federal guidance, and will require that the contractor(s) incorporate in all subcontracts (and cause all subcontractors to include in lower tier subcontracts) such terms and conditions as are required to be incorporated therein by the WIFIA Loan Agreement and by applicable federal laws, rules, regulations and requirements. With respect to the Davis-Bacon Act Requirements, the NBC will insert in full in all contracts relating to the project the contract clauses set forth in the Code of Federal Regulations, Title 29 Part 5.5, and will require and ensure that its contractor(s) insert such clauses in all subcontracts and also will require a clause requiring all subcontractors to include these clauses in any lower tier subcontracts.

EXECUTION VERSION

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

WIFIA LOAN AGREEMENT

For an Original Principal Amount of Up to \$55,499,228

With

NARRAGANSETT BAY COMMISSION

For the

**FIELD'S POINT RESILIENCY IMPROVEMENTS PROJECT
(WIFIA – N21141RI)**

Dated as of July 25, 2022

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I DEFINITIONS AND INTERPRETATION	2
Section 1. Definitions	2
Section 2. Interpretation.....	14
ARTICLE II THE WIFIA LOAN	15
Section 3. WIFIA Loan Amount.....	15
Section 4. Disbursement Conditions.....	15
Section 5. Term.....	16
Section 6. Interest Rate.....	16
Section 7. Security and Priority; Flow of Funds.....	16
Section 8. Payment of Principal and Interest.....	17
Section 9. Prepayment	19
Section 10. Fees and Expenses	20
ARTICLE III CONDITIONS PRECEDENT	22
Section 11. Conditions Precedent	22
ARTICLE IV REPRESENTATIONS AND WARRANTIES	28
Section 12. Representations and Warranties of Borrower	28
Section 13. Representations and Warranties of WIFIA Lender.....	34
ARTICLE V COVENANTS	35
Section 14. Affirmative Covenants.....	35
Section 15. Negative Covenants	39
Section 16. Reporting Requirements	41
ARTICLE VI EVENTS OF DEFAULT.....	46
Section 17. Events of Default and Remedies.....	46
ARTICLE VII MISCELLANEOUS	50
Section 18. Disclaimer of Warranty.....	50
Section 19. No Personal Recourse	50
Section 20. No Third Party Rights.....	50
Section 21. Borrower’s Authorized Representative.....	50
Section 22. WIFIA Lender’s Authorized Representative	50
Section 23. Servicer	50
Section 24. Amendments and Waivers	51
Section 25. Governing Law	51
Section 26. Severability	51
Section 27. Successors and Assigns	51
Section 28. Remedies Not Exclusive.....	51
Section 29. Delay or Omission Not Waiver.....	51
Section 30. Counterparts.....	51
Section 31. Notices	51
Section 32. Indemnification	52
Section 33. Sale of WIFIA Loan	53
Section 34. Effectiveness.....	53
Section 35. Termination.....	54
Section 36. Integration.....	54

SCHEDULE I – Project Definition
SCHEDULE II – Project Budget
SCHEDULE III – Construction Schedule
SCHEDULE IV – Existing Indebtedness
SCHEDULE V – Flow of Funds
SCHEDULE VI – Flow of Funds Following Default
SCHEDULE VII – Rate Covenant
SCHEDULE VIII – Additional Bonds Test
SCHEDULE 12(f) – Litigation
SCHEDULE 12(n) – Existing Principal Project Contracts
SCHEDULE 12(r) – Environmental Matters

EXHIBIT A – Form of WIFIA Bond
EXHIBIT B – [Reserved]
EXHIBIT C – Certification Regarding Debarment, Suspension and other Responsibility Matters
EXHIBIT D – Requisition Procedures
EXHIBIT E – Compliance With Laws
EXHIBIT F – WIFIA Debt Service
EXHIBIT G-1 – Opinions Required from Counsel to Borrower
EXHIBIT G-2 – Opinions Required from Bond Counsel
EXHIBIT H – Form of Certificate of Trustee
EXHIBIT I – Form of Borrower’s Officer’s Certificate
EXHIBIT J – Form of Certificate of Substantial Completion
EXHIBIT K – Form of Quarterly Report
EXHIBIT L – Form of Public Benefits Report
EXHIBIT M – Form of Non-Lobbying Certificate

WIFIA LOAN AGREEMENT

THIS WIFIA LOAN AGREEMENT (this “**Agreement**”), dated as of July 25, 2022, is by and between **NARRAGANSETT BAY COMMISSION**, a public corporation organized and existing under the laws of the State of Rhode Island (the “**State**”), with an address at One Service Road, Providence, RI 02905 (the “**Borrower**” or the “**Commission**”), and the **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**, an agency of the United States of America, acting by and through the Administrator of the Environmental Protection Agency (the “**Administrator**”), with an address at 1200 Pennsylvania Avenue NW, Washington, DC 20460 (the “**WIFIA Lender**”).

RECITALS:

WHEREAS, the Congress of the United States of America enacted the Water Infrastructure Finance and Innovation Act (“**WIFIA**”), § 5021 *et seq.* of Public Law 113-121 (as amended, and as may be further amended from time to time, the “**Act**”), which is codified as 33 U.S.C. §§ 3901-3915;

WHEREAS, the Act authorizes the WIFIA Lender to enter into agreements to provide financial assistance with one or more eligible entities to make secured loans with appropriate security features to finance a portion of the eligible costs of projects eligible for assistance;

WHEREAS, the Borrower has requested that the WIFIA Lender make the WIFIA Loan (as defined herein) in an original principal amount not to exceed \$55,499,228 (excluding interest that is compounded and capitalized in accordance with the terms hereof) to be used to pay a portion of the Eligible Project Costs (as defined herein) related to the Project (as defined herein) pursuant to the application for WIFIA financial assistance dated February 2, 2022 (the “**Application**”);

WHEREAS, as of the date hereof, the Administrator has approved WIFIA financial assistance for the Project to be provided in the form of the WIFIA Loan, subject to the terms and conditions contained herein;

WHEREAS, based on the Application and the representations, warranties and covenants set forth herein, the WIFIA Lender proposes to make funding available to the Borrower through the purchase of the WIFIA Bond (as defined herein), upon the terms and conditions set forth herein;

WHEREAS, the Borrower agrees to repay any amount due pursuant to this Agreement and the WIFIA Bond in accordance with the terms and provisions hereof and of the WIFIA Bond; and

WHEREAS, the WIFIA Lender has entered into this Agreement in reliance upon, among other things, the information and representations of the Borrower set forth in the Application and the supporting information provided by the Borrower.

NOW, THEREFORE, the premises being as stated above, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged to be adequate, and intending to be legally bound hereby, it is hereby mutually agreed by and between the Borrower and the WIFIA Lender as follows:

ARTICLE I DEFINITIONS AND INTERPRETATION

Section 1. Definitions.

Unless the context otherwise requires, capitalized terms used in this Agreement shall have the meanings set forth below in this Section 1 (*Definitions*) or as otherwise defined in this Agreement. Any term used in this Agreement that is defined by reference to any other agreement shall continue to have the meaning specified in such agreement (as amended from time to time), whether or not such agreement remains in effect.

“**Act**” means the Act as defined in the recitals hereto.

“**Additional Principal Project Contracts**” means, with respect to the Project, any prime contract entered into by the Borrower after the Effective Date that involves any construction activity (such as demolition, site preparation, civil works construction, installation, remediation, refurbishment, rehabilitation, or removal and replacement services) for the Project.

“**Additional Security**” has the meaning set forth in Section 208 (*Additional Security*) of the Indenture.

“**Additional Senior Obligations**” means any Senior Obligations permitted under Section 15(a) (*Negative Covenants – Indebtedness*) and under the Indenture, which Senior Obligations are issued or incurred after the Effective Date.

“**Additional Subordinated Obligations**” means any Subordinated Obligations permitted under Section 15(a) (*Negative Covenants – Indebtedness*) and under the Indenture, which Subordinated Obligations are issued or incurred after the Effective Date.

“**Administrator**” has the meaning provided in the preamble hereto.

“**Agency Bonds**” has the meaning set forth in the Indenture.

“**Agreement**” has the meaning provided in the preamble hereto.

“**Anticipated WIFIA Loan Disbursement Schedule**” means the schedule set forth in **Exhibit F** (*WIFIA Debt Service*), reflecting the anticipated disbursement of proceeds of the WIFIA Loan, as such schedule may be amended from time to time pursuant to Section 4(c) (*Disbursement Conditions*).

“**Application**” has the meaning provided in the recitals hereto.

“Bank Secrecy Act” means the Bank Secrecy Act of 1970, as amended, and the regulations promulgated thereunder.

“Bankruptcy Related Event” means, with respect to the Borrower, (a) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Borrower or any of its debts, or of a substantial part of the assets thereof, under any Insolvency Laws, or (ii) the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for the Borrower or for a substantial part of the assets thereof and, in any case referred to in the foregoing subclauses (i) and (ii), such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered; (b) the Borrower shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official therefor or for a substantial part of the assets thereof, (ii) generally not be paying its debts as they become due unless such debts are the subject of a bona fide dispute, or become unable to pay its debts generally as they become due, (iii) fail to make a payment of WIFIA Debt Service in accordance with the provisions of Section 8 (*Payment of Principal and Interest*) and such failure is not cured within thirty (30) days following notification by the WIFIA Lender of failure to make such payment, (iv) make a general assignment for the benefit of creditors, (v) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition with respect to it described in clause (a) of this definition, (vi) commence a voluntary proceeding under any Insolvency Law, or file a voluntary petition seeking liquidation, reorganization, an arrangement with creditors or an order for relief, in each case under any Insolvency Law, (vii) file an answer admitting the material allegations of a petition filed against it in any proceeding referred to in the foregoing subclauses (i) through (v), inclusive, of this clause (b), or (viii) take any action for the purpose of effecting any of the foregoing, including seeking approval or legislative enactment by any Governmental Authority to authorize commencement of a voluntary proceeding under any Insolvency Law; (c) (i) any Person shall commence a process pursuant to which all or a substantial part of the Pledged Collateral may be sold or otherwise disposed of in a public or private sale or disposition pursuant to a foreclosure of the Liens thereon securing the Senior Obligations, or (ii) any Person shall commence a process pursuant to which all or a substantial part of the Pledged Collateral may be sold or otherwise disposed of pursuant to a sale or disposition of such Pledged Collateral in lieu of foreclosure; or (d) any receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official shall transfer, pursuant to directions issued by the Bondholders, funds on deposit in any of the System Accounts upon the occurrence and during the continuation of an Event of Default under this Agreement or an event of default under the Related Documents for application to the prepayment or repayment of any principal amount of the Senior Obligations other than in accordance with the provisions of the Indenture.

“Base Case Financial Model” means a financial model prepared by the Borrower forecasting the capital costs of the System (including the Project) and the rates, revenues, operating expenses and major maintenance requirements of the System for time periods through the Final Maturity Date and based upon assumptions and methodology provided by the Borrower and acceptable to the WIFIA Lender as of the Effective Date, which model shall be provided to the WIFIA Lender as a fully functional Microsoft Excel – based financial model or such other format requested by the WIFIA Lender.

“**Bond**” has the meaning set forth in the Indenture.

“**Bondholder**” or “**Holder**” has the meaning set forth in the Indenture.

“**Borrower**” has the meaning provided in the preamble hereto.

“**Borrower Fiscal Year**” means (a) as of the Effective Date, a fiscal year of the Borrower commencing on July 1 of any calendar year and ending on June 30 of the immediately succeeding calendar year or (b) such other fiscal year as the Borrower may hereafter adopt.

“**Borrower’s Authorized Representative**” means any Person who shall be designated as such pursuant to Section 21 (*Borrower’s Authorized Representative*).

“**Business Day**” means any day other than a Saturday, a Sunday or any other day on which offices of the Government are authorized to be closed or on which any Fiduciary (as defined in the Indenture) is authorized or required by law to be closed for business.

“**Capitalized Interest Period**” means the period from (and including) the Effective Date to (but excluding) the first day of the initial Payment Period, subject to earlier termination as set forth in Section 8(b) (*Payment of Principal and Interest – Capitalized Interest Period*).

“**Congress**” means the Congress of the United States of America.

“**Construction Period**” means the period from the Effective Date through the Substantial Completion Date.

“**Construction Period Servicing Fee**” has the meaning provided in Section 10(a)(ii) (*Fees and Expenses – Fees*).

“**Construction Schedule**” means (a) the initial schedule or schedules on which the construction timetables for the Project are set forth, attached as **Schedule III** (*Construction Schedule*), and (b) any updates thereto included in the periodic reports submitted to the WIFIA Lender pursuant to Section 16(d) (*Reporting Requirements – Construction Reporting*) most recently approved by the WIFIA Lender.

“**Control**” means, when used with respect to any particular Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or partnership or other ownership interests, by contract or otherwise, and the terms “**Controlling**” and “**Controlled by**” have meanings correlative to the foregoing.

“**CPI**” means the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100 (not seasonally adjusted) or its successor, published by the Bureau of Labor Statistics and located at <https://www.bls.gov/news.release/cpi.t01.htm>.

“**Debt Service Payment Commencement Date**” means the earliest to occur of either (a) September 1, 2029; or (b) if the Capitalized Interest Period ends pursuant to Section 8(b) (*Payment of Principal and Interest – Capitalized Interest Period*) due to the occurrence of an

Event of Default, the first Payment Date immediately following the end of the Capitalized Interest Period; or (c) the Payment Date falling closest to, but not later than, the fifth anniversary of the Substantial Completion Date.

“**Debt Service Requirement**” has the meaning set forth in the Indenture.

“**Default**” means any event or condition that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

“**Default Rate**” means an interest rate equal to the sum of (a) the WIFIA Interest Rate plus (b) 200 basis points.

“**Development Default**” means (a) the Borrower abandons work or fails, in the reasonable judgment of the WIFIA Lender, to diligently prosecute the work related to the Project or (b) the Borrower fails to achieve Substantial Completion of the Project within twenty-four (24) months following the Projected Substantial Completion Date, unless delayed due to Uncontrollable Force that is not due to the fault of the Borrower (and which the Borrower could not reasonably have avoided or mitigated).

“**Dollars**” and “**\$**” means the lawful currency of the United States of America.

“**DPUC Order**” means order no. 24412 issued by the Rhode Island Division of Public Utilities and Carriers on June 3, 2022 pursuant to Rhode Island General Laws Section 39-3-15 for the approval of the issuance of the WIFIA Bond.

“**Effective Date**” means the date of this Agreement.

“**Eligible Project Costs**” means amounts in the Project Budget approved by the WIFIA Lender, which are paid by or for the account of the Borrower in connection with the Project (including, as applicable, Project expenditures incurred prior to the receipt of WIFIA credit assistance), which shall arise from the following:

- (a) development-phase activities, including planning, feasibility analysis (including any related analysis necessary to carry out an eligible project), revenue forecasting, environmental review, permitting, preliminary engineering and design work and other preconstruction activities;
- (b) construction, reconstruction, rehabilitation, and replacement activities;
- (c) the acquisition of real property or an interest in real property (including water rights, land relating to the Project and improvements to land), environmental mitigation (including acquisitions pursuant to Section 3905(8) of Title 33 of the United States Code), construction contingencies, and acquisition of equipment; or
- (d) capitalized interest (with respect to Obligations other than the WIFIA Loan) necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses, and other carrying costs during construction;

provided, that Eligible Project Costs must be consistent with all other applicable federal law, including the Act.

“**EMMA**” means the Electronic Municipal Market Access system as described in 1934 Act Release No. 59062 and maintained by the Municipal Securities Rulemaking Board established pursuant to Section 15B(b) of the Securities Exchange Act of 1934, as amended, and its successors.

“**Environmental Laws**” has the meaning provided in Section 12(r) (*Representations and Warranties of Borrower – Environmental Matters*).

“**EPA**” means the United States Environmental Protection Agency.

“**Event of Default**” has the meaning provided in Section 17 (*Events of Default and Remedies*).

“**Event of Loss**” means any event or series of events that causes any portion of the System to be damaged, destroyed or rendered unfit for normal use for any reason whatsoever, including through a casualty, a failure of title, or any loss of such property through eminent domain.

“**Existing Indebtedness**” means the indebtedness of the Borrower that has been issued or incurred prior to the Effective Date and remains Outstanding and is listed and described in **Schedule IV** (*Existing Indebtedness*).

“**Existing Principal Project Contract**” means each contract of the Borrower set forth in **Schedule 12(n)** (*Existing Principal Project Contracts*).

“**Federal Fiscal Year**” means the fiscal year of the Government, which is the twelve (12) month period that ends on September 30 of the specified calendar year and begins on October 1 of the preceding calendar year.

“**Final Disbursement Date**” means the earliest of (a) the date on which the WIFIA Loan has been disbursed in full; (b) the last anticipated date of disbursement set forth in the then-current Anticipated WIFIA Loan Disbursement Schedule; (c) the date on which the Borrower has certified to the WIFIA Lender that it will not request any further disbursements under the WIFIA Loan; (d) the date on which the WIFIA Lender terminates its obligations relating to disbursements of any undisbursed amounts of the WIFIA Loan in accordance with Section 17 (*Events of Default and Remedies*); and (e) the date that is one (1) year after the Substantial Completion Date.

“**Final Maturity Date**” means the earlier of (a) September 1, 2061 (or such earlier date as is set forth in an updated **Exhibit F** (*WIFIA Debt Service*) pursuant to Section 8(g) (*Payment of Principal and Interest – Adjustments to Loan Amortization Schedule*)); and (b) the Payment Date immediately preceding the date that is thirty-five (35) years following the Substantial Completion Date.

“**Financial Statements**” has the meaning provided in Section 12(v) (*Representations and Warranties of Borrower – Financial Statements*).

“**GAAP**” means generally accepted accounting principles for governmental entities, as established by GASB, in effect from time to time in the United States of America.

“**GASB**” means the Government Accounting Standards Board, or any successor entity with responsibility for establishing accounting rules for governmental entities.

“**Government**” means the United States of America and its departments and agencies.

“**Governmental Approvals**” means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions and declarations of or with any Governmental Authority.

“**Governmental Authority**” means any federal, state, provincial, county, city, town, village, municipal or other government or governmental department, commission, council, court, board, bureau, agency, authority or instrumentality (whether executive, legislative, judicial, administrative or regulatory), of or within the United States of America or its territories or possessions, including the State and its counties and municipalities, and their respective courts, agencies, instrumentalities and regulatory bodies, or any entity that acts “on behalf of” any of the foregoing, whether as an agency or authority of such body.

“**Indemnitee**” has the meaning provided in Section 32 (*Indemnification*).

“**Indenture**” means that certain Trust Indenture, dated as of April 15, 2004, between the Borrower and the Trustee, as amended or supplemented.

“**Indenture Documents**” means the Indenture, each Supplemental Indenture (including the WIFIA Supplemental Indenture), documentation related to any Additional Security, Qualified Swap Agreements and each other agreement, instrument and document executed and delivered pursuant to or in connection with any of the foregoing.

“**Insolvency Laws**” means the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, as from time to time amended and in effect, and any state bankruptcy, insolvency, receivership, conservatorship or similar law now or hereafter in effect.

“**Interest Payment Date**” means each March 1 and September 1, commencing on the Debt Service Payment Commencement Date.

“**Investment Grade Rating**” means a public rating no lower than ‘BBB-’, ‘Baa3’, ‘BBB (low)’, or higher, from a Nationally Recognized Rating Agency.

“**Lien**” means any mortgage, pledge, hypothecation, assignment, mandatory deposit arrangement, encumbrance, attachment, lien (statutory or other), charge or other security interest, or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever, including any sale-leaseback arrangement, any conditional sale or other title retention agreement, any financing lease having substantially the same effect as any of the

foregoing, and the filing of any financing statement or similar instrument under the UCC or any other applicable law.

“**Loan Amortization Schedule**” means the Loan Amortization Schedule reflected in the applicable column of **Exhibit F** (*WIFIA Debt Service*), as amended from time to time in accordance with Section 8(g) (*Payment of Principal and Interest – Adjustments to Loan Amortization Schedule*).

“**Material Adverse Effect**” means (a) a change in, or effect on (i) the System, the Project or the Revenues or (ii) the business, operations, properties, condition (financial or otherwise) or prospects of the Borrower, which would, in either case, adversely affect the Borrower’s ability to pay its Obligations when due; or (b) a material adverse effect on (i) the legality, validity or enforceability of any material provision of any Indenture Document or WIFIA Loan Document, (ii) the ability of the Borrower to enter into, perform or comply with any of its material obligations under any Related Document, (iii) the validity, enforceability or priority of the Liens provided under the Indenture Documents on the Pledged Collateral in favor of the Secured Parties or (iv) the WIFIA Lender’s rights or remedies available under any WIFIA Loan Document.

“**Nationally Recognized Rating Agency**” means any nationally recognized statistical rating organization identified as such by the Securities and Exchange Commission.

“**NEPA**” means the National Environmental Policy Act of 1969, as amended, and any successor statute of similar import, and regulations thereunder, in each case as in effect from time to time.

“**NEPA Determination**” means the Categorical Exclusion for the Project issued by EPA on June 30, 2022 in accordance with NEPA.

“**Net Revenues**” has the meaning set forth in the Indenture.

“**Non-Lobbying Certificate**” means a certificate, signed by the Borrower’s Authorized Representative, with respect to the prohibition on the use of appropriated funds for lobbying pursuant to 49 C.F.R. § 20.100(b), substantially in the form attached hereto as **Exhibit M** (*Form of Non-Lobbying Certificate*).

“**Obligations**” means debt of the Borrower that is secured by a pledge and lien on all or a portion of the Revenues, including the Senior Obligations and Subordinated Obligations.

“**OFAC**” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“**Operating Period Servicing Fee**” has the meaning provided in Section 10(a)(iii) (*Fees and Expenses – Fees*).

“**Operating Expenses**” has the meaning set forth in the Indenture.

“Organizational Documents” means: (a) the constitutional and statutory provisions that are the basis for the existence and authority of the Borrower, including any enabling statutes, ordinances or public charters and any other organic laws establishing the Borrower and (b) the resolutions, bylaws, code of regulations, operating procedures or other organizational documents of or adopted by the Borrower by which the Borrower, its powers, operations or procedures or its securities, bonds, notes or other obligations are governed or from which such powers are derived.

“Outstanding” has the meaning set forth in the Indenture.

“Outstanding WIFIA Loan Balance” means the sum of (i) the aggregate principal amount of the WIFIA Loan drawn by the Borrower plus (ii) compounded and capitalized interest added to the principal balance of the WIFIA Loan minus (iii) the aggregate principal amount of the WIFIA Loan repaid by the Borrower, as determined in accordance with Section 8(g) (*Payment of Principal and Interest – Adjustments to Loan Amortization Schedule*).

“Patriot Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, as amended, and all regulations promulgated thereunder.

“Payment Date” means each Interest Payment Date and each Principal Payment Date.

“Payment Default” has the meaning provided in Section 17(a)(i) (*Events of Default and Remedies – Payment Default*).

“Payment Period” means the six (6) month period beginning on March 1, 2029 and ending on August 31, 2029, and each succeeding six (6) month period thereafter; provided, however, that if the Debt Service Payment Commencement Date occurs earlier than September 1, 2029, the first Payment Period shall be the six (6) month period ending on the date immediately prior to the Debt Service Payment Commencement Date.

“Permitted Debt” means:

- (a) Existing Indebtedness;
- (b) the WIFIA Loan;
- (c) Additional Senior Obligations;
- (d) Additional Subordinated Obligations; and
- (e) any other Obligations permitted by the Indenture.

“Permitted Investments” has the meaning set forth in the Indenture.

“Permitted Liens” means:

- (a) Liens imposed pursuant to the WIFIA Loan Documents;

(b) Liens imposed by law, including Liens for taxes that are not yet due or are being contested in compliance with Section 14(i) (*Affirmative Covenants – Material Obligations*);

(c) carriers', warehousemen's, mechanics', materialmen's, repairmen's and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than thirty (30) days or are being contested in compliance with Section 14(i) (*Affirmative Covenants – Material Obligations*);

(d) pledges and deposits made in the ordinary course of business in compliance with workers' compensation, unemployment insurance, and other social security laws or regulations;

(e) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business;

(f) judgment Liens in respect of judgments that do not constitute an Event of Default under Section 17(a)(vi) (*Events of Default and Remedies – Material Adverse Judgment*); and

(g) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that, in any case, do not secure any monetary obligations and do not materially detract from the value of the affected property or interfere with the ordinary conduct of business of the Borrower.

“Person” means and includes an individual, a general or limited partnership, a joint venture, a corporation, a limited liability company, a trust, an unincorporated organization and any Governmental Authority.

“Pledged Collateral” has the meaning assigned to the term “Trust Estate,” as set forth in the Indenture.

“Principal Payment Date” means each September 1, commencing on September 1, 2034.

“Principal Project Contracts” means the Existing Principal Project Contracts and the Additional Principal Project Contracts.

“Principal Project Party” means any Person (other than the Borrower) party to a Principal Project Contract.

“Project” means the rehabilitation, replacement, and construction of new facilities at Field's Point and Lincoln to provide resiliency to the System through seven (7) projects: (a) Field's Point Wastewater Treatment Facility (“FPWWTF”) Improvements, (b) FPWWTF Ernest Street Pump Station Improvements, (c) FPWWTF Maintenance and Storage Buildings, (d) NBC Solar Carport, (e) FPWWTF Electrical Improvements, (f) Cybersecurity Improvements, and (g)

Lincoln Septage Receiving Station Facility Replacement, as further described in **Schedule I** (*Project Definition*).

“Project Budget” means the budget for the Project attached to this Agreement as **Schedule II** (*Project Budget*) showing a summary of Total Project Costs with a breakdown of all Eligible Project Costs and the estimated sources and uses of funds for the Project.

“Projected Substantial Completion Date” means September 1, 2026, as such date may be adjusted in accordance with Section 16(d) (*Reporting Requirements – Construction Reporting*).

“Public Benefits Report” has the meaning provided in Section 16(e) (*Reporting Requirements – Public Benefits Report*).

“Qualified Swap Agreement” has the meaning set forth in the Indenture.

“Qualified Swap Payments” has the meaning set forth in the Indenture.

“Rate Covenant” has the meaning provided in Section 14(a) (*Affirmative Covenants – Rate Covenant*).

“Reimbursement Obligations” has the meaning set forth in the Indenture.

“Related Documents” means the Indenture Documents, this Agreement, the WIFIA Bond and the Principal Project Contracts.

“Requisition” has the meaning provided in Section 4(a) (*Disbursement Conditions*).

“Reserved Revenues” has the meaning set forth in the Indenture.

“Revenue Fund” has the meaning set forth in the Indenture.

“Revenues” has the meaning set forth in the Indenture.

“Secured Obligations” means the Senior Obligations, Subordinated Obligations, Reimbursement Obligations, Qualified Swap Payments and any payments due from the Borrower or the Trustee on behalf of the Borrower, as a cost, expense or fee under the Qualified Swap Agreement, including, but not limited to, any swap termination payment or indemnification of the counterparty to a Qualified Swap Agreement; provided that (a) in the case of Qualified Swap Payments or other obligations of the Borrower or Trustee under a Qualified Swap Agreement, only to the extent the Borrower’s obligations under the Qualified Swap Agreement are secured by the Pledged Collateral pursuant to the Indenture Documents, and (b) in the case of Reimbursement Obligations, only to the extent the Borrower’s Reimbursement Obligations are secured by the Pledged Collateral pursuant to the Indenture Documents.

“Secured Parties” means the Trustee, the WIFIA Lender, other Bondholders, each Counterparty (as defined in the Indenture), and each provider of any Additional Security; provided that (a) in the case of a Counterparty, only to the extent the Borrower’s obligations in

respect of Qualified Swap Payments to the Counterparty are secured by the Pledged Collateral pursuant to the Indenture Documents, and (b) in the case of a provider of Additional Security, only to the extent the Borrower's Reimbursement Obligations to such provider are secured by the Pledged Collateral pursuant to the Indenture Documents.

"Senior Obligations" means (a) Bonds (as defined in the Indenture) other than Subordinated Obligations and (b) any other obligations secured and permitted to be secured under the Indenture by a senior Lien on the Pledged Collateral.

"Servicer" means such entity or entities as the WIFIA Lender shall designate from time to time to perform, or assist the WIFIA Lender in performing, certain duties hereunder.

"Servicing Fee" means the Servicing Set-Up Fee and any Construction Period Servicing Fee or Operating Period Servicing Fee.

"Servicing Set-Up Fee" has the meaning provided in Section 10(a)(i) (*Fees and Expenses – Fees*).

"State" has the meaning provided in the preamble hereto.

"Subordinated Obligations" means Subordinated Bonds, as defined in the Indenture.

"Substantial Completion" means, with respect to the Project, the stage at which the Project is able to perform the functions for which the Project is designed.

"Substantial Completion Date" means the date on which the Borrower certifies to the WIFIA Lender, with evidence satisfactory to the WIFIA Lender, that Substantial Completion has occurred.

"Supplemental Indenture" has the meaning set forth in the Indenture and includes the WIFIA Supplemental Indenture.

"System" has the meaning set forth in the Indenture.

"System Accounts" means those funds and accounts established pursuant to Section 502 (*Establishment of Funds and Accounts*) of the Indenture.

"Total Project Costs" means (a) the costs paid or incurred or to be paid or incurred by the Borrower in connection with or incidental to the acquisition, design, construction and equipping of the Project, including legal, administrative, engineering, planning, design, insurance and financing (including costs of issuance); (b) amounts, if any, required by the Indenture Documents or the WIFIA Loan Documents to be paid into any fund or account upon the incurrence of the WIFIA Loan, any Senior Obligations, or any Subordinated Obligations, in each case in respect of the Project; (c) payments when due (whether at the maturity of principal, the due date of interest, or upon optional or mandatory prepayment) during the Construction Period in respect of any indebtedness of the Borrower or any Additional Security maintained by the Borrower, in each case in connection with the Project (other than the WIFIA Loan); and (d) costs of equipment and supplies and initial working capital and reserves required by the Borrower for

the commencement of operation of the Project, including general administrative expenses and overhead of the Borrower.

“**Trustee**” has the meaning set forth in the Indenture.

“**Uncontrollable Force**” means any cause beyond the control of the Borrower, including: (a) a hurricane, tornado, flood or similar occurrence, landslide, earthquake, fire or other casualty, strike or labor disturbance, freight embargo, act of a public enemy, explosion, war, blockade, terrorist act, insurrection, riot, general arrest or restraint of government and people, civil disturbance or similar occurrence, sabotage, or act of God (provided, that the Borrower shall not be required to settle any strike or labor disturbance in which it may be involved) or (b) the order or judgment of any federal, state or local court, administrative agency or governmental officer or body, if it is not also the result of willful or negligent action or a lack of reasonable diligence of the Borrower and the Borrower does not control the administrative agency or governmental officer or body; provided, that the diligent contest in good faith of any such order or judgment shall not constitute or be construed as a willful or negligent action or a lack of reasonable diligence of the Borrower.

“**Uniform Commercial Code**” or “**UCC**” means the Uniform Commercial Code, as in effect from time to time in the State.

“**WIFIA**” has the meaning provided in the recitals hereto.

“**WIFIA Bond**” means the 2022 Series A Bond (as defined in the WIFIA Supplemental Indenture) delivered by the Borrower in substantially the form of **Exhibit A** (*Form of WIFIA Bond*).

“**WIFIA Debt Service**” means with respect to any Payment Date occurring on or after the Debt Service Payment Commencement Date, the principal portion of the Outstanding WIFIA Loan Balance and any interest payable thereon (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Borrower), in each case, (a) as set forth on **Exhibit F** (*WIFIA Debt Service*) and (b) due and payable on such Payment Date in accordance with the provisions of Section 8(c) (*Payment of Principal and Interest – Payment of WIFIA Debt Service*).

“**WIFIA Debt Service Account**” means the debt service account established for the benefit of the WIFIA Lender in accordance with the terms of the Indenture and the WIFIA Supplemental Indenture.

“**WIFIA Interest Rate**” has the meaning provided in Section 6 (*Interest Rate*).

“**WIFIA Lender**” has the meaning provided in the preamble hereto.

“**WIFIA Lender’s Authorized Representative**” means the Administrator and any other Person who shall be designated as such pursuant to Section 22 (*WIFIA Lender’s Authorized Representative*).

“**WIFIA Loan**” means the secured loan made by the WIFIA Lender to the Borrower on the terms and conditions set forth herein, pursuant to the Act, in an original principal amount not to exceed \$55,499,228 (excluding compounded and capitalized interest), to be used in respect of Eligible Project Costs paid or incurred by the Borrower.

“**WIFIA Loan Documents**” means this Agreement, the WIFIA Bond and the Indenture Documents (excluding documentation related to Additional Security, Qualified Swap Agreements and any Supplemental Indenture other than the WIFIA Supplemental Indenture).

“**WIFIA Supplemental Indenture**” means the Thirty-First Supplemental Indenture, dated July 25, 2022, between the Borrower and the Trustee.

Section 2. Interpretation.

(a) Unless the context shall otherwise require, the words “hereto,” “herein,” “hereof” and other words of similar import refer to this Agreement as a whole.

(b) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders and vice versa.

(c) Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise require.

(d) The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.”

(e) Whenever the Borrower’s knowledge is implicated in this Agreement or the phrase “to the Borrower’s knowledge” or a similar phrase is used in this Agreement, the Borrower’s knowledge or such phrase(s) shall be interpreted to mean to the best of the Borrower’s actual knowledge. Unless the context shall otherwise require, references to any Person shall be deemed to include such Person’s successors and permitted assigns.

(f) Unless the context shall otherwise require, references to preambles, recitals, Sections, subsections, clauses, schedules, exhibits, appendices and provisions are to the applicable preambles, recitals, Sections, subsections, clauses, schedules, exhibits, appendices and provisions of this Agreement.

(g) The schedules and exhibits to this Agreement, and the appendices and schedules to such exhibits, are hereby incorporated by reference and made an integral part of this Agreement.

(h) The headings or titles of this Agreement and its Sections, schedules or exhibits, as well as any table of contents, are for convenience of reference only and shall not define or limit its provisions.

(i) Unless the context shall otherwise require, all references to any resolution, contract, agreement, lease or other document shall be deemed to include any amendments or

supplements to, or modifications or restatements or replacements of, such documents that are approved from time to time in accordance with the terms thereof and hereof.

(j) Every request, order, demand, application, appointment, notice, statement, certificate, consent or similar communication or action hereunder by any party shall, unless otherwise specifically provided, be delivered in writing in accordance with Section 31 (*Notices*) and signed by a duly authorized representative of such party.

(k) References to “disbursements of WIFIA Loan proceeds” or similar phrasing shall be construed as meaning the same thing as “paying the purchase price of the WIFIA Bond”.

(l) Whenever this Agreement requires a change in principal amount, interest rate or amortization schedule of the WIFIA Loan, it is intended that such change be reflected in the WIFIA Bond. Whenever there is a mandatory or optional prepayment of the WIFIA Loan, it is intended that such prepayment be implemented through a prepayment of the WIFIA Bond.

ARTICLE II THE WIFIA LOAN

Section 3. WIFIA Loan Amount. The original principal amount of the WIFIA Loan shall not exceed \$55,499,228 (excluding any interest that is compounded and capitalized in accordance with the terms hereof). WIFIA Loan proceeds available to be drawn shall be disbursed from time to time in accordance with Section 4 (*Disbursement Conditions*) and Section 11(b) (*Conditions Precedent – Conditions Precedent to Disbursements*).

Section 4. Disbursement Conditions.

(a) WIFIA Loan proceeds shall be disbursed solely in respect of Eligible Project Costs paid or incurred and approved for payment by or on behalf of the Borrower in connection with the Project. If the Borrower intends to utilize the WIFIA Loan proceeds to make progress payments for Project construction work performed under the Principal Project Contracts, the Borrower shall demonstrate to the satisfaction of the WIFIA Lender that such progress payments are commensurate with the cost of the work that has been completed. Each disbursement of the WIFIA Loan shall be made pursuant to a requisition and certification (a “**Requisition**”) in the form set forth in **Appendix One** (*Form of Requisition*) to **Exhibit D** (*Requisition Procedures*), along with all documentation and other information required thereby, submitted by the Borrower to, and approved by, the WIFIA Lender, all in accordance with the procedures of **Exhibit D** (*Requisition Procedures*) and subject to the requirements of this Section 4 (*Disbursement Conditions*) and the conditions set forth in Section 11(b) (*Conditions Precedent – Conditions Precedent to Disbursements*); provided, that no disbursements of WIFIA Loan proceeds shall be made after the Final Disbursement Date.

(b) The Borrower shall deliver copies of each Requisition to the WIFIA Lender and the Servicer (if any) on or before the first (1st) Business Day of each month for which a disbursement is requested. If the WIFIA Lender shall expressly approve a Requisition or shall not expressly deny a Requisition, disbursements of funds shall be made on the fifteenth (15th) day of the month for which a disbursement has been requested, or on the next succeeding

Business Day if such fifteenth (15th) day is not a Business Day. Express WIFIA Lender approval or denial shall be substantially in the form annexed hereto as **Appendix Two** (*[Approval/Disapproval] of the WIFIA Lender*) to **Exhibit D** (*Requisition Procedures*). In no event shall disbursements be made more than once each month.

(c) At the time of any disbursement, the sum of all prior disbursements of WIFIA Loan proceeds and the disbursement then to be made shall not exceed the cumulative disbursements through the end of the then-current Federal Fiscal Year set forth in the Anticipated WIFIA Loan Disbursement Schedule, as the same may be amended from time to time in accordance with the terms of this Agreement. Subject to this Section 4 (*Disbursement Conditions*), any scheduled disbursement (as reflected in the Anticipated WIFIA Loan Disbursement Schedule) that remains undrawn at the end of any Federal Fiscal Year shall automatically roll forward to be available in the succeeding Federal Fiscal Year up to the last anticipated date of disbursement set forth in the Anticipated WIFIA Loan Disbursement Schedule, having the effect of automatically updating the Anticipated WIFIA Loan Disbursement Schedule without need for the WIFIA Lender's approval. The Borrower may also amend the Anticipated WIFIA Loan Disbursement Schedule by submitting a revised version thereof to the WIFIA Lender no later than thirty (30) days prior to the proposed effective date of such amendment, together with a detailed explanation of the reasons for such revisions. Such revised Anticipated WIFIA Loan Disbursement Schedule shall become effective upon the WIFIA Lender's approval thereof, which approval shall be granted or denied in the WIFIA Lender's sole discretion.

Section 5. Term. The term of the WIFIA Loan shall extend from the Effective Date to the Final Maturity Date or to such earlier date as all amounts due or to become due to the WIFIA Lender hereunder have been irrevocably paid in full in immediately available funds.

Section 6. Interest Rate. The interest rate with respect to the Outstanding WIFIA Loan Balance (the "**WIFIA Interest Rate**") shall be three and twelve hundredths percent (3.12%) per annum. Interest will accrue and be computed on the Outstanding WIFIA Loan Balance (as well as on any past due interest) from time to time on the basis of a three hundred sixty (360) day year of twelve (12) thirty (30) day months; provided, that, in the event of an Event of Default, the Borrower shall pay interest on the Outstanding WIFIA Loan Balance at the Default Rate, in the case of any Payment Default, from (and including) its due date to (but excluding) the date of actual payment and, in the case of any other Event of Default, from (and including) the date of such occurrence to (but excluding) the earlier of the date on which (x) such Event of Default has been cured (if applicable) in accordance with the terms of this Agreement and (y) the Outstanding WIFIA Loan Balance has been paid in full in cash.

Section 7. Security and Priority; Flow of Funds.

(a) As security for the WIFIA Loan, the Borrower shall pledge, assign and grant to the WIFIA Lender, or shall cause to be pledged, assigned and granted, to the Trustee for the benefit of the WIFIA Lender, Liens on the Pledged Collateral in accordance with the provisions of the Indenture Documents and shall deliver to the WIFIA Lender, as the registered owner or Bondholder, the WIFIA Bond. The WIFIA Loan shall constitute a Bond for purposes of the Indenture, entitled to all of the benefits of a Bond under the Indenture, and shall be secured

by the Liens on the Pledged Collateral, which Liens shall at all times be (i) pari passu in right of payment and right of security with the Liens on the Pledged Collateral for the benefit of the other Holders of Bonds and (ii) senior in right of payment and right of security to the Liens on the Pledged Collateral for the benefit of the Holders of Subordinated Obligations. Except for Permitted Liens, the Pledged Collateral will be free and clear of any pledge, Lien, charge or encumbrance thereon or with respect thereto, of equal rank with or senior to the pledge of the Borrower created under the Indenture Documents.

(b) The Indenture provides that all Revenues, except for certain exclusions as set forth in Section 504 (*Revenue Fund*) of the Indenture, and certain other moneys shall be deposited in the Revenue Fund and applied in accordance with the requirements specified in Section 504 (*Revenue Fund*) of the Indenture. A copy of such section, as of the Effective Date, is attached hereto as **Schedule V** (*Flow of Funds*).

(c) The Indenture provides that, during the continuance of an Event of Default (as defined in the Indenture), moneys, Reserve Deposits (as defined in the Indenture), Additional Security, if any, and funds and such Revenues and income therefrom held by and available to the Trustee, including as a result of the exercise of remedies by the Trustee on behalf of the Holders of Obligations, shall be applied as set forth in Section 702 (*Application of Revenues and Other Moneys after Default*) of the Indenture. A copy of such section, as of the Effective Date, is attached hereto as **Schedule VI** (*Flow of Funds Following Default*).

Section 8. Payment of Principal and Interest.

(a) Payment Dates. The Borrower agrees to pay the principal of and interest on the WIFIA Loan by making payments in accordance with the provisions of this Agreement, the WIFIA Bond, and the Indenture Documents, in the case of interest, on each Interest Payment Date, and in the case of principal, on each Principal Payment Date, and in each case, on each other date on which payment thereof is required to be made hereunder (including the Final Maturity Date and any date on which payment is due by reason of the acceleration of the maturity of the WIFIA Loan or otherwise); provided, that if any such date is not a Business Day, payment shall be made on the next Business Day following such date. Any payment in respect of the WIFIA Bond shall be treated as a payment in respect of the WIFIA Loan and any prepayment of principal in respect of the WIFIA Loan shall be treated as a redemption in respect of the WIFIA Bond. With respect to the WIFIA Loan (and the corresponding WIFIA Bond), interest shall accrue and be payable only on those amounts for which a Requisition has been submitted and funds (or such portion of funds as has been approved by the WIFIA Lender) have been made available to the Borrower for use on the Project in accordance with Section 4 (*Disbursement Conditions*).

(b) Capitalized Interest Period. No payment of the principal of or interest on the WIFIA Loan is required to be made during the Capitalized Interest Period. Interest on amounts compounded and capitalized pursuant to this Section 8(b) (*Payment of Principal and Interest – Capitalized Interest Period*) shall commence on the date such interest is added to the principal balance of the WIFIA Loan (and corresponding WIFIA Bond) during the Capitalized Interest Period. On each March 1 and September 1 occurring during the Capitalized Interest Period and on the day immediately following the end of the Capitalized Interest Period, interest

accrued on the WIFIA Loan in the six (6) month period ending immediately prior to such date shall be compounded, capitalized and added to the Outstanding WIFIA Loan Balance. Within thirty (30) days after the end of the Capitalized Interest Period, the WIFIA Lender shall give written notice to the Borrower stating the Outstanding WIFIA Loan Balance as of the close of business on the last day of the Capitalized Interest Period, which statement thereof shall be deemed conclusive absent manifest error; provided, however, that no failure to give or delay in giving such notice shall affect any of the obligations of the Borrower hereunder or under any of the other WIFIA Loan Documents. Notwithstanding the foregoing, the Capitalized Interest Period shall end immediately upon written notification to the Borrower by the WIFIA Lender that an Event of Default has occurred, in which case the provisions of this Section 8(b) (*Payment of Principal and Interest – Capitalized Interest Period*) shall no longer apply and payments of principal and interest shall be currently due and payable in accordance with the terms hereof and interest shall no longer be compounded and capitalized. For purposes of this subsection, an Event of Default under Section 17(a)(v) (*Events of Default and Remedies – Cross Default with Other Financing Documents*) shall be deemed to have occurred upon the occurrence of any nonpayment of principal of, interest on or redemption price of Senior Obligations when due, regardless of whether the holders of the applicable Obligations or the Trustee for the applicable obligations, or any legal order, has waived, permitted deferral of, or forgiven any such payment.

(c) Payment of WIFIA Debt Service. On each Payment Date occurring on or after the Debt Service Payment Commencement Date, the Borrower shall pay WIFIA Debt Service in the amounts set forth in respect of such Payment Date on **Exhibit F** (*WIFIA Debt Service*), as the same may be revised as provided in Section 8(g) (*Payment of Principal and Interest – Adjustments to Loan Amortization Schedule*), which payments shall be made in accordance with Section 8(d) (*Payment of Principal and Interest – Manner of Payment*).

(d) Manner of Payment. Payments under this Agreement (and the WIFIA Bond, which payments shall not be duplicative) shall be made by wire transfer on or before each Payment Date in Dollars and in immediately available funds (without counterclaim, offset or deduction) in accordance with the payment instructions provided by the WIFIA Lender prior to the relevant payment, as may be modified in writing from time to time by the WIFIA Lender; provided, that the failure to provide updated payment instructions shall not affect in any manner the Borrower's obligations hereunder or under any other WIFIA Loan Document. The Borrower may make any such payment or portion thereof (or direct the Trustee to make such payment) with funds then on deposit in the WIFIA Debt Service Account.

(e) Final Maturity Date. Notwithstanding anything herein to the contrary, the Outstanding WIFIA Loan Balance and any accrued interest thereon shall be due and payable in full on the Final Maturity Date (or on any earlier date on which the WIFIA Loan and corresponding WIFIA Bond are subject to prepayment prior to maturity thereof or shall be accelerated pursuant to the terms of the Indenture).

(f) WIFIA Bond. As evidence of the Borrower's obligation to repay the WIFIA Loan, the Borrower shall issue and deliver to the WIFIA Lender, on or prior to the Effective Date, the WIFIA Bond substantially in the form of **Exhibit A** (*Form of WIFIA Bond*), having a maximum original principal amount (excluding compounded and capitalized interest) of \$55,499,228 (subject to increase or decrease as herein provided), bearing interest at the rate set

forth in Section 6 (*Interest Rate*) and having principal and interest payable on the same dates set forth herein.

(g) Adjustments to Loan Amortization Schedule.

(i) The Outstanding WIFIA Loan Balance will be (A) increased on each occasion on which the WIFIA Lender disburses loan proceeds hereunder, by the amount of such disbursement of loan proceeds; (B) increased on each occasion on which interest on the WIFIA Loan is compounded and capitalized pursuant to the provisions of Section 8(b) (*Payment of Principal and Interest – Capitalized Interest Period*), by the amount of interest so compounded and capitalized; and (C) decreased upon each payment or prepayment of the Outstanding WIFIA Loan Balance, by the amount of principal so paid. The WIFIA Lender may in its discretion at any time and from time to time, or when so requested by the Borrower, advise the Borrower and the Trustee by written notice of the amount of the Outstanding WIFIA Loan Balance as of the date of such notice, and its determination of such amount in any such notice shall be deemed conclusive absent manifest error.

(ii) The WIFIA Lender is hereby authorized to modify the Loan Amortization Schedule included in **Exhibit F** (*WIFIA Debt Service*) from time to time, in accordance with the principles set forth below in this clause (ii), to reflect (A) any change to the Outstanding WIFIA Loan Balance, (B) any change to the date and amount of any principal or interest due and payable or to become due and payable by the Borrower under this Agreement, and (C) such other information as the WIFIA Lender may determine is necessary for administering the WIFIA Loan and this Agreement. Any calculations described above shall be rounded up to the nearest whole cent. Any partial prepayments of the Outstanding WIFIA Loan Balance pursuant to Section 9 (*Prepayment*) shall be applied in accordance with Section 9(d) (*Prepayment – General Prepayment Instructions*). Any adjustments or revisions to the Loan Amortization Schedule as a result of changes in the Outstanding WIFIA Loan Balance other than prepayments shall be applied to reduce future payments due on the WIFIA Bond in inverse order of maturity. Absent manifest error, the WIFIA Lender's determination of such matters as set forth on **Exhibit F** (*WIFIA Debt Service*) shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower's obligations hereunder or under any other WIFIA Loan Document. The WIFIA Lender shall provide the Borrower and the Trustee with a copy of **Exhibit F** (*WIFIA Debt Service*) as revised, but no failure to provide or delay in providing the Borrower with such copy shall affect any of the obligations of the Borrower under this Agreement or the other WIFIA Loan Documents.

Section 9. Prepayment.

(a) [RESERVED].

(b) Optional Prepayments. The Borrower may prepay the WIFIA Loan, without penalty or premium, (i) in full on any date on or after the Final Disbursement Date or (ii)

in part on any Payment Date on or after the Final Disbursement Date (and, if in part, the amounts thereof to be prepaid shall be determined by the Borrower; provided, that such prepayment shall be in principal amounts of \$1,000,000 or any integral multiple of \$1.00 in excess thereof), in each case from time to time but not more than once annually in accordance with 33 U.S.C. § 3908(c)(4)(A). The Borrower may make such prepayment by paying to the WIFIA Lender such principal amount of the WIFIA Loan to be prepaid, which shall be a Payment Date unless otherwise agreed by the WIFIA Lender, together with the unpaid interest accrued on the amount of principal so prepaid to the date of such prepayment. Each prepayment of the WIFIA Loan shall be made on such Payment Date and in such principal amount as shall be specified by the Borrower in a written notice delivered to the WIFIA Lender not less than ten (10) days or more than thirty (30) days prior to the date set for prepayment, unless otherwise agreed by the WIFIA Lender. At any time between delivery of such written notice and the applicable optional prepayment, the Borrower may, without penalty or premium, rescind its announced optional prepayment by further written notice to the WIFIA Lender. Anything in this Section 9(b) (*Prepayment – Optional Prepayments*) to the contrary notwithstanding, the failure by the Borrower to make any optional prepayment shall not constitute a breach or default under this Agreement.

(c) Borrower's Certificate. Each prepayment pursuant to this Section 9 (*Prepayment*) shall be effected pursuant to the WIFIA Supplemental Indenture and accompanied by a certificate signed by the Borrower's Authorized Representative identifying the provision of this Agreement pursuant to which such prepayment is being made and containing a calculation in reasonable detail of the amount of such prepayment.

(d) General Prepayment Instructions. Upon the WIFIA Lender's receipt of confirmation that payment in full in immediately available funds of the entire Outstanding WIFIA Loan Balance and any unpaid interest, fees and expenses with respect thereto has occurred as a result of a prepayment, the WIFIA Lender shall surrender the WIFIA Bond to the Borrower or its representative at the principal office of the WIFIA Lender. If the Borrower prepays only part of the unpaid balance of principal of the WIFIA Loan, the WIFIA Lender may make a notation on **Exhibit F** (*WIFIA Debt Service*) indicating the amount of principal of and interest on the WIFIA Loan then being prepaid. Absent manifest error, the WIFIA Lender's determination of such matters as set forth on **Exhibit F** (*WIFIA Debt Service*) shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower's obligations hereunder or under any other WIFIA Loan Document. All such partial prepayments of principal shall be applied to reduce future payments due on the WIFIA Loan in inverse order of maturity. If such funds have not been so paid on the prepayment date, such principal amount of the WIFIA Loan shall continue to bear interest until payment thereof at the rate provided for in Section 6 (*Interest Rate*).

Section 10. Fees and Expenses.

(a) Fees. The Borrower shall pay to the WIFIA Lender:

(i) a servicing set-up fee equal to \$10,790 (the “**Servicing Set-Up Fee**”), which shall be due and payable within thirty (30) days after receipt of an invoice from the WIFIA Lender with respect thereto (or, if earlier, the first disbursement date);

(ii) an annual construction period servicing fee equal to \$10,790 (the “**Construction Period Servicing Fee**”), which shall accrue on the first Business Day of the then-current Federal Fiscal Year and shall be due and payable on or prior to each November 15 during the Construction Period (including the Federal Fiscal Year during which the Substantial Completion Date occurs); provided, that the initial Construction Period Servicing Fee shall be due and payable within thirty (30) days after receipt of an invoice from the WIFIA Lender with respect thereto (or, if earlier, the first disbursement date of the WIFIA Loan), in a pro-rated amount equal to \$1,790; and

(iii) an annual operating period servicing fee equal to \$8,100 (the “**Operating Period Servicing Fee**”), which shall accrue on the first Business Day of the then-current Federal Fiscal Year and shall be due and payable on or prior to each November 15, beginning with the first November 15 following the end of the Federal Fiscal Year during which the Substantial Completion Date occurs, until (and including) the Final Maturity Date; provided, that the Operating Period Servicing Fee due and payable with respect to the Federal Fiscal Year during which the Final Maturity Date occurs shall be equal to the pro-rata monthly portion of the then applicable Operating Period Servicing Fee multiplied by the number of partial or whole months remaining between October 1 and the Final Maturity Date.

(b) The amount of each Construction Period Servicing Fee (other than the initial Construction Period Servicing Fee) and each Operating Period Servicing Fee shall be adjusted in proportion to the percentage change in CPI for the calendar year immediately preceding the calendar year during which such fee is due. The WIFIA Lender shall notify the Borrower of the amount of each such fee at least thirty (30) days before payment is due, which determination shall be conclusive absent manifest error.

(c) Expenses. The Borrower agrees, whether or not the transactions hereby contemplated shall be consummated, to reimburse the WIFIA Lender on demand from time to time, within thirty (30) days after receipt of any invoice from the WIFIA Lender, for any and all fees, costs, charges, and expenses incurred by it (including the fees, costs, and expenses of its legal counsel, financial advisors, auditors and other consultants and advisors) in connection with the negotiation, preparation, execution, delivery, and performance of this Agreement and the other WIFIA Loan Documents and the transactions hereby and thereby contemplated, including attorneys’, and engineers’ fees and professional costs, including all such fees, costs, and expenses incurred as a result of or in connection with (i) the enforcement of or attempt to enforce, or the protection or preservation of any right or claim under, the Pledged Collateral or any provision of this Agreement or any of the other WIFIA Loan Documents or the rights of the WIFIA Lender thereunder; (ii) any amendment, modification, waiver, or consent with respect to this Agreement or any other Related Document; and (iii) any work-out, restructuring, or similar arrangement of the obligations of the Borrower under this Agreement or the other WIFIA Loan Documents, including during the pendency of any Event of Default.

(d) The obligations of the Borrower under this Section 10 (*Fees and Expenses*) shall survive the payment or prepayment in full or transfer of the WIFIA Bond, the enforcement of any provision of this Agreement or the other WIFIA Loan Documents, any such amendments, waivers or consents, any Event of Default, and any such workout, restructuring, or similar arrangement.

ARTICLE III CONDITIONS PRECEDENT

Section 11. Conditions Precedent.

(a) Conditions Precedent to Effectiveness. Notwithstanding anything in this Agreement to the contrary, this Agreement shall not become effective until each of the following conditions precedent has been satisfied or waived in writing by the WIFIA Lender in its sole discretion:

(i) The Borrower shall have duly executed and delivered to the WIFIA Lender this Agreement and the WIFIA Bond, each in form and substance satisfactory to the WIFIA Lender, and the Authenticating Agent (as defined in the Indenture) shall have authenticated the WIFIA Bond.

(ii) To the extent not previously delivered to the WIFIA Lender, the Borrower shall have delivered to the WIFIA Lender certified, complete, and fully executed copies of each Indenture Document (excluding documentation related to Additional Security and Qualified Swap Agreements), together with any amendments, waivers or modifications thereto, that has been entered into on or prior to the Effective Date, and each such agreement shall be in full force and effect and in form and substance satisfactory to the WIFIA Lender, and all conditions contained in such documents to the closing of the transactions contemplated thereby shall have been fulfilled or effectively waived (provided, that for purposes of this Section 11(a)(ii) (*Conditions Precedent – Conditions Precedent to Effectiveness*), any such waiver shall be subject to the WIFIA Lender's consent in its sole discretion).

(iii) Counsel to the Borrower shall have rendered to the WIFIA Lender legal opinions satisfactory to the WIFIA Lender in its sole discretion (including those opinions set forth on **Exhibit G-1** (*Opinions Required from Counsel to Borrower*) and bond counsel to the Borrower shall have rendered to the WIFIA Lender legal opinions satisfactory to the WIFIA Lender in its sole discretion (including those opinions set forth on **Exhibit G-2** (*Opinions Required from Bond Counsel*)).

(iv) The Borrower shall have provided a certificate from the Borrower's Authorized Representative as to the absence of debarment, suspension or voluntary exclusion from participation in Government contracts, procurement and non-procurement matters substantially in the form attached hereto as **Exhibit C** (*Certification Regarding Debarment, Suspension and other Responsibility Matters*) with respect to the Borrower and its principals (as defined in 2 C.F.R. § 180.995 and supplemented by 2

C.F.R. § 1532.995). The Borrower shall have delivered to the WIFIA Lender the Non-Lobbying Certificate.

(v) The Borrower shall have provided evidence to the WIFIA Lender's satisfaction of the assignment by at least one (1) Nationally Recognized Rating Agency of a public Investment Grade Rating on the WIFIA Loan, the Senior Obligations then Outstanding and any Senior Obligations proposed to be issued for the Project and no such rating has been reduced, withdrawn or suspended as of the Effective Date.

(vi) The Borrower shall have delivered to the WIFIA Lender a certificate from the Borrower's Authorized Representative in the form attached hereto as **Exhibit I** (*Form of Borrower's Officer's Certificate*) (A) as to the satisfaction of certain conditions precedent set forth in this Section 11(a) (*Conditions Precedent – Conditions Precedent to Effectiveness*) as required by the WIFIA Lender, (B) designating the Borrower's Authorized Representative, and (C) confirming such person's position and incumbency.

(vii) The Borrower shall have demonstrated to the WIFIA Lender's satisfaction that as of the Effective Date the aggregate of all funds committed to the development and construction of the Project as set forth in the Base Case Financial Model and in the Project Budget are sufficient to carry out the Project, pay all Total Project Costs anticipated for the Project and achieve Substantial Completion by the Projected Substantial Completion Date.

(viii) Each Existing Principal Project Contract shall be in full force and effect and, if requested in writing by the WIFIA Lender, the Borrower shall have provided to the WIFIA Lender certified, complete, and fully executed copies of each, together with any amendments, waivers or modifications thereto.

(ix) The Borrower shall have demonstrated to the WIFIA Lender's satisfaction (A) that it has obtained all Governmental Approvals required (1) as of the Effective Date in connection with the Project and (2) to execute and deliver, and perform its obligations under the WIFIA Loan Agreement, (B) that all such Governmental Approvals are final, non-appealable, and in full force and effect (and are not subject to any notice of violation, breach or revocation) and (C) that the 30-day appeal period pursuant to Rhode Island General Laws Section 42-35-15 for the DPUC Order has expired without the filing of any appeal so that the WIFIA Bond has been fully approved pursuant to all applicable laws of the State.

(x) The Borrower shall have delivered to the WIFIA Lender a certified Base Case Financial Model on or prior to the Effective Date, which Base Case Financial Model shall (A) demonstrate that projected Revenues are sufficient to meet the Loan Amortization Schedule, (B) demonstrate compliance with the Rate Covenant for each Borrower Fiscal Year through the Final Maturity Date; (C) reflect principal amortization and interest payment schedules acceptable to the WIFIA Lender, (D) demonstrate that the Borrower has developed, and identified adequate revenues to implement, a plan for

operating, maintaining and repairing the Project over the useful life of the Project; and (E) otherwise be in form and substance acceptable to the WIFIA Lender.

(xi) The Borrower shall have (A) provided evidence satisfactory to the WIFIA Lender that the Borrower is authorized, pursuant to Sections 46-25-5, 46-25-58 and 46-25-59 of the Rhode Island General Laws, to pledge, assign, and grant the Liens on the Pledged Collateral purported to be pledged, assigned, and granted pursuant to the Indenture Documents, without the need for notice to any Person, physical delivery, recordation, filing or further act, (B) delivered to the WIFIA Lender time-stamped copies of UCC-1 financing statements covering the Pledged Collateral, in form and substance satisfactory to the WIFIA Lender, that have been filed with the Secretary of State of the State to perfect such Liens, (C) recorded or filed, or caused to be recorded or filed, for record in such manner and in such places as are required all documents and instruments, and taken or caused to be taken all other actions, as are necessary or desirable to establish and enforce the Trustee's Lien on the Pledged Collateral (for the benefit of the Secured Parties) to the extent contemplated by the Indenture Documents or required pursuant to applicable law, and (D) paid, or caused to be paid, all taxes and filing fees that are due and payable in connection with the execution, delivery or recordation of any Related Documents or any instruments, certificates or financing statements in connection with the foregoing.

(xii) The Borrower shall have paid in full all invoices delivered by the WIFIA Lender to the Borrower as of the Effective Date for the fees and expenses of the WIFIA Lender's counsel and financial advisors and any auditors or other consultants retained by the WIFIA Lender for the purposes hereof.

(xiii) The Borrower shall have (A) provided evidence satisfactory to the WIFIA Lender of compliance with NEPA and any applicable federal, state or local environmental review and approval requirements with respect to the Project and (B) complied with all applicable requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 *et seq.*) and Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*) and shall have provided evidence satisfactory to the WIFIA Lender of such compliance upon request by the WIFIA Lender.

(xiv) No later than thirty (30) days prior to the Effective Date, the Borrower shall have delivered to the WIFIA Lender the Public Benefits Report.

(xv) The Borrower shall have (A) obtained a Federal Employer Identification Number, (B) obtained a Data Universal Numbering System number, and (C) registered with the federal System for Award Management (www.SAM.gov).

(xvi) Each of the insurance policies obtained by the Borrower in satisfaction of the conditions in Section 14(f) (*Affirmative Covenants – Insurance and Condemnation*) is in full force and effect, and no notice of termination thereof has been issued by the applicable insurance provider.

(xvii) The Borrower shall have provided to the WIFIA Lender evidence that the Borrower is duly organized and validly existing under the laws of its jurisdiction of formation, with full power, authority and legal right to own its properties and carry on its business and governmental functions as now conducted, including a copy of the Borrower's Organizational Documents, as in effect on the Effective Date (and certified by the Secretary of State of the State, to the extent applicable), which Organizational Documents shall be certified by the Borrower's Authorized Representative to be in full force and effect and shall not have been amended since the date of the last amendment thereto shown on the certificate.

(xviii) The Borrower shall have provided to the WIFIA Lender (A) an executed copy of the WIFIA Supplemental Indenture, (B) all other resolutions, ordinances, or supplements (as the case may be), if any, authorizing the Borrower to execute and deliver, and to perform its respective obligations under, the WIFIA Loan Documents to which it is a party, and (C) all further instruments and documents as are necessary, appropriate or advisable to effectuate the foregoing resolutions and to consummate and implement the transactions contemplated by such resolutions and the WIFIA Loan Documents, and in each case such documents have not been subsequently modified, rescinded or amended, are in full force and effect in the form adopted, and are the only documents required and adopted by the Borrower relating to the matters described therein.

(xix) [RESERVED].

(xx) The Borrower shall have received certified, complete and fully executed copies of each performance security instrument (if any) required to be delivered to the Borrower pursuant to any Principal Project Contract as of the Effective Date, each of which performance security instruments (if any) shall be (A) in compliance with the requirements for such performance security pursuant to the applicable Principal Project Contract and (B) in full force and effect.

(xxi) The representations and warranties of the Borrower set forth in this Agreement (including Section 12 (*Representations and Warranties of Borrower*)) and in each other Related Document shall be true and correct, as of the Effective Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).

(xxii) The Borrower shall have provided the WIFIA Lender with evidence satisfactory to the WIFIA Lender that, as of the Effective Date (A) the maximum principal amount of the WIFIA Loan (excluding any interest that is compounded and capitalized in accordance with the terms hereof), together with the amount of any other credit assistance provided under the Act to the Borrower, does not exceed forty-nine percent (49%) of reasonably anticipated Eligible Project Costs and (B) the total federal assistance provided to the Project, including the maximum principal amount of the WIFIA Loan (excluding any interest that is compounded and capitalized in accordance with the terms hereof), does not exceed eighty percent (80%) of Total Project Costs.

(xxiii) The Borrower shall have delivered to the WIFIA Lender a duly executed certificate from the Trustee in the form attached hereto as **Exhibit H** (*Form of Certificate of Trustee*).

(xxiv) [RESERVED].

(xxv) [RESERVED].

(xxvi) The Borrower shall have delivered such other agreements, documents, instruments, opinions and other items required by the WIFIA Lender, all in form and substance satisfactory to the WIFIA Lender.

(b) Conditions Precedent to Disbursements. Notwithstanding anything in this Agreement to the contrary, the WIFIA Lender shall have no obligation to make any disbursement of loan proceeds to the Borrower (including the initial disbursement hereunder) until each of the following conditions precedent has been satisfied or waived in writing by the WIFIA Lender in its sole discretion:

(i) [RESERVED].

(ii) The Borrower shall have provided to the WIFIA Lender evidence satisfactory to the WIFIA Lender that (A) the aggregate amount of all disbursements of the WIFIA Loan (including the requested disbursement but excluding any interest that is compounded and capitalized in accordance with the terms hereof) shall not exceed the amount of Eligible Project Costs paid or incurred by the Borrower and (B) the Borrower has sufficient available funds committed to the Project, which together with funds that remain available and not yet drawn under the WIFIA Loan, will be sufficient to pay the reasonably anticipated remaining Total Project Costs.

(iii) The Borrower shall have provided all information required as of the relevant disbursement date pursuant to Section 16(a) (*Reporting Requirements – Financial Reporting*) and Section 16(b) (*Reporting Requirements – Annual Financial Statements*).

(iv) To the extent not previously delivered to the WIFIA Lender, the Borrower shall have delivered to the WIFIA Lender certified, complete and fully executed copies of any Indenture Documents entered into after the Effective Date.

(v) To the extent (A) not previously delivered to the WIFIA Lender and (B) requested in writing by the WIFIA Lender, the Borrower shall have provided certified copies of all Principal Project Contracts (including, in each case, any amendment, modification or supplement thereto) entered into after the Effective Date.

(vi) The Borrower shall have demonstrated to the WIFIA Lender's satisfaction that all Governmental Approvals necessary as of the time of the applicable disbursement for the development, construction, operation and maintenance of the Project have been issued and are in full force and effect (and are not subject to any notice of violation, breach or revocation).

(vii) Each of the insurance policies obtained by the Borrower and by any applicable Principal Project Party in satisfaction of the conditions in Section 14(f) (*Affirmative Covenants – Insurance and Condemnation*) is in full force and effect, and no notice of termination thereof has been issued by the applicable insurance provider.

(viii) At the time of, and immediately after giving effect to, any disbursement of WIFIA Loan proceeds then currently requested, (A) no Default or Event of Default hereunder shall have occurred and be continuing and (B) no event of default or default that, with the giving of notice or the passage of time or both, would constitute an event of default, in each case, under any other Related Document, shall have occurred and be continuing.

(ix) The representations and warranties of the Borrower set forth in this Agreement (including Section 12 (*Representations and Warranties of Borrower*)) and in each other Related Document shall be true, correct and complete as of each date on which any disbursement of the WIFIA Loan is made, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).

(x) No Material Adverse Effect, or any event or condition that could reasonably be expected to result in a Material Adverse Effect, shall have occurred since February 2, 2022.

(xi) The Borrower shall have delivered to the WIFIA Lender a Requisition that complies with the provisions of Section 4 (*Disbursement Conditions*), and the WIFIA Lender shall have approved (or be deemed to have approved in accordance with Section 4(b) (*Disbursement Conditions*)) such Requisition.

(xii) The Borrower shall have paid in full (A) any outstanding Servicing Fees due and payable under Section 10 (*Fees and Expenses*) and (B) all invoices received from the WIFIA Lender as of the date of disbursement of the WIFIA Loan and delivered by the WIFIA Lender to the Borrower, for the fees and expenses of the WIFIA Lender's counsel and financial advisors and any auditors or other consultants retained by the WIFIA Lender for the purposes hereof.

(xiii) To the extent not previously received by the Borrower, the Borrower shall have received complete and fully executed copies of each performance security instrument (if any) required to be delivered to the Borrower pursuant to any Principal Project Contract as of the date of disbursement of the WIFIA Loan, each of which performance security instruments shall be (A) in compliance with the requirements for such performance security pursuant to the applicable Principal Project Contract and (B) in full force and effect.

(xiv) The Borrower shall have provided the WIFIA Lender with evidence satisfactory to the WIFIA Lender that, as of the relevant disbursement date, the total federal assistance provided to the Project, including the maximum principal amount of the WIFIA Loan (excluding any interest that is compounded and capitalized in

accordance with the terms hereof), does not exceed eighty percent (80%) of Total Project Costs.

(xv) [RESERVED].

ARTICLE IV REPRESENTATIONS AND WARRANTIES

Section 12. Representations and Warranties of Borrower. The Borrower hereby represents and warrants that, as of the Effective Date and, as to each of the representations and warranties below other than those contained in Section 12(b) (*Representations and Warranties of Borrower – Officers’ Authorization*), the first sentence of Section 12(f) (*Representations and Warranties of Borrower – Litigation*), Section 12(k) (*Representations and Warranties of Borrower – Credit Ratings*), and the first sentence of Section 12(n) (*Representations and Warranties of Borrower – Principal Project Contracts*), as of each date on which any disbursement of the WIFIA Loan is requested or made:

(a) Organization; Power and Authority. The Borrower is a public corporation duly organized and validly existing under its Organizational Documents and the laws of the State, has full legal right, power and authority to do business in the State and to enter into the Related Documents then in existence, to execute and deliver this Agreement and the WIFIA Bond, and to carry out and consummate all transactions contemplated hereby and thereby and has duly authorized the execution, delivery and performance of this Agreement, the WIFIA Bond, and the other Related Documents.

(b) Officers’ Authorization. As of the Effective Date, the officers of the Borrower executing (or that previously executed) the Related Documents, and any certifications or instruments related thereto, to which the Borrower is a party are (or were at the time of such execution) duly and properly in office and fully authorized to execute the same.

(c) Due Execution; Enforceability. Each of the Related Documents in effect as of any date on which this representation and warranty is made, and to which the Borrower is a party has been duly authorized, executed and delivered by the Borrower and constitutes the legal, valid and binding agreement of the Borrower enforceable against the Borrower in accordance with its terms, except as such enforceability (i) may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally and (ii) is subject to general principles of equity (regardless of whether enforceability is considered in equity or at law).

(d) Non-Contravention. The execution and delivery of the Related Documents to which the Borrower is a party, the consummation of the transactions contemplated by the Related Documents, and the fulfillment of or compliance with the terms and conditions of all of the Related Documents, will not (i) conflict with the Borrower’s Organizational Documents, (ii) conflict in any material respect with, or constitute a violation, breach or default (whether immediately or after notice or the passage of time or both) by the Borrower of or under, any applicable law, administrative rule or regulation, any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, loan agreement, lease, contract or other

agreement or instrument to which the Borrower is a party or by which it or its properties or assets are otherwise subject or bound, or (iii) result in the creation or imposition of any prohibited Lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower.

(e) Consents and Approvals. No consent or approval of any trustee, holder of any indebtedness of the Borrower or any other Person, and no consent, permission, authorization, order or license of, or filing or registration with, any Governmental Authority is necessary in connection with (i) the execution and delivery by the Borrower of the Related Documents, except as have been obtained or made and as are in full force and effect, or (ii) (A) the consummation of any transaction contemplated by any of the foregoing documents or (B) the fulfillment of or compliance by the Borrower with the terms and conditions of any of the Related Documents, except as have been obtained or made and as are in full force and effect or as are ministerial in nature and can reasonably be expected to be obtained or made in the ordinary course on commercially reasonable terms and conditions when needed; provided, however, that, in respect of clause (ii) of this Section 12(e) (*Representations and Warranties of Borrower – Consents and Approvals*), the Borrower may require approval of rate increases from the Rhode Island Division of Public Utilities and Carriers.

(f) Litigation. Except as set forth in **Schedule 12(f)** (*Litigation*), as of the Effective Date, there is no action suit, proceeding or, to the knowledge of the Borrower, any inquiry or investigation, in any case before or by any court or other Governmental Authority pending or, to the knowledge of the Borrower, threatened against or affecting the System (including the Project) or the ability of the Borrower to execute, deliver and perform its obligations under the Related Documents. As of the Effective Date and as of each other date on which the representations and warranties herein are made or confirmed, there is no action, suit, proceeding or, to the knowledge of the Borrower, any inquiry or investigation before or by any court or other Governmental Authority pending, or to the knowledge of the Borrower, threatened against or affecting the System (including the Project), the Borrower or the assets, properties or operations of the Borrower, that in any case could reasonably be expected to result in a Material Adverse Effect. To the Borrower's knowledge after reasonable and diligent inquiry, there are no actions of the type described above pending or, threatened against or affecting any of the Principal Project Parties, except for matters arising after the Effective Date that could not reasonably be expected to (i) result in a Material Adverse Effect or (ii) adversely affect the Borrower's ability to receive Revenues in amounts sufficient to meet the Loan Amortization Schedule. The Borrower is not in default (and no event has occurred and is continuing that, with the giving of notice or the passage of time or both, could constitute a default) with respect to any Governmental Approval, which default could reasonably be expected to result in a Material Adverse Effect.

(g) Security Interests. The Indenture Documents and Sections 46-25-5, 46-25-58 and 46-25-59 of the Rhode Island General Laws establish, in favor of the Trustee for the benefit of the WIFIA Lender, the valid and binding Liens on the Pledged Collateral that they purport to create, irrespective of whether any Person has notice of the pledge and without the need for any physical delivery, recordation, filing, or further act. Such Liens are in full force and effect and are not subordinate or junior to any other Liens in respect of the Pledged Collateral except for the Permitted Liens arising by operation of law, and not *pari passu* with any

obligations other than the Senior Obligations. The Borrower has duly and lawfully taken all actions required under this Agreement, the Indenture Documents, and applicable laws for the pledge of the Pledged Collateral pursuant to and in accordance with the Indenture Documents, and the security interests created in the Pledged Collateral have been duly perfected under applicable State law. The Borrower is not in breach of any covenants set forth in Section 14 (*Affirmative Covenants*) or in the Indenture Documents with respect to the matters described in such Section. As of the Effective Date and as of each other date this representation and warranty is made, (i) all documents (including UCC-1 financing statements) and instruments have been recorded or filed for record in such manner and in such places as are required and all other action as is necessary or desirable has been taken to establish a legal, valid, binding, and enforceable and perfected Lien on the Pledged Collateral in favor of the Trustee (for the benefit of the Secured Parties) to the extent contemplated by the Indenture Documents, and (ii) all taxes and filing fees that are due and payable in connection with the execution, delivery or recordation of any Indenture Documents or any instruments, certificates or financing statements in connection with the foregoing, have been paid.

(h) No Debarment. The Borrower has fully complied with its verification obligations under 2 C.F.R. § 180.320 and confirms, based on such verification, that, to its knowledge, neither the Borrower nor any of its principals (as defined in 2 C.F.R. § 180.995 and supplemented by 2 C.F.R. § 1532.995) is debarred, suspended or voluntarily excluded from participation in Government contracts, procurement or non-procurement matters or delinquent on a Government debt as more fully set forth in the certificate delivered pursuant to Section 11(a)(iv) (*Conditions Precedent – Conditions Precedent to Effectiveness*).

(i) Accuracy of Representations and Warranties. The representations, warranties and certifications of the Borrower set forth in this Agreement and the other Related Documents are true, correct, and complete, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true, correct, and complete as of such earlier date).

(j) Compliance with Federal Requirements. The Borrower, and each of its contractors and subcontractors at all tiers with respect to the Project, has complied with all applicable federal laws, rules, regulations and requirements, including (i) 40 U.S.C. §§ 3141-3144, 3146, and 3147 and regulations relating thereto (Davis-Bacon Act Requirements), (ii) 33 U.S.C. § 3914 (relating to American iron and steel products), and (iii) those set forth in **Exhibit E** (*Compliance With Laws*). To ensure such compliance, the Borrower has included in all contracts with respect to the Project requirements that its contractor(s) shall comply with applicable federal laws, rules, regulations, and requirements set forth in this Section 12(j) (*Representations and Warranties of Borrower – Compliance with Federal Requirements*) and follow applicable federal guidance, and has required that the contractor(s) incorporate in all subcontracts (and cause all subcontractors to include in lower tier subcontracts) such terms and conditions as are required to be incorporated therein by applicable federal laws, rules, regulations and requirements set forth in this Section 12(j) (*Representations and Warranties of Borrower – Compliance with Federal Requirements*). With respect to the Davis-Bacon Act Requirements, the Borrower has inserted in full in all contracts relating to the Project the contract clauses set forth in the Code of Federal Regulations, Title 29 Part 5.5, and required and ensured that its

contractor(s) have inserted such clauses in all subcontracts and also a clause requiring all subcontractors to include these clauses in any lower tier subcontracts.

(k) Credit Ratings. The WIFIA Loan and the Senior Obligations then Outstanding have received a public Investment Grade Rating from at least one (1) Nationally Recognized Rating Agency, written evidence of such ratings has been provided to the WIFIA Lender prior to the Effective Date, and no such rating has been reduced, withdrawn or suspended as of the Effective Date.

(l) No Defaults. No Default or Event of Default, and no default or event of default by the Borrower under any other Related Document, has occurred and is continuing.

(m) Governmental Approvals. All Governmental Approvals required as of the Effective Date and any subsequent date on which this representation is made (or deemed made) for the undertaking and completion by the Borrower of the Project, and for the operation and management thereof, have been obtained or effected and are in full force and effect and there is no basis for, nor proceeding that is pending or threatened that could reasonably be expected to result in, the revocation of any such Governmental Approval.

(n) Principal Project Contracts. Attached as **Schedule 12(n)** (*Existing Principal Project Contracts*) is a list of the Existing Principal Project Contracts, including (i) the name of the contract, (ii) the parties thereto, (iii) the effective date or expected effective date, as applicable, and (iv) a brief description of each contract. With respect to each Principal Project Contract executed as of any date on which this representation and warranty is made, (x) it is in full force and effect, (y) all conditions precedent to the obligations of the respective parties under each such Principal Project Contract have been satisfied and (z) the Borrower has delivered to the WIFIA Lender a fully executed, complete and correct copy of each such Principal Project Contract (including in each case all exhibits, schedules and other attachments), including any amendments or modifications thereto and any related credit support instruments or side letters. No event has occurred that gives the Borrower or, to the Borrower's knowledge, any Principal Project Party, the right to terminate any such Principal Project Contract. The Borrower is not in breach of any material term in or in default under any of such Principal Project Contracts, and, to the knowledge of the Borrower, no party to any of such agreements or contracts is in breach of any material term therein or in default thereunder.

(o) Information. The information furnished by or on behalf of the Borrower to the WIFIA Lender, when taken as a whole, does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements contained therein not misleading as of the date made or furnished; provided, that no representation or warranty is made with regard to projections or other forward-looking statements provided by or on behalf of the Borrower (including the Base Case Financial Model and the assumptions therein) except that the Base Case Financial Model (i) is based on assumptions that were reasonable in all material respects when made, (ii) was prepared in good faith and (iii) represents, in the opinion of the Borrower, reasonable projections at the time made of the future performance of the System and the Project (it being understood that projections are not to be considered or regarded as facts and contain significant uncertainties and contingencies, many of which are beyond the control of the Borrower, that actual results may differ significantly from projections and that no representation

is made with respect to the accuracy of such projections). The Borrower hereby discloses that on July 16, 2022, The Providence Journal reported that the Borrower experienced a cybersecurity incident that involved the encryption of data on certain computers and systems in its network. The Borrower has determined that such cybersecurity incident did not result in a Material Adverse Effect hereunder.

(p) OFAC; Anti-Corruption Laws. The Borrower (i) is not in violation of nor, since the date that is five (5) years prior to the Effective Date, has violated: (A) any applicable anti-money laundering laws, including those contained in the Bank Secrecy Act and the Patriot Act; (B) any applicable economic sanction laws administered by OFAC or by the United States Department of State; or (C) any applicable anti-drug trafficking, anti-terrorism, or anti-corruption laws, civil or criminal; and (ii) is not a Person (A) that is charged with, or has received notice from a Governmental Authority that it is under investigation for, any violation of any such laws; or (B) that has been, since the date that is five (5) years prior to the Effective Date, convicted of any violation of, has been subject to criminal or civil penalties pursuant to, had any of its property seized or forfeited under, or has entered into any agreement with the Government or a state or local government related to violations of any such laws. Neither the Borrower nor, to the knowledge of the Borrower after reasonable and diligent inquiry, any Principal Project Party, is a Person (i) that is named on the list of “Specially Designated Nationals and Blocked Persons” maintained by OFAC (or any successor Government office or list), or any similar list maintained by the United States Department of State (or any successor Government office or list); or (ii) with whom any U.S. Person (as defined by the applicable OFAC regulations) is prohibited from transacting business of the type contemplated by this Agreement and the other Related Documents under any other applicable law.

(q) Compliance with Law. The Borrower has complied in all material respects with, and has conducted (or caused to be conducted) its management and operation of the System (including the Project) in compliance in all material respects with, all applicable laws (other than Environmental Laws, which are addressed in Section 12(r) (*Representations and Warranties of Borrower – Environmental Matters*)), including those set forth on **Exhibit E** (*Compliance With Laws*), to the extent applicable. To the Borrower’s knowledge, each of the Borrower’s contractors and subcontractors at all tiers, has complied in all material respects with all applicable laws (other than such Environmental Laws) with respect to the Project, including those set forth on **Exhibit E** (*Compliance With Laws*), to the extent applicable. To the Borrower’s knowledge after reasonable and diligent inquiry, each Principal Project Party is, and has caused its respective contractors and subcontractors to be, in compliance in all material respects with all applicable laws as they relate to the Project, including those set forth on **Exhibit E** (*Compliance With Laws*), to the extent applicable. No notices of violation of any applicable law have been issued, entered or received by the Borrower or, to the Borrower’s knowledge after reasonable and diligent inquiry and solely in respect of the Project or any Principal Project Contract, any Principal Project Party, other than, in each case, notices of violations that are immaterial.

(r) Environmental Matters. Except as set forth in **Schedule 12(r)** (*Environmental Matters*), each of the Borrower and, to the Borrower’s knowledge, each Principal Project Party, is in compliance with all laws applicable to the System (including the Project) relating to (i) air emissions, (ii) discharges to surface water or ground water, (iii) noise

emissions, (iv) solid or liquid waste disposal, (v) the use, generation, storage, transportation or disposal of toxic or hazardous substances or wastes, (vi) biological resources (such as threatened and endangered species), and (vii) other environmental, health or safety matters, including all laws applicable to the System (including the Project) (collectively, the “**Environmental Laws**”). All Governmental Approvals for the Project relating to Environmental Laws have been, or, when required, will be, obtained and are (or, as applicable, will be) in full force and effect. The Borrower has not received any written communication or notice, whether from a Governmental Authority, employee, citizens group, or any other Person, that alleges that the Borrower is not in full compliance with all Environmental Laws and Governmental Approvals relating thereto in connection with the Project and, to the Borrower’s knowledge, there are no circumstances that may prevent or interfere with full compliance in the future by the Borrower with any such Environmental Law or Governmental Approval. The Borrower has provided to the WIFIA Lender all material assessments, reports, results of investigations or audits, and other material information in the possession of or reasonably available to the Borrower regarding the Borrower’s or the Project’s compliance with (A) Environmental Laws and (B) Governmental Approvals that are required for the Project and relate to Environmental Laws.

(s) Sufficient Rights. The Borrower possesses either valid legal and beneficial title to, leasehold title in, or other valid legal rights with respect to the real property relating to the System (including the Project), in each case as is necessary and sufficient as of the date this representation is made for the construction, operation, maintenance and repair of the System (including the Project). As of any date on which this representation and warranty is made, the Principal Project Contracts then in effect and the Governmental Approvals that have been obtained and are then in full force and effect create rights in the Borrower sufficient to enable the Borrower to own, construct, operate, maintain and repair the Project and to perform its obligations under the Principal Project Contracts to which it is a party.

(t) Insurance. The Borrower is in compliance with all insurance obligations required under each Principal Project Contract and the other Related Documents as of the date on which this representation and warranty is made. To the extent the Borrower self-insures, the Borrower’s self-insurance program is actuarially sound and the Borrower has received an opinion from an accredited actuary within the last twelve (12) months, which opinion confirms that the Borrower’s self-insurance program is actuarially sound.

(u) No Liens. Except for Permitted Liens, the Borrower has not created, and is not under any obligation to create, and has not entered into any transaction or agreement that would result in the imposition of, any Lien on the Pledged Collateral, the System, the Project, or the Revenues, properties or assets in relation to the Project.

(v) Financial Statements. Each income statement, balance sheet and statement of operations and cash flows (collectively, “**Financial Statements**”) delivered to the WIFIA Lender pursuant to Section 16(b) (*Reporting Requirements – Annual Financial Statements*) has been prepared in accordance with GAAP and presents fairly, in all material respects, the financial condition of the Borrower as of the respective dates of the balance sheets included therein and the results of operations of the Borrower for the respective periods covered by the statements of income included therein. Except as reflected in such Financial Statements, there

are no liabilities or obligations of the Borrower of any nature whatsoever for the period to which such Financial Statements relate that are required to be disclosed in accordance with GAAP.

(w) Securities Laws. Under existing law, the WIFIA Bond may be issued and sold without registration under the Securities Act of 1933, as amended, and any state blue sky laws, and the Indenture is exempt from qualification pursuant to the Trust Indenture Act of 1939, as amended.

(x) Taxes. The Borrower is not required to file tax returns in respect of income tax with any Governmental Authority.

(y) Sufficient Funds. The amount of the WIFIA Loan, when combined with all other funds committed for the development and construction of the Project as set forth under the various sources of funds in the Base Case Financial Model and the Project Budget will be sufficient to carry out the Project, pay all Total Project Costs anticipated for the development and construction of the Project and achieve Substantial Completion by the Projected Substantial Completion Date.

(z) Sovereign Immunity. The Borrower has no immunity from the jurisdiction of any court of competent jurisdiction or from any legal process therein which could be asserted in any action to enforce the obligations of the Borrower under any of the Related Documents to which it is a party or the transactions contemplated hereby or thereby, including the obligations of the Borrower hereunder and thereunder.

(aa) Patriot Act. The Borrower is not required to establish an anti-money laundering compliance program pursuant to the Patriot Act.

(bb) Federal Debt. The Borrower has no delinquent federal debt (including tax liabilities but excluding any delinquencies that have been resolved with the appropriate federal agency in accordance with the standards of the Debt Collection Improvement Act of 1996).

Section 13. Representations and Warranties of WIFIA Lender. The WIFIA Lender represents and warrants that:

(a) Power and Authority. The WIFIA Lender has all requisite power and authority to make the WIFIA Loan and to perform all transactions contemplated by the Related Documents to which it is a party.

(b) Due Execution; Enforceability. The Related Documents to which it is a party have been duly authorized, executed and delivered by the WIFIA Lender, and are legally valid and binding agreements of the WIFIA Lender, enforceable in accordance with their terms.

(c) Officers' Authorization. The officers of the WIFIA Lender executing each of the Related Documents to which the WIFIA Lender is a party are duly and properly in office and fully authorized to execute the same on behalf of the WIFIA Lender.

ARTICLE V COVENANTS

Section 14. Affirmative Covenants. The Borrower covenants and agrees as follows until the date the WIFIA Bond and the Obligations of the Borrower under this Agreement (other than contingent indemnity obligations) are irrevocably paid in full in cash, unless the WIFIA Lender waives compliance in writing:

(a) Rate Covenant. The Borrower shall fix, charge and collect rates, fees and charges for the System during each Borrower Fiscal Year which:

(i) comply with the requirements specified in Section 603 (*Covenant as to Rates and Charges*) of the Indenture, which requirements are hereby incorporated herein and a copy of such section, as of the Effective Date, is attached hereto as **Schedule VII** (*Rate Covenant*); and

(ii) will be at least sufficient to yield, in each Borrower Fiscal Year, Net Revenues equal to at least one hundred twenty-five percent (125%) of the Debt Service Requirement during such Borrower Fiscal Year with respect to all Outstanding Obligations (including Agency Bonds based on debt service net of any interest rate subsidy), as of the first day of such fiscal year (together with clause (i), the "**Rate Covenant**").

(b) Securing Liens. The Borrower shall at any and all times, to the extent permitted by law, pass, make, do, execute, acknowledge and deliver, all and every such further resolutions, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable in connection with assuring, conveying, granting, assigning, securing and confirming the Liens on the Pledged Collateral (whether now existing or hereafter arising) granted to the WIFIA Lender for its benefit pursuant to the Indenture Documents, or intended so to be granted pursuant to the Indenture Documents, or which the Borrower may become bound to grant, and the Borrower shall at all times maintain the Pledged Collateral free and clear of any pledge, Lien, charge or encumbrance thereon or with respect thereto that has priority over, or equal rank with, the Liens created by the Indenture Documents, other than as permitted by this Agreement, and all organizational, regulatory or other necessary action on the part of the Borrower to that end shall be duly and validly taken at all times. The Borrower shall at all times, to the extent permitted by law, defend, preserve and protect the Liens on the Pledged Collateral granted pursuant to the Indenture Documents and for the benefit of the WIFIA Lender under the Indenture Documents against all claims and demands of all Persons whomsoever, subject to Permitted Liens.

(c) Use of Proceeds. The Borrower shall use the proceeds of the WIFIA Loan for purposes permitted by applicable law and as otherwise permitted under this Agreement and the other Related Documents.

(d) Prosecution of Work; Verification Requirements.

(i) The Borrower shall diligently prosecute the work relating to the Project and complete the Project in accordance with the Construction Schedule, and in accordance with the highest standards of the Borrower's industry.

(ii) The Borrower shall ensure that each Principal Project Party complies with all applicable laws and legal or contractual requirements with respect to any performance security instrument delivered by such Principal Project Party to the Borrower and shall ensure that any letter of credit provided pursuant to any Principal Project Contract meets the requirements therefor set forth in such Principal Project Contract.

(iii) The Borrower shall comply with Subpart C of 2 C.F.R. Part 180, as supplemented by Subpart C of 2 C.F.R. Part 1532 (relating to debarment), including the verification requirements set forth in 2 C.F.R. §§ 180.300 and 180.320, and shall include in its contracts with respect to the Project similar terms or requirements for compliance.

(e) Operations and Maintenance. The Borrower shall (i) operate and maintain the System (including, but not limited to, the Project) (A) in a reasonable and prudent manner and (B) substantially in accordance with the information submitted by the Borrower pursuant to Section 16(a) (*Reporting Requirements – Financial Reporting*) (except as necessary to prevent or mitigate immediate threats to human health and safety or to prevent or mitigate physical damage to material portions of the System (including the Project)) and (ii) maintain the System (including the Project) in good repair, working order and condition and in accordance with the requirements of all applicable laws and each applicable Related Document. The Borrower shall at all times do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect the Governmental Approvals and any other rights, licenses, franchises, and authorizations material to the conduct of its business.

(f) Insurance and Condemnation. The Borrower shall comply with the requirements specified in Section 606 (*Insurance and Condemnation*) of the Indenture, which requirements are hereby incorporated herein. The Borrower shall cause all liability insurance policies (if any) that it maintains (and, during the Construction Period, that are maintained by any Principal Project Party), other than workers' compensation insurance, to reflect the WIFIA Lender as an additional insured. All such policies shall be available at all reasonable times for inspection by the WIFIA Lender, its agents and representatives.

(g) Permitted Investments. The Borrower shall comply with the requirements specified in Section 514 (*Investments*) of the Indenture, which requirements are hereby incorporated herein.

(h) Compliance With Laws. The Borrower shall, and shall require its contractors and subcontractors at all tiers with respect to the Project to, comply in all material respects with all applicable federal, State and local laws, rules, regulations and requirements, including without limitation (i) 40 U.S.C. §§ 3141-3144, 3146, and 3147 (Davis-Bacon Act requirements), (ii) 33 U.S.C. § 3914 (relating to American iron and steel products), and (iii) all

items set forth in **Exhibit E** (*Compliance With Laws*). To ensure such compliance, the Borrower shall include in all contracts with respect to the Project requirements that its contractor(s) shall comply with applicable federal laws, rules, regulations, and requirements set forth in this Section 14(h) (*Affirmative Covenants – Compliance With Laws*) and follow applicable federal guidance, and shall require that the contractor(s) incorporate in all subcontracts (and cause all subcontractors to include in all lower tier subcontracts) such terms and conditions as are required to be incorporated therein by applicable federal laws, rules, regulations and requirements set forth in this Section 14(h) (*Affirmative Covenants – Compliance With Laws*). With respect to the Davis-Bacon Act Requirements, the Borrower shall insert in full in all contracts relating to the Project the contract clauses set forth in the Code of Federal Regulations, Title 29 Part 5.5, and require and ensure that its contractor(s) insert such clauses in all subcontracts with respect to the Project and also a clause requiring all subcontractors to include these clauses in any lower tier subcontracts.

(i) Material Obligations. The Borrower shall pay its material obligations promptly and in accordance with their terms and pay and discharge promptly all taxes, assessments and governmental charges or levies imposed upon it or upon the Revenues or other assets of the System, before the same shall become delinquent or in default, as well as all lawful and material claims for labor, materials and supplies or other claims which, if unpaid, might give rise to a Lien upon such properties or any part thereof or on the Revenues or the Pledged Collateral; provided, however, that such payment and discharge shall not be required with respect to any such tax, assessment, charge, levy, claim or Lien so long as the validity or amount thereof shall be contested by the Borrower in good faith by appropriate proceedings and so long as the Borrower shall have set aside adequate reserves with respect thereto in accordance with and to the extent required by GAAP, applied on a consistent basis.

(j) [RESERVED].

(k) SAM Registration. The Borrower shall obtain and maintain through the Final Disbursement Date an active registration status with the federal System for Award Management (www.SAM.gov) (or any successor system or registry).

(l) DUNS Number. The Borrower shall obtain and maintain from Dun & Bradstreet (or a successor entity) a Data Universal Numbering System Number (a “**DUNS Number**”).

(m) Events of Loss; Loss Proceeds. If an Event of Loss shall occur with respect to the System (including the Project) or any part thereof, the Borrower shall comply with the requirements specified in Section 605 (*Operation, Maintenance and Reconstruction*) of the Indenture and Section 606 (*Insurance and Condemnation*) of the Indenture.

(n) Immunity. To the fullest extent permitted by applicable law, the Borrower agrees that it will not assert any immunity (and hereby waives any such immunity) it may have as a governmental entity from lawsuits, other actions and claims, and any judgments with respect to the enforcement of any of the obligations of the Borrower under this Agreement or any other WIFIA Loan Document.

(o) Accounting and Audit Procedures.

(i) The Borrower shall establish fiscal controls and accounting procedures sufficient to assure proper accounting for all (i) Revenues, operating expenses, capital expenses, depreciation, reserves, debt issued and outstanding and debt payments and (ii) Project-related costs, WIFIA Loan requisitions submitted, WIFIA Loan proceeds received, payments made by the Borrower with regard to the Project, other sources of funding for the Project (including amounts paid from such sources for Project costs so that audits may be performed to ensure compliance with and enforcement of this Agreement). The Borrower shall use accounting, audit and fiscal procedures conforming to GAAP, including, with respect to the WIFIA Loan, accounting of principal and interest payments, disbursements, prepayments and calculation of interest and principal amounts Outstanding.

(ii) The Borrower shall have a single or program-specific audit conducted in accordance with 2 C.F.R. Part 200 Subpart F and 31 U.S.C. § 7502 in year 2022 and annually thereafter, except to the extent biennial audits are permitted for the Borrower pursuant to 2 C.F.R. § 200.504 and 31 U.S.C. § 7502(b). Upon reasonable notice, the Borrower shall cooperate fully in the conduct of any periodic or compliance audits conducted by the WIFIA Lender, or designees thereof, pursuant to 40 C.F.R. Part 35, 31 U.S.C. § 7503(b), or 31 U.S.C. § 6503(h) and shall provide full access to any books, documents, papers or other records that are pertinent to the Project or the WIFIA Loan, to the WIFIA Lender, or the designee thereof, for any such project or programmatic audit.

(p) Access; Records.

(i) So long as the WIFIA Loan or any portion thereof shall remain outstanding and until five (5) years after the WIFIA Loan shall have been paid in full, the WIFIA Lender shall have the right, upon reasonable prior notice, to visit and inspect any portion of the Project, to examine books of account and records of the Borrower relating to the Project, to make copies and extracts therefrom at the Borrower's expense, and to discuss the Borrower's affairs, finances and accounts relating to the Project with, and to be advised as to the same by, its officers and employees and its independent public accountants (and by this provision the Borrower irrevocably authorizes its independent public accountants to discuss with the WIFIA Lender the affairs, finances and accounts of the Borrower, whether or not any representative of the Borrower is present, it being understood that nothing contained in this Section 14(p) (*Affirmative Covenants – Access; Records*) is intended to confer any right to exclude any such representative from such discussions), all at such reasonable times and intervals as the WIFIA Lender may request. The Borrower agrees to pay all out-of-pocket expenses incurred by the WIFIA Lender in connection with the WIFIA Lender's exercise of its rights under this Section 14(p) (*Affirmative Covenants – Access; Records*) at any time when an Event of Default shall have occurred and be continuing.

(ii) The Borrower shall maintain and retain all files relating to the Project and the WIFIA Loan until five (5) years after the later of the date on which (i) all

rights and duties under this Agreement and under the WIFIA Bond (including payments) have been fulfilled and any required audits have been performed and (ii) any litigation relating to the Project, the WIFIA Loan or this Agreement is finally resolved or, if the WIFIA Lender has reasonable cause to extend such date, a date to be mutually agreed upon by the WIFIA Lender and the Borrower. The Borrower shall provide to the WIFIA Lender in a timely manner all records and documentation relating to the Project that the WIFIA Lender may reasonably request from time to time.

Section 15. Negative Covenants. The Borrower covenants and agrees as follows until the date the WIFIA Bond and the obligations of the Borrower under this Agreement (other than contingent indemnity obligations) are irrevocably paid in full in cash, unless the WIFIA Lender waives compliance in writing:

(a) Indebtedness. The Borrower shall not issue any Obligations, unless the conditions described in this Section 15(a) (*Negative Covenants – Indebtedness*) are satisfied:

(i) The Borrower shall comply with the requirements specified in Section 205 (*General Provisions for Issuance of Bonds*) of the Indenture and Section 607 (*Creation of Liens, Other Indebtedness*) of the Indenture, which requirements are hereby incorporated herein and a copy of each such section, as of the Effective Date, is attached hereto as **Schedule VIII** (*Additional Bonds Test*); and

(ii) The Borrower has demonstrated that, for the three (3) full Borrower Fiscal Years following issuance of the Obligations (including the Borrower Fiscal Year in which such Obligations are issued), the estimated annual Net Revenues for each such Borrower Fiscal Year together with the amounts of Reserved Revenues, if any, available in such fiscal year (as calculated by an Authorized Officer (as defined in the Indenture) at the time of the issuance of such Obligations but without double-counting the amount of Reserved Revenues included in the estimated Net Revenues) will be at least equal to one hundred twenty-five percent (125%) of (A) the Debt Service Requirement for all Outstanding Obligations (including Agency Bonds based on debt service net of any interest rate subsidy) for such fiscal year less (B) the amount, if any, of Bond proceeds available or projected to be available to pay Principal Installments (as defined in the Indenture) and interest becoming due in such fiscal year on Outstanding Obligations or projected to be Outstanding as of the first day of such fiscal year.

(iii) Upon the incurrence of Additional Senior Obligations, the Borrower shall provide to the WIFIA Lender a certificate signed by the Borrower's Authorized Representative, (A) specifying the closing date with respect to such Additional Senior Obligations and (B) confirming that the incurrence of such Additional Senior Obligations satisfies the requirements set forth in this Section 15(a) (*Negative Covenants – Indebtedness*).

(b) No Lien Extinguishment or Adverse Amendments. The Borrower shall not, and shall not permit any Person to, without the prior written consent of the WIFIA Lender: (i) release all or substantially all the Pledged Collateral from the Lien of the Indenture or otherwise extinguish or materially impair (as to the WIFIA Loan or any other Secured

Obligations the proceeds of which are applied to fund Total Project Costs) the pledged source of repayment granted pursuant to the Indenture; (ii) extinguish the Rate Covenant; (iii) amend, modify or supplement any Indenture Document in a manner that could reasonably be expected to disproportionately affect the WIFIA Lender in connection with the WIFIA Loan compared to other holders of Obligations; (iv) amend, modify or supplement any Indenture Document in a manner that would affect the order of priority in which funds are to be applied to the Operation and Maintenance Account and the Debt Service Fund (as defined in the Indenture) for the Bonds as set forth in Section 504 (*Revenue Fund*) of the Indenture as of the Effective Date; (v) assign any Related Document; or (vi) terminate, replace, amend, modify or supplement any Principal Project Contract in a manner that could reasonably be expected to have a Material Adverse Effect.

(c) No Prohibited Liens. Except for Permitted Liens, the Borrower shall not create, incur, assume or permit to exist any Lien on the Project, the Pledged Collateral, the Revenues, or the Borrower's respective rights therein. The Borrower shall not collaterally assign any of its rights under or pursuant to any Principal Project Contract and shall not permit a Lien to encumber the Borrower's rights or privileges under any Principal Project Contract, unless pursuant to the Indenture Documents in favor of the Trustee on behalf of the Secured Parties.

(d) Restricted Payments and Transfers. The Borrower shall not permit Revenues or other assets of the System, or any funds in any accounts held under the Indenture or in any other fund or account held by or on behalf of the Borrower in respect of the System, to be paid or transferred or otherwise applied for purposes other than ownership, operation or maintenance of the System, except with the consent of the WIFIA Lender, which consent shall be in the WIFIA Lender's sole discretion.

(e) No Prohibited Sale, Lease or Assignment. The Borrower shall comply with requirements specified in Section 604 (*Sale, Lease or Encumbrance of System*) of the Indenture, which requirements are hereby incorporated herein. The Borrower reasonably expects that no portion of the Project will be sold prior to the Final Maturity Date of the WIFIA Loan.

(f) Fiscal Year. The Borrower shall not at any time adopt any fiscal year other than the Borrower Fiscal Year, except with thirty (30) days' prior written notice to the WIFIA Lender.

(g) Mergers and Acquisitions. The Borrower shall not, and shall not agree to, reorganize, consolidate with or merge into another Person except in accordance with Section 604 (*Sale, Lease or Encumbrance of System*) of the Indenture.

(h) No Defeasance. Notwithstanding anything to the contrary in any Indenture Document or document related thereto, the WIFIA Loan shall not be subject to defeasance and no amounts in respect of the WIFIA Loan shall be considered or deemed to have been paid until the WIFIA Lender shall have received irrevocable payment in immediately available funds in accordance with the requirements for payment set forth in this Agreement.

(i) OFAC Compliance. The Borrower shall not: (i) violate (A) any applicable anti-money laundering laws, including those contained in the Bank Secrecy Act and the Patriot

Act, (B) any applicable economic sanction laws administered by OFAC or by the United States Department of State, or (C) any applicable anti-drug trafficking, anti-terrorism, or anti-corruption laws, civil or criminal; or (ii) be a Person (A) that is charged with, or that has received notice from a Governmental Authority that it is under investigation for, any violation of any such laws, (B) that is convicted of any violation of, is subject to civil or criminal penalties pursuant to, has any of its property seized or forfeited under, or enters into any agreement with the Government or a state or local government related to violations of, any such laws, (C) that is named on the list of “Specially Designated Nationals and Blocked Persons” maintained by OFAC (or any successor Government office or list), or any similar list maintained by the United States Department of State (or any successor Government office or list), (D) with whom any U.S. Person (as defined in the applicable OFAC regulations) is prohibited from transacting business of the type contemplated by this Agreement and the other Related Documents under any other applicable law, (E) that is owned, Controlled by, or affiliated with any Person identified in clause (A), (B), (C) or (D) of this clause (ii), or (F) that is in violation of any obligation to maintain appropriate internal controls as required by the governing laws of the jurisdiction of such Person as are necessary to ensure compliance with the economic sanctions, anti-money laundering and anti-corruption laws of the United States of America and the jurisdiction where the Person resides, is domiciled or has its principal place of business. The Borrower shall not knowingly make a payment to any Principal Project Party that is a Person (A) that is named on the list of “Specially Designated Nationals and Blocked Persons” maintained by OFAC (or any successor Government office or list), or any similar list maintained by the United States Department of State (or any successor Government office or list) or (B) with whom any U.S. Person (as defined in the applicable OFAC regulations) is prohibited from transacting business of the type contemplated by this Agreement and the other Related Documents under any other applicable law.

(j) Hedging. Other than Qualified Swap Agreements expressly permitted under the Indenture, the Borrower shall not enter into any swap or hedging transaction, including inflation indexed swap transactions, “cap” or “collar” transactions, futures, or any other hedging transaction, in each case, payable from the Pledged Collateral.

Section 16. Reporting Requirements.

(a) Financial Reporting. The Borrower shall provide the WIFIA Lender with the following:

(i) unless included as part of the annual budget pursuant to clause (ii) of this Section 16(a) (*Reporting Requirements – Financial Reporting*) or the annual financial statements pursuant to Section 16(b) (*Reporting Requirements – Annual Financial Statements*), an analysis of operating revenues and expenses, including a description of the status of all revenues securing the WIFIA Bond and of any operating expenses in excess of budget, not later than one hundred eighty (180) days after the end of each Borrower Fiscal Year;

(ii) a copy of the annual budget of the Borrower, not later than fifteen (15) days after its adoption;

(iii) unless included as part of the annual budget pursuant to clause (ii) of this Section 16(a) (*Reporting Requirements – Financial Reporting*) or the annual financial statements pursuant to Section 16(b) (*Reporting Requirements – Annual Financial Statements*), a schedule of current and projected short-term and long-term debt service, concurrently with each annual budget provided pursuant to clause (ii) of this Section 16(a) (*Reporting Requirements – Financial Reporting*); and

(iv) unless included as part of the annual budget pursuant to clause (ii) of this Section 16(a) (*Reporting Requirements – Financial Reporting*) or the annual financial statements pursuant to Section 16(b) (*Reporting Requirements – Annual Financial Statements*), a schedule of capital replacement reserves, concurrently with each annual budget provided pursuant to clause (ii) of this Section 16(a) (*Reporting Requirements – Financial Reporting*).

(b) Annual Financial Statements. The Borrower shall post to EMMA, no later than one hundred eighty (180) days after the end of each Borrower Fiscal Year:

(i) a copy of the audited income statement and balance sheet of the Borrower as of the end of such Borrower Fiscal Year and the related audited statements of operations and of cash flow of the Borrower for such Borrower Fiscal Year, (A) setting forth in each case in comparative form the figures for the previous fiscal year, (B) certified without qualification or exception, or qualification as to the scope of the audit, by an independent public accounting firm selected by the Borrower and (C) which shall be complete and correct in all material respects and shall be prepared in reasonable detail and in accordance with GAAP applied consistently throughout the periods reflected therein (except, with respect to the annual financial statements, for changes approved or required by the independent public accountants certifying such statements and disclosed therein); and

(ii) together with each delivery of such annual audited financial statements, a certificate signed by the chief executive officer or chief financial officer of the Borrower or the Borrower's Authorized Representative, stating whether or not, to the Borrower's knowledge, during the annual period covered by such financial statements, there occurred any Default or Event of Default and, if any such Default or Event of Default shall have occurred during such period, the nature of such Default or Event of Default and the actions that the Borrower has taken or intends to take in respect thereof.

(c) Final Design Specifications; RIDEM Approvals. The Borrower shall deliver, upon the request of the WIFIA Lender (i) the final designs, plans and specifications relating to the development and construction of the Project and (ii) evidence of receipt of the Orders of Approval and Certificates of Approval from the Rhode Island Department of Environmental Management.

(d) Construction Reporting. The WIFIA Lender shall have the right in its sole discretion to monitor (or direct its agents to monitor) the development of the Project, including environmental compliance, design, and construction of the Project. The Borrower shall be responsible for administering construction oversight of the Project in accordance with applicable

federal, state and local governmental requirements. The Borrower agrees to cooperate in good faith with the WIFIA Lender in the conduct of such monitoring by promptly providing the WIFIA Lender with such reports, documentation or other information as shall be requested by the WIFIA Lender or its agents, including any independent engineer reports, documentation or information and, if requested by the WIFIA Lender, copies of any Principal Project Contracts and related documentation. During the period through Substantial Completion of the Project, the Borrower shall furnish to the WIFIA Lender, on a quarterly basis, a report on the status of the Project, substantially in the form of **Exhibit K** (*Form of Quarterly Report*). The report shall be executed by the Borrower's Authorized Representative and, for any quarter, shall be delivered to the WIFIA Lender not later than the fifteenth (15th) day of the following quarter (or if such day is not a Business Day, on the next following Business Day). If the then-current projection for the Substantial Completion Date is a date later than the Projected Substantial Completion Date, the Borrower shall provide in such report a description in reasonable detail to the reasonable satisfaction of the WIFIA Lender of the reasons for such projected delay, an estimate of the impact of such delay on the capital and operating costs of the System (if any), and that the new date could not reasonably be expected to result in a Material Adverse Effect or a material and adverse effect on the Project or the System. The Projected Substantial Completion Date shall automatically be adjusted to the date specified by the Borrower in its report unless the WIFIA Lender objects to the adjustment in writing to the Borrower within sixty (60) days following receipt of the Borrower's report on the basis that the Borrower's report does not demonstrate the matters specified in this Section 16(d) (*Reporting Requirements – Construction Reporting*).

(e) Public Benefits Report. The Borrower shall deliver to the WIFIA Lender a report, in the form of **Exhibit L** (*Form of Public Benefits Report*) (the "**Public Benefits Report**"), (i) no later than thirty (30) days prior to the Effective Date, (ii) within ninety (90) days following the Substantial Completion Date and (iii) within ninety (90) days following the fifth (5th) anniversary of the Substantial Completion Date. The Borrower agrees that information described under this Section 16(e) (*Reporting Requirements – Public Benefits Report*) may be made publicly available by the WIFIA Lender at its discretion.

(f) Modifications to Total Project Costs. For the period through the Substantial Completion Date, the Borrower shall provide the WIFIA Lender with written notification at least thirty (30) days prior to instituting any increase or decrease to the aggregate Total Project Costs in an amount equal to or greater than ten percent (10%), which notification shall set forth the nature of the proposed increase or decrease and an estimate of the impact of such increase or decrease on the capital costs and operating costs of the System. The Borrower's notice shall demonstrate that the proposed increase or decrease is consistent with the provisions of this Agreement, is necessary or beneficial to the Project, does not materially impair the WIFIA Lender's security or the Borrower's ability to comply with its obligations under the Related Documents (including any financial ratios or covenants included therein), and could not reasonably be expected to result in a Material Adverse Effect.

(g) Operations and Maintenance. The WIFIA Lender shall have the right, in its sole discretion, to monitor (or direct its agents to monitor) the Project's operations and, as the WIFIA Lender may request from time to time, to receive reporting on the operation and management of the Project, and copies of any contracts relating to the operation and maintenance of the Project. The Borrower agrees to cooperate in good faith with the WIFIA Lender in the

conduct of such monitoring by promptly providing the WIFIA Lender with such reports, documentation, or other information requested by the WIFIA Lender. The WIFIA Lender has the right, in its sole discretion, to retain such consultants or advisors, to carry out the provisions of this Section 16(g) (*Reporting Requirements – Operations and Maintenance*). On or prior to the Substantial Completion Date, the Borrower shall deliver to the WIFIA Lender an operations and maintenance manual with respect to the Project, in form and substance reasonably acceptable to the WIFIA Lender.

(h) Notices.

(i) [RESERVED].

(ii) The Borrower shall, within ten (10) Business Days after the Borrower learns of the occurrence, give the WIFIA Lender notice of any of the following events or receipt of any of the following notices, as applicable, setting forth details of such event:

(A) Substantial Completion: the occurrence of Substantial Completion, such notice to be provided in the form set forth in **Exhibit J** (*Form of Certificate of Substantial Completion*);

(B) Defaults; Events of Default; any Default or Event of Default;

(C) Litigation; (1) the filing of any litigation, suit or action, or the commencement of any proceeding, against the Borrower before any arbitrator, Governmental Authority, alternative dispute resolution body, or other neutral third-party, or the receipt by the Borrower in writing of any threat of litigation, suit, action, or proceeding, or of any written claim against the Borrower that, in each case, could reasonably be expected to have a Material Adverse Effect, and any material changes in the status of such litigation, suit, action or claim, and (2) any judgments against the Borrower with award amounts in excess of \$50,000,000, either individually or in the aggregate;

(D) Environmental Notices: any material notice of violation or material change in finding under any Environmental Law related to the Project or any material changes to the NEPA Determination;

(E) 2 C.F.R. § 180.350 Notices: any notification required pursuant to 2 C.F.R. § 180.350, whether attributable to a failure by the Borrower to disclose information previously required to have been disclosed or due to the Borrower or any of its principals meeting any of the criteria set forth in 2 C.F.R. § 180.335;

(F) Amendments; any material amendment of any Related Document; provided that (1) if applicable, such notice can be accomplished through an email to the WIFIA Lender that includes a link to the posting of the relevant document on EMMA and (2) a Supplemental Indenture executed solely for the purpose of issuing

Additional Senior Obligations, without any modification to the Indenture, shall not be considered a material amendment for purposes of this clause (F);

(G) Ratings Changes: any change in the rating assigned to the Senior Obligations or any Subordinated Obligations, in each case by any Nationally Recognized Rating Agency that has provided a public rating on such indebtedness, and any notices, reports or other written materials (other than those that are ministerial in nature) received from any such rating agencies; provided that such notice can be accomplished through an email to the WIFIA Lender that includes a link to the posting of the relevant documents on EMMA;

(H) Postings on EMMA; the posting of any document on EMMA in accordance with the requirements of any continuing disclosure agreement with respect to any Outstanding Obligations relating to annual financial information and operating data and the reporting of significant events; provided that such notice can be accomplished through an email to the WIFIA Lender that includes a link to the posting of the relevant document on EMMA;

(I) Mergers and Acquisitions; the consummation of a merger, consolidation, or acquisition of the Borrower or the sale of all or substantially all of the assets of the Borrower, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms; provided that such notice can be accomplished through an email to the WIFIA Lender that includes a link to the posting of the relevant documents on EMMA;

(J) Change in Trustee; the appointment of a successor or additional trustee, or the change of name of a trustee, if material;

(K) Other Significant Financial Matters: any (1) unscheduled draws on debt service reserves reflecting financial difficulties, (2) unscheduled draws on credit enhancements reflecting financial difficulties, (3) substitution of credit or liquidity providers, or their failure to perform, (4) Bond calls, if material, and tender offers, (5) defeasances, (6) release, substitution or sale of property securing repayment of the WIFIA Bond, if material, or (7) incurrence of a financial obligation of the Borrower, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the Borrower, any of which affect the WIFIA Lender, if material; provided that any such notice can be accomplished through an email to the WIFIA Lender that includes a link to the posting of the relevant documents on EMMA; and

(L) Other Adverse Events; the occurrence of any other event or condition, including any notice of breach from a contract counterparty or any Holder of any Obligations, that could reasonably be expected to result in a Material Adverse Effect or have a material and adverse effect on the Project.

(iii) The Borrower and the WIFIA Lender agree and confirm that no provision of this Section 16(h) (*Reporting Requirements – Notices*) constitutes a continuing disclosure undertaking pursuant to SEC Rule 15c2-12 adopted by the Securities Exchange Commission under the Securities Exchange Act of 1934.

(i) Requested Information. The Borrower shall, at any time while the WIFIA Loan remains outstanding, promptly deliver to the WIFIA Lender such additional information regarding the business, financial, legal or organizational affairs of the Borrower or regarding the Project, the System or the Revenues as the WIFIA Lender may from time to time reasonably request. Such additional information may include, if requested by the WIFIA Lender, a written statement from the Borrower's Authorized Representative setting forth the actions the Borrower proposes to take with respect to the occurrence of any event specified in Section 16(h)(ii) (*Reporting Requirements – Notices*), excluding the events specified in sub-clauses (A) (*Substantial Completion*), (F) (*Amendments*) or, in the case of a ratings upgrade, (G) (*Ratings Changes*) thereto.

(j) Annual Officer's Certificate. The Borrower shall furnish to the WIFIA Lender, concurrently with the delivery of the same to the Trustee, a copy of the certificate required to be delivered to the Trustee pursuant to Section 603(4) (*Covenant as to Rates and Charges*) of the Indenture; provided that the failure of the Borrower to deliver such certificate to the WIFIA Lender concurrently with the delivery to the Trustee shall not constitute a Default or Event of Default unless (i) the WIFIA Lender shall have provided the Borrower with written notice of such failure, and (ii) the Borrower shall have failed to deliver such certificate to the WIFIA Lender within thirty (30) days after the date of delivery of such notice.

ARTICLE VI EVENTS OF DEFAULT

Section 17. Events of Default and Remedies.

(a) An “**Event of Default**” shall exist under this Agreement if any of the following occurs:

(i) Payment Default. The Borrower shall fail to pay any of the principal amount of or interest on the WIFIA Loan (including WIFIA Debt Service required to have been paid pursuant to the provisions of Section 8 (*Payment of Principal and Interest*) when and as the payment thereof shall be required under this Agreement or the WIFIA Bond or on the Final Maturity Date (each such failure, a “**Payment Default**”).

(ii) Covenant Default. The Borrower shall fail to observe or perform any covenant, agreement or obligation of the Borrower under this Agreement, the WIFIA Bond or any other WIFIA Loan Document (other than in the case of any Payment Default or any Development Default), and such failure shall not be cured within thirty (30) days after the earlier to occur of (A) receipt by the Borrower from the WIFIA Lender of written notice thereof or (B) the Borrower's knowledge of such failure; provided, however, that if such failure is capable of cure but cannot reasonably be cured within such thirty (30) day cure period, then no Event of Default shall be deemed to have

occurred or be continuing under this clause (i), and such thirty (30) day cure period shall be extended by up to one hundred fifty (150) additional days, if and so long as (x) within such thirty (30) day cure period the Borrower shall commence actions reasonably designed to cure such failure and shall diligently pursue such actions until such failure is cured and (y) such failure is cured within one hundred eighty (180) days of the date specified in either (A) or (B) above, as applicable.

(iii) Misrepresentation Default. Any of the representations, warranties or certifications of the Borrower made in or delivered pursuant to the WIFIA Loan Documents (or in any certificates delivered by the Borrower in connection with the WIFIA Loan Documents) shall prove to have been false or misleading in any material respect when made or deemed made (or any representation and warranty that is subject to a materiality qualifier shall prove to have been false or misleading in any respect); provided, that no Event of Default shall be deemed to have occurred under this clause (ii) if and so long as (A) such misrepresentation is not intentional, (B) such misrepresentation is not a misrepresentation in respect of Section 12(h) (*Representations and Warranties of Borrower – No Debarment*), Section 12(j) (*Representations and Warranties of Borrower – Compliance with Federal Requirements*), Section 12(p) (*Representations and Warranties of Borrower – OFAC; Anti-Corruption Laws*), or Section 12(aa) (*Representations and Warranties of Borrower – Patriot Act*), (C) in the reasonable determination of the WIFIA Lender, such misrepresentation has not had, and would not reasonably be expected to result in, a Material Adverse Effect, (D) in the reasonable determination of the WIFIA Lender, the underlying issue giving rise to the misrepresentation is capable of being cured, (E) the underlying issue giving rise to the misrepresentation is cured by the Borrower within thirty (30) days from the date on which the Borrower first became aware (or reasonably should have become aware) of such misrepresentation, and (F) the Borrower diligently pursues such cure during such thirty (30) day period.

(iv) Acceleration of Senior Obligations. Any acceleration shall occur of the maturity of any Senior Obligation, or any such Senior Obligation shall not be paid in full upon the final maturity thereof.

(v) Cross Default with Other Financing Documents. Any default shall occur in respect of the performance of any covenant, agreement or obligation of the Borrower under the Related Documents (except for the Principal Project Contracts), and such default shall be continuing after the giving of any applicable notice and the expiration of any applicable grace period specified in the Related Documents (except for the Principal Project Contracts) with respect to such default, and the Borrower shall have failed to cure such default or to obtain an effective written waiver thereof in accordance with the terms of the applicable Senior Obligations.

(vi) Material Adverse Judgment. Any final, non-appealable judgment related to the Revenues, the System or the Project shall be entered against the Borrower which has a Material Adverse Effect.

(vii) Occurrence of a Bankruptcy Related Event. A Bankruptcy Related Event shall occur with respect to the Borrower.

(viii) Invalidity of WIFIA Loan Documents and Indenture Documents.
(A) Any WIFIA Loan Document ceases to be in full force and effect (other than as a result of the termination thereof in accordance with its terms) or becomes void, voidable, illegal or unenforceable, or the Borrower contests in any manner the validity or enforceability of any WIFIA Loan Document to which it is a party or denies it has any further liability under any WIFIA Loan Document to which it is a party, or purports to revoke, terminate or rescind any WIFIA Loan Document to which it is a party; (B) any Indenture Document ceases (other than as expressly permitted thereunder) to be effective or to grant a valid and binding security interest on any material portion of the Pledged Collateral other than as a result of actions or a failure to act by, and within the control of, the Trustee or any Secured Party, and with the priority purported to be created thereby; or (C) any event occurs that results in the material impairment in the perfection or priority of the WIFIA Lender's security interest in the Pledged Collateral or in the value of such Pledged Collateral.

(ix) [RESERVED].

(x) Development Default. A Development Default shall occur.

(xi) Default Under Principal Project Contracts. The Borrower shall default in the timely performance of any covenant, agreement or obligation under any Principal Project Contract or any Principal Project Contract shall be terminated prior to its scheduled expiration (unless in any case such default or termination could not reasonably be expected to have a Material Adverse Effect), and the Borrower shall have failed to cure such default or to obtain an effective written waiver or revocation thereof prior to the expiration of the applicable grace period specified in any such Principal Project Contract, or to obtain an effective revocation of such termination (as the case may be); provided, however, that no Event of Default shall be deemed to have occurred or be continuing under this clause if, in the case of any termination of a Principal Project Contract, the Borrower replaces such Principal Project Contract with a replacement agreement (1) entered into with another counterparty that (I) is of similar or greater creditworthiness and experience as the counterparty being replaced was at the time the applicable Principal Project Contract was originally executed (or otherwise reasonably acceptable to the WIFIA Lender) and (II) is not, at the time of such replacement, suspended or debarred or subject to a proceeding to suspend or debar from bidding, proposing or contracting with any federal or state department or agency, (2) on substantially the same terms and conditions as the Principal Project Contract being replaced (or otherwise reasonably acceptable to the WIFIA Lender) and (3) effective as of the date of termination of the Principal Project Contract being replaced.

(xii) Cessation of System Operations. Following the Substantial Completion Date, operation of the System shall cease for a continuous period of not less than one hundred eighty (180) days unless such cessation of operations shall occur by

reason of an Uncontrollable Force that is not due to the fault of the Borrower (and which the Borrower could not reasonably have avoided or mitigated).

(xiii) Failure to Maintain Legal Structure. The Borrower shall fail to maintain its existence as a public corporation organized and existing under its Organizational Documents and the laws of the State.

(b) Upon the occurrence of any Bankruptcy Related Event, all obligations of the WIFIA Lender hereunder with respect to the disbursement of any undisbursed amounts of the WIFIA Loan shall automatically be deemed terminated.

(c) Upon the occurrence of any Event of Default, the WIFIA Lender, by written notice to the Borrower, may exercise any or all of the following remedies:

(i) the WIFIA Lender may suspend or terminate all of its obligations hereunder with respect to the disbursement of any undisbursed amounts of the WIFIA Loan;

(ii) the WIFIA Lender may cease permitting interest on the WIFIA Loan to be compounded and capitalized;

(iii) the WIFIA Lender may apply the Default Rate provisions of Section 6 (Interest Rate);

(iv) the WIFIA Lender may suspend or debar the Borrower from further participation in any Government program administered by the WIFIA Lender and to notify other departments and agencies of such default; and/or

(v) subject to the provisions of the Indenture, the WIFIA Lender shall be entitled and empowered to institute any actions or proceedings at law or in equity for the collection of any sums due and unpaid hereunder or under the WIFIA Bond or the other WIFIA Loan Documents, and may prosecute any such judgment or final decree against the Borrower and collect in the manner provided by law out of the property of the Borrower the moneys adjudged or decreed to be payable, and the WIFIA Lender shall have all of the rights and remedies of a creditor, including all rights and remedies of a secured creditor under the Uniform Commercial Code, and may take such other actions at law or in equity as may appear necessary or desirable to collect all amounts payable by Borrower under this Agreement, the WIFIA Bond or the other WIFIA Loan Documents then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Agreement, the WIFIA Bond or the other WIFIA Loan Documents. The WIFIA Lender acknowledges that it has no right to accelerate the Outstanding amount of the WIFIA Loan except as permitted under the Indenture.

(d) No action taken pursuant to this Section 17 (*Events of Default and Remedies*) shall relieve Borrower from its obligations pursuant to this Agreement, the WIFIA Bond or the other WIFIA Loan Documents, all of which shall survive any such action.

ARTICLE VII MISCELLANEOUS

Section 18. Disclaimer of Warranty. The WIFIA Lender makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for a particular purpose or fitness for use of the Project or any portion thereof or any other warranty with respect thereto. In no event shall the WIFIA Lender be liable for any incidental, indirect, special or consequential damages incidental to or arising out of this Agreement or the Project or the existence, furnishing, functioning or use of the Project or any item or products or services provided for in this Agreement.

Section 19. No Personal Recourse. No official, employee or agent of the WIFIA Lender or the Borrower or any Person executing this Agreement or any of the other WIFIA Loan Documents shall be personally liable on this Agreement or such other WIFIA Loan Documents by reason of the issuance, delivery or execution hereof or thereof.

Section 20. No Third Party Rights. The parties hereby agree that this Agreement creates no third party rights against the Borrower, the Government, or the WIFIA Lender, solely by virtue of the WIFIA Loan, and the Borrower agrees to indemnify and hold the WIFIA Lender, the Servicer (if any), the Administrator, and the Government harmless, to the extent permitted by law and in accordance with Section 32 (*Indemnification*), from any lawsuit or claim arising in law or equity solely by reason of the WIFIA Loan, and that no third party creditor or creditors of the Borrower shall have any right against the WIFIA Lender with respect to the WIFIA Loan made pursuant to this Agreement.

Section 21. Borrower's Authorized Representative. The Borrower shall at all times have appointed a Borrower's Authorized Representative by designating such Person or Persons from time to time to act on the Borrower's behalf pursuant to a written certificate furnished to the WIFIA Lender and the Servicer, if any, containing the specimen signature or signatures of such Person or Persons and signed by the Borrower.

Section 22. WIFIA Lender's Authorized Representative. The WIFIA Lender hereby appoints the Director of the WIFIA Program, whose notice details are set forth below in Section 31 (*Notices*), to serve as the WIFIA Lender's Authorized Representative under this Agreement until such time as a successor or successors shall have been appointed. Thereafter, the successor in office shall serve as the WIFIA Lender's Authorized Representative. The WIFIA Lender shall provide notice to the Borrower within a reasonable time period following the succession.

Section 23. Servicer. The WIFIA Lender may from time to time designate another entity or entities to perform, or assist the WIFIA Lender in performing, the duties of the Servicer or specified duties of the WIFIA Lender under this Agreement and the WIFIA Bond. The WIFIA Lender shall give the Borrower written notice of the appointment of any successor or additional Servicer and shall enumerate the duties or any change in duties to be performed by any Servicer. Any references in this Agreement to the WIFIA Lender shall be deemed to be a reference to the Servicer with respect to any duties which the WIFIA Lender shall have delegated to such Servicer. The WIFIA Lender may at any time assume the duties of any Servicer under this Agreement and the WIFIA Bond. The Borrower shall cooperate and respond to any reasonable

request of the Servicer for information, documentation or other items reasonably necessary for the performance by the Servicer of its duties hereunder.

Section 24. Amendments and Waivers. No amendment, modification, termination, or waiver of any provision of this Agreement shall in any event be effective without the written consent of each of the parties hereto.

Section 25. Governing Law. This Agreement shall be governed by the federal laws of the United States of America if and to the extent such federal laws are applicable and the internal laws of the State, if and to the extent such federal laws are not applicable.

Section 26. Severability. In case any provision in or obligation under this Agreement shall be invalid, illegal, or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

Section 27. Successors and Assigns. This Agreement shall be binding upon the parties hereto and their respective permitted successors and assigns and shall inure to the benefit of the parties hereto and their permitted successors and assigns. Neither the Borrower's rights or obligations hereunder nor any interest therein may be assigned or delegated by the Borrower without the prior written consent of the WIFIA Lender.

Section 28. Remedies Not Exclusive. No remedy conferred herein or reserved to the WIFIA Lender is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Section 29. Delay or Omission Not Waiver. No delay or omission of the WIFIA Lender to exercise any right or remedy provided hereunder upon a default of the Borrower (except a delay or omission pursuant to a written waiver) shall impair any such right or remedy or constitute a waiver of any such default or acquiescence therein. Every right and remedy given by this Agreement or by law to the WIFIA Lender may be exercised from time to time, and as often as may be deemed expedient by the WIFIA Lender.

Section 30. Counterparts. This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by the different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Electronic delivery of an executed counterpart of a signature page of this Agreement or of any document or instrument delivered in connection herewith in accordance with Section 31 (*Notices*) shall be effective as delivery of an original executed counterpart of this Agreement or such other document or instrument, as applicable.

Section 31. Notices. Notices hereunder shall be (a) in writing, (b) effective as provided below and (c) given by (i) nationally recognized courier service, (ii) hand delivery, or (iii) email, in each case to:

If to WIFIA Lender: Environmental Protection Agency
WJC-E 7334A
1200 Pennsylvania Avenue NW
Washington, D.C. 20460
Attention: WIFIA Director
Email: WIFIA_Portfolio@epa.gov

If to Borrower: Narragansett Bay Commission
One Service Road
Providence, RI 02905
Attention: Chief Financial Officer
Email: Karen.Giebink@narrabay.com

If to Trustee: U.S. Bank Trust Company, National Association
One Federal Street
Boston, MA 02110
Attention: Karen Beard
Email: Karen.Beard@usbank.com

Unless otherwise instructed by the WIFIA Lender's Authorized Representative, all notices to the WIFIA Lender should be made by email to the email address noted above for the WIFIA Lender. Notices required to be provided herein shall be provided to such different addresses or to such further parties as may be designated from time to time by a Borrower's Authorized Representative, with respect to notices to the Borrower, or by the WIFIA Lender's Authorized Representative, with respect to notices to the WIFIA Lender or the Servicer. Each such notice, request or communication shall be effective (x) if delivered by hand or by nationally recognized courier service, when delivered at the address specified in this Section 31 (*Notices*) (or in accordance with the latest unrevoked written direction from the receiving party) and (y) if given by email, when such email is delivered to the address specified in this Section 31 (*Notices*) (or in accordance with the latest unrevoked written direction from the receiving party); provided, that notices received on a day that is not a Business Day or after 5:00 p.m. Eastern Time on a Business Day will be deemed to be effective on the next Business Day.

Section 32. Indemnification. The Borrower shall, to the extent permitted by law, indemnify the WIFIA Lender and any official, employee, agent or representative of the WIFIA Lender (each such Person being herein referred to as an "**Indemnatee**") against, and hold each Indemnatee harmless from, any and all losses, claims, damages, liabilities, fines, penalties, costs and expenses (including the fees, charges and disbursements of any counsel for any Indemnatee and the costs of environmental remediation), whether known, unknown, contingent or otherwise, incurred by or asserted against any Indemnatee arising out of, in connection with, or as a result of (a) the execution, delivery and performance of this Agreement or any of the other Related Documents, (b) the WIFIA Loan or the use of the proceeds thereof, or (c) the violation of any law, rule, regulation, order, decree, judgment or administrative decision relating to the environment, the preservation or reclamation of natural resources, the management, release or threatened release of any hazardous material or to health and safety matters; in each case arising out of or in direct relation to the Project; provided, that such indemnity shall not, as to any

Indemnitee, be available to the extent that such losses, claims, damages, liabilities, fines, penalties, costs or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee. In case any action or proceeding is brought against an Indemnitee by reason of any claim with respect to which such Indemnitee is entitled to indemnification hereunder, the Borrower shall be entitled, at its expense, to participate in the defense thereof; provided, that such Indemnitee has the right to retain its own counsel, at the Borrower's expense, and such participation by the Borrower in the defense thereof shall not release the Borrower of any liability that it may have to such Indemnitee. Any Indemnitee against whom any indemnity claim contemplated in this Section 32 (*Indemnification*) is made shall be entitled, after consultation with the Borrower and upon consultation with legal counsel wherein such Indemnitee is advised that such indemnity claim is meritorious, to compromise or settle any such indemnity claim. Any such compromise or settlement shall be binding upon the Borrower for purposes of this Section 32 (*Indemnification*). Nothing herein shall be construed as a waiver of any legal immunity that may be available to any Indemnitee. To the extent permitted by applicable law, neither the Borrower nor the WIFIA Lender shall assert, and each of the Borrower and the WIFIA Lender hereby waives, any claim against any Indemnitee or the Borrower, respectively, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any of the other Related Documents, the other transactions contemplated hereby and thereby, the WIFIA Loan or the use of the proceeds thereof, provided, that nothing in this sentence shall limit the Borrower's indemnity obligations to the extent such damages are included in any third party claim in connection with which an Indemnitee is entitled to indemnification hereunder. All amounts due to any Indemnitee under this Section 32 (*Indemnification*) shall be payable promptly upon demand therefor. The obligations of the Borrower under this Section 32 (*Indemnification*) shall survive the payment or prepayment in full or transfer of the WIFIA Bond, the enforcement of any provision of this Agreement or the other Related Documents, any amendments, waivers (other than amendments or waivers in writing with respect to this Section 32 (*Indemnification*)) or consents in respect hereof or thereof, any Event of Default, and any workout, restructuring or similar arrangement of the obligations of the Borrower hereunder or thereunder.

Section 33. Sale of WIFIA Loan. The WIFIA Lender shall not sell the WIFIA Loan at any time prior to the Substantial Completion Date. After such date, the WIFIA Lender may sell the WIFIA Loan to another entity or reoffer the WIFIA Loan into the capital markets only in accordance with the provisions of this Section 33 (*Sale of WIFIA Loan*). Such sale or reoffering shall be on such terms as the WIFIA Lender shall deem advisable. However, in making such sale or reoffering the WIFIA Lender shall not change the terms and conditions of the WIFIA Loan without the prior written consent of the Borrower in accordance with Section 24 (*Amendments and Waivers*). The WIFIA Lender shall provide, at least sixty (60) days prior to any sale or reoffering of the WIFIA Loan, written notice to the Borrower of the WIFIA Lender's intention to consummate such a sale or reoffering; provided, however, that no such notice shall be required during the continuation of any Event of Default. The provision of any notice pursuant to this Section 33 (*Sale of WIFIA Loan*) shall not (x) obligate the WIFIA Lender to sell nor (y) provide the Borrower with any rights or remedies in the event the WIFIA Lender, for any reason, does not sell the WIFIA Loan.

Section 34. Effectiveness. This Agreement shall be effective on the Effective Date.

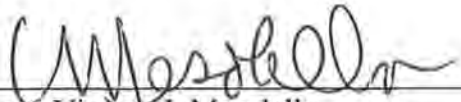
Section 35. Termination. This Agreement shall terminate upon the irrevocable payment in full in cash by the Borrower of the Outstanding WIFIA Loan Balance, together with all accrued interest, fees and expenses with respect thereto; provided, however, that the indemnification requirements of Section 32 (*Indemnification*), the reporting and record keeping requirements of Section 14(p) (*Affirmative Covenants – Access; Records*) and the payment requirements of Section 10 (*Fees and Expenses*) shall survive the termination of this Agreement as provided in such Sections.

Section 36. Integration. This Agreement constitutes the entire contract between the parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

[Signature pages follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

NARRAGANSETT BAY COMMISSION

By: 
Name: Vincent J. Mesolella
Title: Chairman

By: 
Name: Laurie Horridge
Title: Executive Director

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY**, acting by and through
the Administrator of the Environmental Protection
Agency

By: 
Name: Michael S. Regan
Title: Administrator

SCHEDULE I

PROJECT DEFINITION

The Field's Point Resiliency Improvements project consists of seven projects as follows:

Field's Point Wastewater Treatment Facilities (FPWWTF) Improvements

This project consists of improvements and upgrades to the Field's Point WWTF including the disinfection and de-chlorination systems, the odor control unit at the Gravity Thickener Building, a new transformer and replacement of the plant water automatic strainer. Other improvements include new variable frequency drives (VFDs) for the return activated sludge pumps and other items.

20400 FPWWTF Ernest Street Pump Station Improvements

This project involves improvements and upgrades to NBC's Ernest Street pump station located adjacent to Field's Point. Identified improvements include replacement of large diameter valves, gates, actuators, flow meters, pumps, VFDs, instrumentation and control units, influent screening, motor control centers, motor protectors, electrical power systems and a new standby generator. In addition, the building requires modification to the roofing system, air handling units and other infrastructure.

20500 FPWWTF Maintenance and Storage Buildings

This project involves the replacement of the Maintenance Building and Storage Building that are beyond their useful life.

20600 NBC Solar Carport

This project involves the installation of a solar carport at Field's Point.

40101 FPWWTF Electrical Improvements

This project involves the evaluation of critical electrical, control systems and standby power capabilities for critical facilities at the FPWWTF and the implementation of the recommended solution to ensure uninterrupted treatment processes.

20800 Cybersecurity Improvements

This project includes the purchase and implementation of cybersecurity improvements to operate and maintain its facilities.

71000 Lincoln Septage Receiving Station Replacement

This project includes design and construction of a new replacement septage receiving station equipped with a screening mechanism and sample collection capabilities in accordance with NBC's Standard Operating Procedures for monitoring septage.

SCHEDULE II
PROJECT BUDGET

SOURCES OF FUNDS	AMOUNT (\$ USD)	PERCENTAGE (%)
WIFIA	\$55,499,228	49.0%
SRF	\$12,000,000	10.6%
Borrower Cash	\$45,764,504	40.4%
<u>Total Sources of Funds</u>	\$113,263,732	100%
USES OF FUNDS	AMOUNT (\$ USD)	PERCENTAGE (%)
Construction	\$92,962,172	82.1%
Design	\$10,236,000	9.0%
Land Acquisition	\$750,000	0.7%
WIFIA Market Conditions Contingency	\$7,100,000	6.3%
Financing Costs	\$2,215,560	2.0%
<u>Total Uses of Funds</u>	\$113,263,732	100%
<u>Total Eligible Project Costs</u>	\$113,263,732	
<u>Total Project Costs</u>	\$113,263,732	

SCHEDULE III
CONSTRUCTION SCHEDULE

Project Element	Design Start	Design End	Construction Start	Construction End
20300 FPWWTF Improvements Contract 1	4/1/2022	9/1/2023	9/1/2023	2/1/2025
20300 FPWWTF Improvements Contract 2	4/1/2022	3/1/2023	3/1/2023	8/1/2024
20300 FPWWTF Improvements Phase 2	4/1/2022	10/1/2021	10/1/2021	8/1/2022
20400 FPWWTF Ernest Street Pump Station Improvements	7/1/2021	4/1/2025	8/1/2022	12/10/2025
20500 FPWWTF Maintenance & Storage Buildings	12/3/2021	6/22/2023	7/10/2022	6/30/2025
20600 NBC Solar Carport			1/1/2022	9/22/2022
20800 Cybersecurity Improvements			8/1/2020	7/1/2024
40101 FPWWTF Electrical Improvements	5/20/2022	12/30/2023	1/10/2023	12/30/2024
71000 Lincoln Septage Receiving Station Replacement	2/1/2022	12/20/2023	7/1/2024	9/1/2026

Projected Substantial Completion: September 1, 2026

SCHEDULE IV

EXISTING INDEBTEDNESS

Existing Senior Obligations

	Agreement/Series	Issued in the Amount of
1.	Narragansett Bay Commission Clean Water Revenue Bonds, 2003 Series	\$40,000,000
2.	Narragansett Bay Commission Wastewater System Revenue Bonds, 2004 Series B	\$40,000,000
3.	Narragansett Bay Commission Wastewater System Revenue Bonds, 2005 Series B	\$30,000,000
4.	Narragansett Bay Commission Wastewater System Revenue Bonds, 2006 Series A	\$30,000,000
5.	Narragansett Bay Commission Wastewater System Revenue Bonds, 2007 Series B	\$25,000,000
6.	Narragansett Bay Commission Wastewater System Revenue Refunding Bonds, 2008 Series A	\$66,360,000
7.	Narragansett Bay Commission Wastewater System Revenue Bonds, 2009 Series A	\$55,000,000
8.	Narragansett Bay Commission Wastewater System Revenue Bonds, 2010 Series A	\$2,000,000
9.	Narragansett Bay Commission Wastewater System Revenue Bonds, 2010 Series B	\$20,000,000
10.	Narragansett Bay Commission Wastewater System Revenue Bonds, 2011 Series A	\$30,000,000
11.	Narragansett Bay Commission Wastewater System Revenue Bonds, 2012 Series A	\$25,750,000
12.	Narragansett Bay Commission Wastewater System Revenue Bonds, 2013 Series B	\$25,000,000
13.	Narragansett Bay Commission Wastewater System Revenue Bonds, 2013 Series C (partially refunded)	\$34,970,000
14.	Narragansett Bay Commission Wastewater System Revenue Bonds, 2014 Series A	\$45,000,000
15.	Narragansett Bay Commission Wastewater System Refunding Revenue Bonds, 2015 Series A (partially refunded)	\$40,085,000
16.	Narragansett Bay Commission Wastewater System Revenue Bonds, 2015 Series B	\$41,753,500
17.	Narragansett Bay Commission Wastewater System Revenue Bonds, 2016 Series A	\$23,000,000
18.	Narragansett Bay Commission Wastewater System Revenue Bonds, 2019 Series A	\$35,000,000

19.	Narragansett Bay Commission Wastewater System Revenue Bonds, 2019 Series B	\$10,000,000
20.	Narragansett Bay Commission Wastewater System Refunding Revenue Bonds, 2020 Series A	\$196,360,000
21.	Narragansett Bay Commission Wastewater System Revenue Refunding Bonds, 2020 Series B, Taxable Compound Interest Bonds	\$268,710,610
22.	Narragansett Bay Commission Wastewater System Revenue Bonds, 2020 Series C, Taxable Compound Interest Bonds	\$190,633,824
23.	Narragansett Bay Commission Wastewater System Revenue Bonds, 2021 Series A, Federally Taxable	\$45,000,000

SCHEDULE V

FLOW OF FUNDS

All terms used in this Schedule V shall have the meaning assigned to such terms as provided in the Indenture. All section references used in this Schedule V shall be references to the appropriate section in the Indenture.

Section 504. Revenue Fund.

(1) All Revenues, except (i) proceeds of insurance and condemnation to the extent provided in Section 606, (ii) proceeds of any sale or other disposition of any part of the System to the extent provided in Section 604, (iii) earnings on investment of the funds and accounts hereunder to the extent provided in Section 514 hereof and (iv) Debt Service Assistance deposited in the Debt Service Assistance Account as provided in Section 506, shall be collected by or for the account of the Commission and deposited by or on behalf of the Commission as promptly as practicable in the Revenue Fund. There shall also be deposited in the Revenue Fund any other moneys so directed by the Indenture and any other moneys of the Commission which the Commission may in its discretion determine to so apply unless required to be otherwise applied by the Indenture.

There shall be established in the Revenue Fund, a Narragansett Bay Environmental Enforcement Fund. There shall be deposited in the Narragansett Bay Environmental Enforcement Fund such sums as the Commission may, from time to time, deposit, or sums recovered by any administrative or civil enforcement action brought under the authority of the Act. All sums shall be expended for emergency response activities, enforcement activities, additional activities and the retirement of Bonds as provided in Rhode Island General Laws Section 46-25-38.1, as amended.

(2) On the third day prior to the last Business Day of each calendar month, the Commission (or during such times as the Trustee shall hold the Revenue Fund, the Trustee) shall apply amounts available in the Revenue Fund to the following purposes and in the following order:

- (i) To the Commission for deposit in the Operation and Maintenance Account of the Operation and Maintenance Fund, the amount specified by an Authorized Officer in accordance with Section 608; provided that if no amount has been specified by such Authorized Officer, the Operating Expenses for such month shall be deemed to be 125% of the Operating Expenses expended in the same calendar month in the preceding year or such lesser amount as an Authorized Officer shall certify in writing to the Trustee, but in no event less than 100% of such amount;
- (ii) To the Debt Service Fund, an amount, which together with other amounts on deposit in such Fund, will equal the Debt Service Fund Requirement as of the first day of the next ensuing month and;
- (iii) To the Rebate Fund, the amount which together with the amounts on deposit therein, will equal the Rebate Requirement as of such day;

- (iv) Subject to Section 508, to the Debt Service Reserve Fund, an amount which, together with the amounts on deposit therein, will equal the Debt Service Reserve Fund Requirement as of the first day of the next ensuing month;
- (v) To the Debt Service Assistance Account in the Debt Service Fund an amount specified by an Authorized Officer in a certificate delivered to the Trustee, as amended from time to time;
- (vi) To the Stabilization Account of the Debt Service Fund the amount, if any, designated by the Commission as further provided in Section 504(4);
- (vii) To make deposits and payments with respect to obligations secured by the Revenues junior and subordinate to the Bonds as required pursuant to this Indenture, including but not limited to, swap termination payments provided that following any swap termination payment the Commission shall have funds as necessary to make the next succeeding Debt Service Payment for each Series of Bonds, or any indenture or instrument pursuant to which such obligations are issued;
- (viii) Subject to Section 608, to the Operation and Maintenance Reserve Fund, an amount necessary for such Fund to equal the Operation and Maintenance Reserve Fund Requirement as of such day;
- (ix) To the Commission for deposit in the Insurance Reserve Fund, the amount, if any, determined by the Commission pursuant to Section 606(3) as necessary to maintain such Fund at the Insurance Reserve Fund Requirement;
- (x) Subject to Section 609, to the Renewal and Replacement Reserve Fund, an amount, which together with the amounts on deposit therein, will equal the Renewal and Replacement Reserve Fund Requirement as of such day;
- (xi) To the one or more Operating Capital Accounts of the Project Fund, such amount as requested by the Commission but only upon receipt by the Trustee of (a) a copy of the resolution of the Commission approving the Capital Improvements to be funded in whole or in part from such Accounts, certified by an Authorizing Officer and (b) a certificate of an Authorized Officer stating that such deposit will not impair the ability of the Commission to either (A) meet the requirements of the Revenue Fund in the succeeding months of such Fiscal Year based on the then current Annual Budget prepared in accordance with Section 608 or (B) satisfy the requirements of Section 603 in the current or next succeeding Fiscal Year;
- (xii) To such other funds or accounts as shall be required by any Supplemental Indenture; and

(xiii) To such other funds or accounts established by the Commission in compliance with applicable law or as required by any order of the PUC, including, but not limited to, transfers to an Operating Capital Account in accordance with Section 503(5) hereof.

(3) On the last Business Day of each Fiscal Year, the Commission shall, after making the deposits required by Sections 504(2), apply amounts available in the Revenue Fund to the Unrestricted Fund, the amount, if any, directed to be deposited therein in writing by an Authorized Officer.

Any balance remaining in the Revenue Fund following the above payments shall be retained in the Revenue Fund to be available for payments therefrom in the succeeding months, provided that if the Commission shall have issued Notes in accordance with Section 607(2)(i) or (iii), amounts in the Revenue Fund remaining after the above payments have been made may be used by the Commission to pay the principal of such notes at maturity or upon earlier redemption.

(4) Notwithstanding the foregoing, in the event that any order of the PUC requires that Revenues be held in a restricted account, the Commission shall request the Trustee to make such transfers as may be required to comply with any rate order. In the event that Revenues must be restricted in an account for debt service, such monies shall be deposited by the Trustee into the Stabilization Account of the Debt Service Fund.

(5) If, on the last Business Day of any month, the amounts deposited pursuant to Section 504(2)(ii) are, as of such date of calculation, less than the amounts required to be deposited therein, the Trustee shall promptly notify the Agency of any such deficit.

SCHEDULE VI

FLOW OF FUNDS FOLLOWING DEFAULT

All terms used in this Schedule VI shall have the meaning assigned to such terms as provided in the Indenture. All section references used in this Schedule VI shall be references to the appropriate section in the Indenture.

Section 702. Application of Revenues and Other Moneys after Default.

(1) The Commission covenants that if an Event of Default shall happen and shall not have been remedied, the Commission, upon demand of the Trustee, shall pay over and assign to the Trustee (i) forthwith, all moneys, securities, Reserve Deposits, Additional Security, if any, and funds then held by the Commission in any fund or account pledged under the Indenture including, without limitation, funds then held by it in the Revenue Fund, and (ii) as promptly as practicable after receipt thereof the Revenues.

(2) During the continuance of an Event of Default, the Trustee shall apply the moneys, Reserve Deposits, Additional Security, if any, and funds held by the Trustee and such Revenues and the income therefrom as follows and in the following order:

- (i) to the payment of the reasonable and proper charges and expenses of the Fiduciaries and of its agents, representatives, advisors and legal counsel, and of any engineer or firm of engineers selected by the Trustee pursuant to this Article and to the payment of any fees and expenses required to keep any Reserve Deposits or Additional Security in full force and effect;
- (ii) to the payment of the amounts required for reasonable and necessary Operating Expenses, including reasonable and necessary reserves and working capital therefor, and for the reasonable repair and replacement of the System necessary to prevent loss of Revenues or to provide for the continued operation of the System, as certified to the Trustee by an independent engineer or firm of engineers of recognized standing (who may be an engineer or firm of engineers retained by the Commission for other purposes) selected by the Trustee;
- (iii) to the payment of the interest and Principal Amount or Redemption Price then due on the State Obligations and the Bonds, as follows:
 - (a) unless the Principal Amount of all of the Bonds shall have become or have been declared due and payable,

First: To the payment to the persons entitled thereto of all installments of interest or Qualified Swap Payments then due in the order of the maturity of such installments maturing (or payments due), and, if the amount available shall not be sufficient to pay in full all installments maturing (or payments due) on the same date, then to the payment

thereof ratably, according to the amounts due thereon, to the persons entitled thereto, without any discrimination or preference; and

Second: To the payment to the persons entitled thereto of the unpaid Principal Amount or Redemption Price of any State Obligations and Bonds which shall become due, whether at maturity or by call for redemption, in the order of their due dates, and, if the amount available shall not be sufficient to pay in full all the State Obligations and Bonds due on any date, then to the payment thereof ratably, according to the amounts of Principal Amount or Redemption Price due on such date, to the persons entitled thereto, without any discrimination or preference; and

(b) if the Principal Amount of all of the Bonds shall have become or have been declared due and payable, to the payment of the Principal Amount and interest or Qualified Swap Payments then due and unpaid upon the State Obligations and Bonds without preference or priority of Principal Amount over interest or Qualified Swap Payments or of interest over Principal Amount or Qualified Swap Payments, or of any installment of interest (or payment due) over any other installment of interest (or payment due), or of any Bond over any other Bond, ratably, according to the amounts due respectively for Principal Amount and interest and Qualified Swap Payments, to the persons entitled thereto without any discrimination or preference;

(3) If and whenever all overdue installments of interest on all Bonds together with the reasonable and proper charges and expenses of the Fiduciaries including without limitation the fees and disbursements of its legal counsel, and all other sums payable by the Commission under the Indenture, including the Principal Installments and Redemption Price of and accrued unpaid interest on all Bonds which shall then be payable by declaration or otherwise, shall either be paid by or for the account of the Commission, or provision satisfactory to the Trustee shall be made for such payment and all defaults under the Indenture or the Bonds shall have been cured, the Trustee shall pay over to the Commission all moneys, securities and funds remaining unexpended in all funds and accounts provided by the Indenture to be held by the Commission, and thereupon the Commission and the Trustee shall be restored, respectively, to their former positions and rights under the Indenture and all Revenues shall thereafter be applied as provided in Article V. No such payment over to the Commission by the Trustee or resumption of the application of Revenues as provided in Article V shall extend to or affect any subsequent default under the Indenture or impair any right consequent thereon.

(4) The proceeds of any Reserve Deposits and Additional Security shall be applied by the Trustee in the manner provided in the applicable Supplemental Indenture authorizing such Reserve Deposits and Additional Security.

SCHEDULE VII

RATE COVENANT

All terms used in this Schedule VII shall have the meaning assigned to such terms as provided in the Indenture. All section references used in this Schedule VII shall be references to the appropriate section in the Indenture.

Section 603. Covenant as to Rates and Charges.

(1) To the extent not otherwise provided by a Supplemental Indenture, so long as any Bonds are Outstanding, the Commission shall take all actions within its power to establish and maintain Rates and Charges adequate at all times, with other available funds, to provide Revenues and other moneys, including Reserved Revenues from the Stabilization Account of the Debt Service Fund at least sufficient to pay or provide for, as the same become due or are payable (i) all Operating Expenses, (ii) all payments of Principal Installments and Redemption Price of and interest on the Bonds and all other bonds, notes or other evidences of indebtedness of or assumed by the Commission which are payable from Revenues of the System, (iii) all amounts, if any, payable to the Operation and Maintenance Reserve Fund, Debt Service Reserve Fund, the Renewal and Replacement Reserve Fund and, if any, the Insurance Reserve Fund, (iv) all repairs, replacements, and renewals of the System deemed necessary by the Commission which are payable from Revenues of the System and (v) all other amounts which the Commission may by law or contract be obligated to pay from Revenues of the System including amounts payable under Qualified Swap Agreements. Provided the Commission complies with Section 504(4) and has complied or is diligently proceeding to comply with the requirements of subsection (3) and (4) of this Section 603, the Trustee shall take no action pursuant to Section 701 or Section 703 on account of any failure by the Commission to comply with the requirements of this subsection; provided that the setting of the Rates and Charges shall, to the extent required by law, be subject to the approval of the PUC.

(2) Without limiting the generality of the foregoing, the Commission shall take all actions within its power to establish and maintain Rates and Charges at levels sufficient so that total Net Revenues in each Fiscal Year during which Bonds are Outstanding, shall equal at least one hundred twenty-five percent (125%) of the Debt Service Requirement during such Fiscal Year with respect to all Bonds Outstanding, other than Agency Bonds, as of the first day of such Fiscal Year and one hundred thirty-five percent (135%) of the Required Debt Service Fund Deposits for Agency Bonds (based on debt service net of any interest rate subsidy) for such Fiscal Year. Failure by the Commission to comply with the requirements of this subsection (2) shall not be considered an Event of Default under the Indenture so long as the Commission has complied or is diligently proceeding to comply with the requirements of subsection (3) and (4) of this Section 603.

(3) On or before the day which is six months prior to the last Business Day of each Fiscal Year the Commission shall review the adequacy of its Rates and Charges to satisfy the requirements of this Section for the next succeeding Fiscal Year. If such review indicates that the Rates and Charges are, or are likely to be, insufficient to meet the requirements of this Section for the next succeeding Fiscal Year, or if it otherwise appears at any time during such Fiscal Year that Rates and Charges are or are likely to be insufficient to meet such requirements, the Commission shall promptly take such steps as are permitted by law and as are necessary to cure

or avoid the deficiency, including but not limited to, making an emergency request to the Public Utilities Commission to raise its Rates and Charges.

(4) Within one hundred and eighty days of the close of each Fiscal Year while Bonds are Outstanding, the Commission shall deliver to the Trustee a certificate of an Authorized Officer (which may be based on unaudited financial statements) stating, if such was the case, that the Commission satisfied the requirements of subsections (1) and (2) of this Section 603 in such Fiscal Year or, if such was not the case, specifying in reasonable detail the corrective steps taken by the Commission so that it will comply with such requirements in the then current Fiscal Year. If such certificate is based on unaudited financial statements, then within 270 days of the close of each Fiscal Year while the Bonds are Outstanding, the Commission shall deliver to the Trustee an additional certificate based on audited financial statements. Any certificate based on audited financial statements shall be accompanied by a certificate of the independent public accountant or firm of accountants regularly auditing the books of the Commission in accordance with Section 610 setting forth the Net Revenues for the preceding Fiscal Year.

SCHEDULE VIII

ADDITIONAL BONDS TEST

All terms used in this Schedule VIII shall have the meaning assigned to such terms as provided in the Indenture. All section references used in this Schedule VIII shall be references to the appropriate section in the Indenture.

Section 205. General Provisions for Issuance of Bonds.

(1) Bonds of any Series shall be authorized by a Supplemental Indenture which shall specify:

- (i) the authorized Principal Amount, designation, manner of numbering and lettering and Series of such Bonds;
- (ii) the date of such Bonds and the date or dates of maturity thereof;
- (iii) the Redemption Price or Prices and the time or times and other terms of redemption, if any, of any of such Bonds;
- (iv) the amount and date of each Sinking Fund Payment, if any, required to be paid for the retirement of any of such Bonds of like maturity;
- (v) the manner in which the proceeds, if any, of such Bonds are to be applied;
- (vi) the Project or Projects, if any, to be financed by such Bonds and the designation of a Project Account, if any, for the Bonds of such Series;
- (vii) the form or forms of the Bonds of such Series;
- (viii) the Series Debt Service Reserve Fund Requirement, if any, applicable to the Bonds of such Series;
- (ix) if the Bonds are Agency Bonds, the Required Debt Service Fund Deposits to be made to the Debt Service Fund in compliance with the applicable Agency Loan Agreement, taking into account any principal or interest subsidies available to the Commission in connection with such Agency Loan Agreement;
- (x) the minimum denomination, if any, applicable to the Bonds of such Series; and
- (xi) any other provisions deemed advisable by the Commission not in conflict with the Indenture.

(2) The Bonds of each Series shall be executed by the Commission and delivered to the Authenticating Agent for such Series of Bonds and by it authenticated and delivered to or upon the order of the Commission, but only upon receipt by the Trustee of:

- (i) written order signed by an Authorized Officer of the Commission as to the authentication and delivery of such Bonds;
- (ii) a copy of the applicable Supplemental Indenture executed by an Authorized Officer;
- (iii) an amount of moneys or Reserve Deposits in a stated amount such that following the issuance of such Bonds and application of their proceeds, the amounts on deposit in and the aggregate stated and unpaid amount of all Reserve Deposits held as part of the Debt Service Reserve Fund shall equal the Debt Service Reserve Fund Requirement, if any; provided, however, that the applicable Supplemental Indenture may provide that the Series Debt Service Reserve Fund Requirement, if any, attributable to any Series of Agency Bonds may be funded in substantially equal monthly installments over a period of time after issuance as specified in the applicable Supplemental Indenture (which period shall not exceed 24 months);
- (iv) a certificate of a Consulting Engineer or Certified Public Accountant (a) setting forth the estimated annual Net Revenues for each of the three full Fiscal Years following the issuance of such Bonds (including the Fiscal Year in which such Bonds are issued), after giving effect to any increases or decreases in Rates and Charges projected to be in effect for such period, and to the Series Debt Service Reserve Fund Requirement attributable to such Bonds and to any additional Revenues projected to be available during such period, and (b) showing for each of such Fiscal Years that the estimated annual Net Revenues for such Fiscal Year together with the amounts of Reserved Revenues, if any, available in such Fiscal Year (as calculated by an Authorized Officer at the time of the issuance of such Bonds) will be, except with respect to Agency Bonds, at least equal to one hundred twenty-five percent (125%) and with respect to Agency Bonds, at least equal to one hundred thirty-five percent (135%) of the Required Debt Service Fund Deposits for Agency Bonds (based on debt service net of any interest rate subsidy) for such Fiscal Year (or such higher amount as may be set forth in the Supplemental Indenture authorizing the issuance of such Series of Bonds) of (A) the Debt Service Requirement for such Fiscal Year less (B) the amount, if any, of Bond proceeds available or projected to be available to pay Principal Installments and interest becoming due in such Fiscal Year on Bonds Outstanding or projected to be Outstanding as of the first day of such Fiscal Year; provided that the Consulting Engineer's or Certified Public Accountant's certificate shall not project any increase in Rates and Charges during the first full Fiscal Year of the projection period which has not been adopted by the Commission for such Fiscal Year on or before the date of such certificate;
- (v) if on the date of issuance of such Series of Bonds the Commission has any outstanding obligation to replenish the Debt Service Reserve Fund under Section 508(4), evidence that the Commission has made at least one

monthly payment with respect to such obligation on or before the date required thereunder;

- (vi) a certificate of an Authorized Officer stating that, as of the date of delivery of such Bonds, no Event of Default, as described in Section 701, has occurred and is continuing; and
- (vii) to the extent required by law, an order of the Division of Public Utilities approving the issuance of the Bonds.

Section 607. Creation of Liens, Other Indebtedness.

(1) The Commission shall not issue any bonds, notes or other evidences of indebtedness, other than the Bonds and Subordinated Bonds, secured by a pledge of or other lien on the Revenues of the System and other moneys, securities, Reserve Deposits, if any, and funds held or set aside by the Commission or by the Fiduciaries under the Indenture, and shall not otherwise create or cause to be created any lien or charge on the Revenues of the System, moneys, securities, Reserve Deposits, if any, and funds, except to the extent provided in this Section 607.

(2) Notwithstanding anything herein to the contrary the Commission may at any time or from to time issue notes or other evidences of indebtedness (and renewals thereof);

- (i) in anticipation of Bonds to the extent and in the manner provided in Section 207, which Bond Anticipation Notes, if so determined by the Commission, may be secured by a pledge of Revenues, provided that such pledge shall in all respects be subordinate to the provisions of the Indenture and the pledge created by the Indenture;
- (ii) in anticipation of the receipt by the Commission of any grant-in-aid from the United States of America or the State or any agency, instrumentality or political subdivision of either of them, for or on account of Capital Improvements and payable solely out of, or secured by a pledge of, the amounts to be received (which amounts shall not be deemed Revenues hereunder while any such notes are outstanding); provided that no such notes shall be issued unless (a) the Commission shall have received and accepted an agreement, whether conditional or unconditional, providing for the grant-in-aid anticipated by such notes executed by authorized officers of the grantor, (b) the aggregate principal amount of such notes (excluding renewals thereof issued by the Commission) shall not exceed the aggregate amount of the grant-in-aid provided for in such agreement and not yet received by the Commission and (c) all such notes or renewals thereof shall be issued to mature not later than four (4) years after the date of issuance and (d) the Commission shall have received the approval of the Governor of the State as required by the Act; or
- (iii) in anticipation of the Revenues to be received in any Fiscal Year, which notes may be payable out of, or secured by a pledge of, Revenues; provided that (a) any such pledge shall in all respects be subordinate to the provisions of the Indenture and the pledge created by the Indenture, (b)

any such notes shall be payable no later than one year from date of issue (or, in the case of notes issued to renew such notes, no later than one year from the date of issue of the original issue of notes), (c) the aggregate amount of such notes outstanding at any one time in a Fiscal Year shall not exceed eighty percent (80%) of the Revenues for the immediately preceding Fiscal Year and (d) the proceeds of such notes (other than the proceeds of renewal notes require to pay notes) shall be deposited in the Revenue Fund.

(3) Notwithstanding anything herein to the contrary, the Commission may issue bonds, notes or other evidences of indebtedness secured solely by the revenues, receipts or other moneys derived by the Commission from the lease, license, operation, sale or other disposition of any facility or equipment constituting part of the System hereafter constructed or acquired by or on behalf of the Commission with the proceeds of such bonds, notes or evidences of indebtedness. Such revenues, receipts and other moneys shall not be considered Revenues or Rates and Charges hereunder provided that (i) neither the debt service on such bonds, notes, or other evidences of indebtedness nor any cost of the acquisition, construction, operation, maintenance or repair of any such facility or equipment nor provision for reserves for any of the foregoing shall be paid from the proceeds of Bonds or from Revenues (other than Revenues deposited in the Unrestricted Fund pursuant to Section 504) or shall be included in Operating Expenses, and (ii) any such receipts and moneys in excess of such debt service cost of acquisition, construction operation, maintenance, repair and reserves shall be deposited in the Revenue Fund (and upon such deposit shall be deemed Revenues); and (iii) prior to the issue of any such bonds, notes or other evidences of indebtedness, the Commission shall deliver to the Trustee a certificate of a Consulting Engineer or Certified Public Accountant stating that the lease, license, operation, sale or other disposition of such facility or equipment and the application of the revenues, receipts and other moneys derived therefrom to the operation, maintenance and repair thereof and the payment of the debt service on the bonds, notes or other evidences of indebtedness issued therefor and the provision of reserves for the foregoing, will not result in any decrease in the Net Revenues projected by such Consulting Engineer or Certified Public Accountant to be received by the Commission during the succeeding five Fiscal Years (including the Fiscal Year in which such bonds, notes or other evidences of indebtedness are issued).

(4) The Commission hereby reserves the right, and nothing herein shall be construed to impair such right, to finance improvements to the System by the State's issuance of its general obligation bonds for the benefit of the Commission, provided that nothing herein shall be construed as requiring the issuance of any such bonds and that no such bonds shall be deemed to be Bonds for any purpose hereunder.

(5) Nothing in this Section or in this Indenture shall prevent the Commission from issuing Notes or otherwise incurring contractual obligations which are payable solely out of, or solely secured by a pledge of amounts which may be deposited in the Unrestricted Fund pursuant to Section 504, provided that the pledge of such amounts shall in all respects be subordinate to the provisions of this Indenture.

(6) Notwithstanding anything herein to the contrary, the Commission may provide for the payment of swap termination payments from Revenues, provided that such payment obligations are junior and subordinate to the Bonds and any payments due to the Bond Insurer as required by this Indenture and provided that following any swap termination payment, the

Commission shall have funds as necessary to make the necessary Debt Service Fund Requirement for each Series of Bonds.

SCHEDULE 12(f)

LITIGATION

NONE

SCHEDULE 12(n)

EXISTING PRINCIPAL PROJECT CONTRACTS

Contract	Date	Parties	Description
FY 2019 Field's Point WWTF Improvements Phase 2	August 2021	Daniel O'Connell's Sons	Improvements to the Field's Point WWTF including replacement of the odor control unit at the Gravity Thickener Building; improvements and upgrades to the disinfection and de-chlorination systems, and other improvements.

SCHEDULE 12(r)

ENVIRONMENTAL MATTERS

The Narragansett Bay Commission (NBC) has Rhode Island Pollutant Discharge Elimination System (RIPDES) permits for two wastewater treatment plants, Field's Point and Bucklin Point, that are operated by NBC. In 2017 and 2018 NBC had exceedances of water quality standards as set forth in the respective RIPDES permits.

2017

Field's Point had one violation of effluent limitations.

Bucklin Point had six violations of effluent limitations.

2018

Field's Point had one violation of effluent limitations.

Bucklin point had five violations of effluent limitations.

2019

Field's Point had three violations of effluent limitations.

Bucklin point did not have any violations of effluent limitations.

2020

Field's Point had one violation of effluent limitations.

Bucklin point had one violation of effluent limitations.

2021

Field's Point had six violations of effluent limitations.

Bucklin Point had two violations of effluent limitations.

2022 (as of April 28, 2022)

Field's Point had two violations of effluent limitations.

Bucklin Point had one violation of effluent limitations.

EXHIBIT A

**UNITED STATES OF AMERICA
STATE OF RHODE ISLAND
NARRAGANSETT BAY COMMISSION
WASTEWATER SYSTEM REVENUE BONDS
(FIELD'S POINT RESILIENCY IMPROVEMENTS PROJECT),
2022 SERIES A**

**(WIFIA – N21141RI)
WIFIA BOND**

**Maximum Original Principal Amount: \$55,499,228
(excluding the maximum amount of compounded and capitalized interest that has been
authorized)**

Effective Date: July 25, 2022

Due: September 1, 2061

NARRAGANSETT BAY COMMISSION, a public corporation organized and existing under the laws of the State of Rhode Island (the “**Borrower**” or the “**Commission**”), for value received, hereby promises to pay to the order of the **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**, acting by and through the Administrator of the United States Environmental Protection Agency, or its assigns (the “**WIFIA Lender**” or the “**Holder**”), the lesser of (x) the Maximum Original Principal Amount set forth above and (y) the aggregate unpaid principal amount of all disbursements (the “**Disbursements**”) made by the WIFIA Lender (such lesser amount, together with any interest that is compounded and capitalized and added to principal in accordance with the provisions of the WIFIA Loan Agreement (as defined below), being hereinafter referred to as the “**Outstanding Principal Sum**”), together with accrued and unpaid interest (including, if applicable, interest at the Default Rate, as defined in the WIFIA Loan Agreement) on the Outstanding Principal Sum and all fees, costs and other amounts payable in connection therewith, all as more fully described in the WIFIA Loan Agreement. The principal hereof shall be payable in the manner and at the place provided in the WIFIA Loan Agreement in accordance with **Exhibit F** (*WIFIA Debt Service*) to the WIFIA Loan Agreement, as revised from time to time in accordance with the WIFIA Loan Agreement, until paid in full (which **Exhibit F**, as modified from time to time in accordance with the terms of the WIFIA Loan Agreement, is incorporated in and is a part of this WIFIA Bond).

The interest rate on this WIFIA Bond shall be three and twelve hundredths percent (3.12%) per annum. Interest will accrue and be computed on the Outstanding Principal Sum (as well as on any past due interest) from time to time on the basis of a three hundred sixty (360) day year of twelve (12) thirty (30) day months; provided, that, in the event of an Event of Default (as defined in the WIFIA Loan Agreement), the Borrower shall pay interest on the Outstanding Principal Sum at the Default Rate (as defined in the WIFIA Loan Agreement) in accordance with Section 6 (*Interest Rate*) of the WIFIA Loan Agreement.

No payment of the principal or interest on this WIFIA Bond is required to be made during the Capitalized Interest Period, as defined in the WIFIA Loan Agreement. Interest on amounts compounded and capitalized pursuant to the WIFIA Loan Agreement shall commence on the date such interest is added to the principal balance of this WIFIA Bond during the Capitalized Interest Period. On each March 1 and September 1 occurring during the Capitalized Interest Period and on the day immediately following the end of the Capitalized Interest Period, interest accrued on this WIFIA Bond in the six (6) month period ending immediately prior to such date shall be compounded, capitalized and added to the Outstanding Principal Sum of this WIFIA Bond. Within thirty (30) days after the end of the Capitalized Interest Period, the Holder shall give written notice to the Borrower stating the Outstanding Principal Sum as of the close of business on the last day of the Capitalized Interest Period, which statement thereof shall be deemed conclusive absent manifest error; provided, however, that no failure to give or delay in giving such notice shall affect any of the obligations of the Borrower. Notwithstanding the foregoing, the Capitalized Interest Period shall end immediately upon written notification to the Borrower by the WIFIA Lender that an Event of Default under the WIFIA Loan Agreement has occurred, in which case, principal and interest shall be currently due and payable and interest shall no longer be compounded and capitalized, all in accordance with the terms of the WIFIA Loan Agreement.

The WIFIA Lender is hereby authorized to modify the Loan Amortization Schedule included in **Exhibit F** to the WIFIA Loan Agreement from time to time in accordance with the terms of the WIFIA Loan Agreement to reflect the amount of each disbursement made thereunder and the date and amount of principal or interest paid by the Borrower thereunder. Absent manifest error, the WIFIA Lender's determination of such matters as set forth on **Exhibit F** to the WIFIA Loan Agreement shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower's obligations hereunder or under any other WIFIA Loan Document.

Payments hereon are to be made in accordance with Section 8(d) (*Payment of Principal and Interest – Manner of Payment*) of the WIFIA Loan Agreement as the same become due. Principal of and interest on this WIFIA Bond shall be paid in funds available on or before the due date and in any lawful coin or currency of the United States of America that at the date of payment is legal tender for the payment of public and private debts. If the Final Maturity Date is amended in connection with an update to **Exhibit F** pursuant to the terms of the WIFIA Loan Agreement, the due date of this WIFIA Bond shall be deemed to be amended to change the due date to such revised Final Maturity Date without any further action required on the part of the Borrower or the WIFIA Lender and such amendment shall in no way amend, modify or affect the other provisions of this WIFIA Bond without the prior written agreement of the WIFIA Lender.

This WIFIA Bond has been executed under and pursuant to that certain WIFIA Loan Agreement, dated as of the date hereof, between the WIFIA Lender and the Borrower (the "**WIFIA Loan Agreement**") and is issued to evidence the obligation of the Borrower under the WIFIA Loan Agreement to repay the loan made by the WIFIA Lender and any other payments of any kind required to be paid by the Borrower under the WIFIA Loan Agreement or the other WIFIA Loan Documents referred to therein. Reference is made to the WIFIA Loan Agreement for all details relating to the Borrower's obligations hereunder. All capitalized terms used in this

WIFIA Bond and not defined herein shall have the meanings set forth in the WIFIA Loan Agreement.

This WIFIA Bond may be prepaid at the option of the Borrower, without penalty or premium, (i) in full on any date on or after the Final Disbursement Date or (ii) in part on any Payment Date on or after the Final Disbursement Date (and, if in part, the amounts thereof to be prepaid shall be determined by the Borrower; provided, that such prepayment shall be in principal amounts of \$1,000,000 or any integral multiple of \$1.00 in excess thereof), in each case from time to time but not more than once annually in accordance with the WIFIA Loan Agreement.

This WIFIA Bond shall be subject to acceleration in accordance with the Indenture.

Payment of the obligations of the Borrower under this WIFIA Bond is secured pursuant to the Indenture referred to in the WIFIA Loan Agreement.

THE PRINCIPAL OF OR REDEMPTION PRICE AND INTEREST ON THIS WIFIA BOND ARE PAYABLE ONLY FROM THE REVENUES OR ASSETS OF THE COMMISSION PLEDGED THEREFOR AND NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION OF THE STATE SHALL BE OBLIGATED TO PAY THIS WIFIA BOND. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OR ANY POLITICAL SUBDIVISION OF THE STATE IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OR REDEMPTION PRICE OF OR INTEREST ON THIS WIFIA BOND.

This WIFIA Bond is one of a duly authorized issue of bonds of the Commission (herein called the "**Bonds**"), issued and to be issued pursuant to Chapter 25 of Title 46 of the General Laws of the State of Rhode Island, 1956 (2007 Reenactment) as amended (the "Act") and under and pursuant to a Trust Indenture by and between the Commission and the Trustee dated as of April 15, 2004, as amended and supplemented by a First Supplemental Indenture dated as of April 15, 2004, a Second Supplemental Indenture dated as of December 30, 2004, a Third Supplemental Indenture dated August 4, 2005, a Fourth Supplemental Indenture dated as of December 15, 2005, a Fifth Supplemental Indenture dated as of December 21, 2006, a Sixth Supplemental Indenture dated as of February 8, 2007, a Seventh Supplemental Indenture dated as of October 15, 2007, an Eighth Supplemental Indenture dated as of December 12, 2007, a Ninth Supplemental Indenture dated as of July 1, 2008, a Tenth Supplemental Indenture dated as of November 1, 2008, an Eleventh Supplemental Indenture dated as of October 6, 2009, a Twelfth Supplemental Indenture dated as of February 12, 2010, a Thirteenth Supplemental Indenture dated as of June 24, 2010, a Fourteenth Supplemental Indenture dated as of March 29, 2011, a Fifteenth Supplemental Indenture dated as of June 28, 2012, a Sixteenth Supplemental Indenture dated November 28, 2012, a Seventeenth Supplemental Indenture dated March 21, 2013, an Eighteenth Supplemental Indenture dated as of June 6, 2013, a Nineteenth Supplemental Indenture dated December 12, 2013, a Twentieth Supplemental Indenture dated March 6, 2014, a Twenty-First Supplemental Indenture dated October 28, 2014, a Twenty-Second Supplemental Indenture dated May 5, 2015, a Twenty-Third Supplemental Indenture dated July 30, 2015, a Twenty-Fourth Supplemental Indenture dated June 2, 2016, a Twenty-Fifth Supplemental Indenture dated April 4, 2019, a Twenty-Sixth Supplemental Indenture dated

August 27, 2019, a Twenty-Seventh Supplemental Indenture dated March 19, 2020, a Twenty-Eighth Supplemental Indenture dated October 26, 2020, a Twenty-Ninth Supplemental Indenture dated October 26, 2020, a Thirtieth Supplemental Indenture dated November 16, 2021, and a Thirty-First Supplemental Indenture dated July 25, 2022 (the Trust Indenture, as amended and supplemented including by the Thirty-First Supplemental Indenture are collectively referred to herein as the “**Indenture**”), each by and between the Commission and U.S. Bank Trust Company, National Association, as successor trustee (the “**Trustee**”). As provided in the Indenture, Bonds may be issued from time to time in one or more series in various principal amounts, may mature at different times, may bear interest at different rates, and may otherwise vary as provided in the Indenture. Except as provided in the Indenture, the aggregate principal amount of Bonds which may be issued thereunder is not limited and all Bonds issued and to be issued under said Indenture are and will be equally secured by the pledge and covenants provided therein.

This WIFIA Bond is a general obligation of the Commission, to which its full faith and credit are pledged. The Commission has also pledged to the payment of the principal and redemption price of and interest on this WIFIA Bond, subject to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth in the Indenture, all Revenues of the Commission (as defined in the Indenture), and all moneys, securities and other amounts in all funds and accounts established by or pursuant to the Indenture, except the Operation and Maintenance Fund, the Rebate Fund, the Purchase Fund, if any, and the Unrestricted Fund of the Commission.

This WIFIA Bond is one of a series of Bonds designated as “Wastewater System Revenue Bonds (Field’s Point Resiliency Improvements Project), 2022 Series A Bond” (herein called the “**WIFIA Bond**”), issued under the Indenture, and limited to the maximum original principal amount of \$55,499,228 (excluding interest that is compounded and capitalized in accordance with the terms of the WIFIA Loan Agreement). Copies of the Indenture are on file at the office of the Commission and at the principal corporate trust office of the Trustee and reference to the Indenture and any supplements thereto and to the Act is made for a description of the pledge securing the Bonds and covenants relating thereto, the manner of enforcement of the pledge, the rights and remedies of the Holders of the Bonds with respect thereto, the terms and conditions upon which the Bonds are issued and may be issued thereunder, the conditions upon which the Indenture may be amended with or without the consent of the Holders of the Bonds, and the terms upon which Bonds may no longer be secured by the Indenture.

Any delay on the part of the WIFIA Lender in exercising any right hereunder shall not operate as a waiver of any such right, and any waiver granted with respect to one default shall not operate as a waiver in the event of any subsequent default.

The Holder of this WIFIA Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein to take any action with respect to an Event of Default under the Indenture or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Indenture and the WIFIA Loan Agreement.

This WIFIA Bond is transferable, as provided in the Indenture and in Section 33 of the WIFIA Loan Agreement, only upon the books of the Commission at the Principal Office of the Trustee by the Holder hereof in person or by his attorney duly authorized in writing, upon surrender hereof together with a written instrument of transfer satisfactory to the Trustee duly executed by the Holder or his duly authorized attorney, and thereupon the Commission shall issue in the name of the transferee a new registered Bond or Bonds of the same aggregate principal amount, interest rate and maturity as the surrendered Bond, as provided in the Indenture, and upon the payment of the charges therein prescribed. This WIFIA Bond may also be exchanged, alone or with other Bonds of the same series, interest rate and maturity, at the Principal Office of the Trustee, for a new Bond or Bonds of the same aggregate principal amount, interest rate and maturity, without transfer to a new Holder, as provided in the Indenture and upon the payment of the charges therein prescribed.

The Commission shall not be obligated to make any transfer or exchange of this WIFIA Bond sixty (60) days prior to an Interest Payment Date.

No recourse shall be had for the payment of the principal or redemption price of or the interest on the Bonds or for any claim based thereon or on the Indenture against any member, officer or employee of the Commission or any person executing the Bonds.

It is hereby certified and recited that all conditions, acts and things required by the Constitution or statutes of the State and by the Indenture to exist, to have happened or to have been performed precedent to or in the issuance of this WIFIA Bond, exist, have happened and have been performed and that the issue of this WIFIA Bond, together with all other indebtedness of the Commission, is within every debt and other limit prescribed by law. This WIFIA Bond is issued with the intent that the federal laws of the United States of America shall govern its construction to the extent such federal laws are applicable and the internal laws of the State shall govern its construction to the extent such federal laws are not applicable.

This WIFIA Bond shall not be entitled to any security, right or benefit under the Indenture or be valid or obligatory for any purpose, unless the certificate of authentication hereon has been duly executed by the Trustee.

IN WITNESS WHEREOF, the Narragansett Bay Commission has caused this WIFIA Bond to be executed in its name by the manual or facsimile signature of an authorized officer of the Commission and its corporate seal (or a facsimile thereof) to be affixed, imprinted, engraved or otherwise reproduced hereon and countersigned by the manual or facsimile signature of another authorized officer of the Commission, all as of the Effective Date set forth above.

(Seal)

NARRAGANSETT BAY COMMISSION

By: _____
Authorized Officer

Attested:

By: _____
Authorized Officer

CERTIFICATE OF AUTHENTICATION

This WIFIA Bond is the 2022 Series A Bond described in the within-mentioned Indenture.

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, as Trustee (as successor in interest to U.S. Bank National Association, as successor trustee to Wells Fargo Bank, N.A., as successor trustee to The Bank of New York Trust Company, N.A., as successor trustee in interest to J.P. Morgan Trust Company, National Association)

By: _____

(FORM OF ASSIGNMENT)

FOR VALUE RECEIVED, the Undersigned hereby unconditionally sells, assigns
and transfers unto _____

(Please insert Social Security or other identifying number of Assignee(s)):

the within bond and all rights thereunder.

Dated: _____

NOTICE: The signature to this assignment
must correspond with the name as it appears
upon the face of the within note in every
particular, without alteration or enlargement or
any change whatever.

EXHIBIT B

[Reserved]

EXHIBIT C

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

The undersigned, on behalf of Narragansett Bay Commission, hereby certifies that Narragansett Bay Commission has fully complied with its verification obligations under 2 C.F.R. § 180.320 and hereby further confirms, based on such verification, that, to its knowledge, the Borrower and its principals (as defined in 2 C.F.R. § 180.995 and supplemented by 2 C.F.R. 1532.995):

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;

(b) Have not within a three (3) year period preceding the Effective Date been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

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

(d) Have not within a three (3) year period preceding the Effective Date had one or more public transactions (federal, state or local) terminated for cause or default.

This certificate may be delivered by the delivery of signed signature pages by electronic means, facsimile transmission, or by e-mail with a PDF copy attached, and any printed or copied versions of any signature page so delivered shall have the same force and effect as an originally signed version of such signature page. Signatures of this certificate made by electronic means shall be accompanied by an email, contemporaneous or otherwise, confirming the use of such means.

Dated: _____

NARRAGANSETT BAY COMMISSION¹

By: _____

Name:

Title:

¹ To be executed by Borrower's Authorized Representative.

EXHIBIT D

REQUISITION PROCEDURES

This **Exhibit D** sets out the procedures which the Borrower agrees to follow in submitting Requisitions for the disbursement of WIFIA Loan proceeds in respect of the Eligible Project Costs incurred in connection with the Project. Section 1 sets out the manner in which Requisitions are to be submitted and reviewed. Sections 2 through 4 set out the circumstances in which the WIFIA Lender may reject or correct Requisitions submitted by the Borrower or withhold a disbursement. The Borrower expressly agrees to the terms hereof, and further agrees that (i) the rights of the WIFIA Lender contained herein are in addition to (and not in lieu of) any other rights or remedies available to the WIFIA Lender under the WIFIA Loan Agreement, and (ii) nothing contained herein shall be construed to limit the rights of the WIFIA Lender to take actions including administrative enforcement action and actions for breach of contract against the Borrower if it fails to carry out its obligations under the WIFIA Loan Agreement during the term thereof.

Section 1. General Requirements. All requests by the Borrower for the disbursement of WIFIA Loan proceeds shall be made by electronic mail or overnight delivery service by submission to the WIFIA Lender, in accordance with Section 31 (*Notices*) of the WIFIA Loan Agreement, of a Requisition, in form and substance satisfactory to the WIFIA Lender and completed and executed by the Borrower's Authorized Representative. The form of Requisition is attached as **Appendix One** (*Form of Requisition*) to this **Exhibit D**.

Supporting documentation should be submitted with the requisition. If the Borrower anticipates that it will draw down all or a portion of the proceeds of the WIFIA Loan to reimburse the Borrower for Eligible Project Costs paid by or on behalf of the Borrower prior to such disbursement of WIFIA Loan proceeds, whether paid from funds of the Borrower or proceeds of Obligations issued by the Borrower, including for the purpose of paying or redeeming such Obligations, the Borrower shall deliver appropriate documentation, including invoices and records, evidencing such incurred or paid Eligible Project Costs (the "Eligible Project Costs Documentation"). The Eligible Project Costs Documentation must provide sufficient detail to enable the WIFIA Lender to verify that such costs are Eligible Project Costs paid by the Borrower, in connection with the reimbursement of such Eligible Project Costs or for the purpose of paying or redeeming, in whole or part, the portion of any such short-term interim financing in respect of which the proceeds were used to pay such documented Eligible Project Costs. The WIFIA Lender shall review the Eligible Project Costs Documentation for compliance with WIFIA disbursement requirements, and any amounts approved by the WIFIA Lender as Eligible Project Costs will be disbursed at such time as the Borrower submits a Requisition in respect of such approved amounts.

The WIFIA Lender agrees to promptly send to the Borrower in accordance with Section 31 (*Notices*) of the WIFIA Loan Agreement, an acknowledgement of receipt of each Requisition in the form attached as **Appendix Two** (*[Approval/Disapproval] of the WIFIA Lender*) to this **Exhibit D** setting forth the date of receipt by the WIFIA Lender of such Requisition and setting forth the Business Day on which disbursement will be made absent denial by the WIFIA Lender. All disbursement requests must be received by the WIFIA Lender at or before 5:00 P.M. (EST)

on the first (1st) Business Day of a calendar month in order to obtain disbursement by the fifteenth (15th) day of such calendar month or, if either such day is not a Business Day, the next succeeding Business Day. If a Requisition is approved by the WIFIA Lender, the WIFIA Lender will notify the Borrower of such approval and of the amount so approved.

Section 2. Rejection. A Requisition may be rejected in whole or in part by the WIFIA Lender if it is:

- (a) submitted without signature;
- (b) submitted under signature of a Person other than a Borrower's Authorized Representative;
- (c) submitted after prior disbursement of all proceeds of the WIFIA Loan; or
- (d) submitted without adequate Eligible Project Costs Documentation, including (i) copies of invoices and records evidencing the Eligible Project Costs, (ii) a summary of the progress of construction of the Project and a general description of the work done for which the funds being requisitioned are being applied (or a certification that no change has occurred since the date of the latest quarterly report provided pursuant to Section 16(d) (*Reporting Requirements – Construction Reporting*)), and (iii) a copy of the most recent update to the Borrower's risk register, if requested by the WIFIA Lender.

The WIFIA Lender will notify the Borrower of any Requisition so rejected, and the reasons therefor. Any Requisition rejected for the reasons specified above (other than Section 2(c)) must be resubmitted in proper form in order to be considered for approval. If a Requisition exceeds the balance of the WIFIA Loan proceeds remaining to be disbursed, the request will be treated as if submitted in the amount of the balance so remaining, and the WIFIA Lender will so notify the Borrower.

Section 3. Correction. A Requisition containing an apparent mathematical error will be corrected by the WIFIA Lender, after telephonic or email notification to the Borrower, and will thereafter be treated as if submitted in the corrected amount.

Section 4. Withholding. The WIFIA Lender shall be entitled to withhold approval (in whole or in part) of any pending or subsequent requests for the disbursement of WIFIA Loan proceeds if:

- (a) a Default or an Event of Default shall have occurred and be continuing; or
- (b) the Borrower:
 - (i) knowingly takes any action, or omits to take any action, amounting to fraud or violation of any applicable federal or local criminal law, in connection with the transactions contemplated hereby; or
 - (ii) fails to construct the Project in a manner consistent with the Governmental Approvals with respect to the Project, or with good engineering

practices, where such failure prevents or materially impairs the Project from fulfilling its intended purpose, or prevents or materially impairs the ability of the WIFIA Lender to monitor compliance by the Borrower with applicable federal or local law pertaining to the Project or with the terms and conditions of the WIFIA Loan Agreement; or

(iii) fails to observe or comply with any applicable federal or local law, or any term or condition of the WIFIA Loan Agreement; or

(iv) fails to satisfy the conditions set forth in Section 4 (*Disbursement Conditions*) of the WIFIA Loan Agreement and Section 11(b) (*Conditions Precedent – Conditions Precedent to Disbursements*) of the WIFIA Loan Agreement; or

(v) fails to deliver Eligible Project Costs Documentation satisfactory to the WIFIA Lender at the times and in the manner specified by the WIFIA Loan Agreement; provided, that in such case the WIFIA Lender may, in its sole discretion, partially approve a disbursement request in respect of any amounts for which adequate documentation evidencing Eligible Project Costs has been provided and may, in its sole discretion, disburse in respect of such properly documented amounts.

APPENDIX ONE TO EXHIBIT D

FORM OF REQUISITION

United States Environmental Protection Agency
1200 Pennsylvania Avenue NW
WJC-E 7334A
Washington, D.C. 20460

[Loan Servicer]
[Address]
[Attention: WIFIA Director]

Re: FIELD'S POINT RESILIENCY IMPROVEMENTS PROJECT (WIFIA # N21141RI)

Ladies and Gentlemen:

Pursuant to Section 4 (*Disbursement Conditions*) of the WIFIA Loan Agreement, dated as of July 25, 2022 (the "**WIFIA Loan Agreement**"), by and between NARRAGANSETT BAY COMMISSION (the "**Borrower**") and the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, acting by and through the Administrator (the "**WIFIA Lender**"), the Borrower hereby requests disbursement in the amount set forth below in respect of Eligible Project Costs paid or incurred by the Borrower. Capitalized terms used but not defined herein have the meaning set forth in the WIFIA Loan Agreement.

In connection with this Requisition the undersigned, as the Borrower's Authorized Representative, hereby represents and certifies the following:

1.	Project name	Field's Point Resiliency Improvements Project
2.	Borrower name	Narragansett Bay Commission
3.	WIFIA reference number	N21141RI
4.	Requisition number	[]
5.	Requested disbursement amount	[\$]

6.	Requested disbursement date (the "Disbursement Date")	<input type="text"/>
7.	Total amounts previously disbursed under the WIFIA Loan Agreement	\$ <input type="text"/>
8.	Wire instructions	<input type="text"/>

9. The amounts hereby requisitioned have been paid or incurred and approved for payment by or on behalf of the Borrower for Eligible Project Costs and have not been paid for or reimbursed by any previous disbursement from WIFIA Loan proceeds.
10. The amount of this Requisition, together with all prior Requisitions, does not exceed the amount of the WIFIA Loan, and the amount of this Requisition together with the sum of all disbursements of WIFIA Loan proceeds made and to be made for the current Federal Fiscal Year will not exceed the cumulative disbursements through the end of the current Federal Fiscal Year as set forth in the Anticipated WIFIA Loan Disbursement Schedule.
11. All documentation evidencing the Eligible Project Costs to be reimbursed to the Borrower by the above-requested disbursement has been delivered by the Borrower at the times and in the manner specified by the WIFIA Loan Agreement, including the details set forth [in the attachment hereto, which is in form satisfactory to the WIFIA Lender][below]:

								WIFIA USE ONLY	
Vendor or Contractor Name ²	Invoice Number ³	Invoice Date	Payment Date	Invoice Amount	WIFIA Requested Amount ⁴	Activity Type ⁵	Description of Activity ⁶	Approved Amount	Notes

² If seeking reimbursement for internal costs, enter "Internally financed activities."

³ Vendor's number indicated on the invoice sent to the Borrower.

⁴ If the amount requested for reimbursement by WIFIA is less than the total amount of the invoice, include an explanation for the difference.

⁵ Specify whether activity is: (a) Development phase activity, which includes planning, preliminary engineering, design, environmental review, revenue forecasting and other pre-construction activities; (b) Construction, which includes construction, reconstruction, rehabilitation and replacement activities; (c) Acquisition of real property, which includes acquiring an interest in real property, environmental mitigation, construction contingencies and acquisition of equipment; (d) Carrying costs, including capitalized interest, as necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses and other carrying costs during construction; (e) WIFIA fees, including for application and credit processing; or (f) Other, with an explanation in column H.

⁶ Provide a brief description of the activities included in the invoice for which WIFIA funds are being requested and any other notes that will aid in the review of the disbursement request.

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12. The Borrower has sufficient available funds committed to the Project, which together with funds that remain available and not yet drawn under the WIFIA Loan, will be sufficient to pay the reasonably anticipated remaining Total Project Costs.
13. The total federal assistance provided to the Project, including the maximum principal amount of the WIFIA Loan, does not exceed eighty percent (80%) of Total Project Costs.
14. The Borrower has all Governmental Approvals necessary as of the date hereof and as of the Disbursement Date (immediately after giving effect to the above-requested disbursement of WIFIA Loan proceeds) for the development, construction, operation and maintenance of the Project and each such Governmental Approval is in full force and effect (including approval from the Rhode Island Coastal Resources Management Council for those construction activities subject to its regulatory authority) (and is not subject to any notice of violation, breach or revocation).
15. Each of the insurance policies obtained by the Borrower in satisfaction of the condition in Section 11(a)(xvi) (*Conditions Precedent – Conditions Precedent to Effectiveness*) of the WIFIA Loan Agreement is in full force and effect, and no notice of termination thereof has been issued by the applicable insurance provider.
16. The Project has been, and is being, constructed in a manner consistent with all plans, specifications, engineering reports and facilities plans previously submitted to and approved by the WIFIA Lender and with good engineering practices in accordance with the highest standards of the Borrower’s industry.
17. The representations and warranties of the Borrower set forth in the WIFIA Loan Agreement and in each other Related Document are true and correct as of the date hereof and as of the Disbursement Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).
18. As of the date hereof and on the Disbursement Date (immediately after giving effect to the above-requested disbursement of WIFIA Loan proceeds), (i) no Default or Event of Default and (ii) no event of default under any other Related Document and no event that, with the giving of notice or the passage of time or both, would constitute an event of default under any Related Document, in each case, has occurred and is continuing.
19. No Material Adverse Effect, or any event or condition that could reasonably be expected to have a Material Adverse Effect, has occurred or arisen since February 2, 2022.

20. The total federal assistance provided to the Project, including the maximum principal amount of the WIFIA Loan (excluding any interest that is compounded and capitalized in accordance with the terms hereof), does not exceed eighty percent (80%) of Total Project Costs.
21. The undersigned acknowledges that if the Borrower makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Government in connection with the Project, the Government reserves the right to impose on the Borrower the penalties of 18 U.S.C. § 1001, to the extent the Government deems appropriate.
22. A copy of this requisition has been delivered to each of the above named addressees.
23. The undersigned is duly authorized to execute and deliver this requisition on behalf of the Borrower.

[Add wire instructions for Borrower/Trustee.]

Date: _____

NARRAGANSETT BAY COMMISSION,
by its authorized representative

By: _____

Name: _____

Title: _____

APPENDIX TWO TO EXHIBIT D

**[APPROVAL/DISAPPROVAL] OF THE WIFIA LENDER
(To be delivered to the Borrower)**

Requisition Number [] is [approved in the amount of \$[]]
[approved in part in the amount of \$[]] [not approved, for the reasons set forth in
Annex A attached hereto,]⁷ by the WIFIA Lender (as defined herein) pursuant to Section 4
(*Disbursement Conditions*) of the WIFIA Loan Agreement, dated as of July 25, 2022, by and
between Narragansett Bay Commission (the “**Borrower**”) and the United States Environmental
Protection Agency, acting by and through the Administrator (the “**WIFIA Lender**”).

Any determination, action or failure to act by the WIFIA Lender with respect to the
Requisition set forth above, including any withholding of a disbursement, shall be at the WIFIA
Lender’s sole discretion, and in no event shall the WIFIA Lender be responsible for or liable to
the Borrower for any and/or all consequence(s) which are the result thereof.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY**, acting by and
through the Administrator

By: _____
WIFIA Lender’s Authorized Representative
Name:
Title:
Dated:

⁷ If there is any partial or full denial of approval, the WIFIA Lender shall provide a separate attachment setting forth the reasons for such partial or full denial of approval.

EXHIBIT A TO APPENDIX TWO TO EXHIBIT D

[Insert reasons for any partial or full denial of approval.]

EXHIBIT E

COMPLIANCE WITH LAWS

The Borrower shall, and shall require its contractors and subcontractors at all tiers for the Project to, comply in all material respects with any and all applicable federal and state laws. The following list of federal laws is illustrative of the type of requirements generally applicable to water and wastewater projects. It is not intended to be exhaustive.

Environmental Authorities

- Archeological and Historic Preservation Act, Pub. L. 93-291, as amended
- Archaeological Resources Protection Act, 16 U.S.C. §§ 470aa-mm
- Bald and Golden Eagle Protection Act, 16 U.S.C. §§ 668-668c
- Clean Air Act, Pub. L. 95-95, as amended
- Clean Water Act, Titles III, IV and V, Pub. L. 92-500, as amended
- Coastal Barrier Resources Act, Pub. L. 97-348
- Coastal Zone Management Act, Pub. L. 92-583, as amended
- Endangered Species Act, Pub. L. 93-205, as amended
- Farmland Protection Policy Act, Pub. L. 97-98
- Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations Environmental Justice, Executive Order 12898
- Fish and Wildlife Coordination Act, Pub. L. 85-624, as amended
- Floodplain Management, Executive Order 11988, 42 FR 26951, May 24, 1977, as amended by Executive Order 13690, 80 FR 6425, February 4, 2015
- Magnuson-Stevens Fishery Conservation and Management Act, Pub. L. 94-265
- Marine Mammal Protection Act, 16 U.S.C. §§ 1361-1407
- Migratory Bird Treaty Act, 16 U.S.C. §§ 703-712
- National Historic Preservation Act, Pub. L. 89-655, as amended
- National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq.
- Native American Graves Protection and Repatriation Act, 25 U.S.C. § 3001 et seq.
- Protection of Wetlands, Executive Order 11990 as amended by Executive Order 12608
- Rivers and Harbors Act, 33 U.S.C. 403

- Safe Drinking Water Act, Pub L. 93-523, as amended
- Wild and Scenic Rivers Act, Pub. L. 90-54, as amended
- Wilderness Act, 16 U.S.C. § 1131 et seq.

Economic and Miscellaneous Authorities

- Debarment and Suspension, Executive Order 12549
- Demonstration Cities and Metropolitan Development Act, Pub. L. 89 -754, as amended, and Executive Order 12372
- Drug-Free Workplace Act, Pub. L. 100-690
- Labor Standards, 33 U.S.C. § 1372 and 40 U.S.C. 3141-3144, 3146 and 3147
- New Restrictions on Lobbying, Section 319 of Pub. L. 101-121
- Prohibitions relating to violations of the Clean Water Act or Clean Air Act with respect to federal contracts, grants, or loans under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, and Executive Order 11738
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 et seq.)

Civil Rights, Nondiscrimination, Equal Employment Opportunity Authorities

- Age Discrimination Act, Pub. L. 94-135
- Equal Employment Opportunity, Executive Order 11246
- Section 13 of the Clean Water Act, Pub. L. 92-500
- Section 504 of the Rehabilitation Act, Pub. L 93-112 supplemented by Executive Orders 11914 and 11250
- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.)
- Participation by Disadvantaged Business Enterprises in Procurement under EPA Financial Assistance Agreements

EXHIBIT F

WIFIA DEBT SERVICE

Narragansett Bay Commission - Field's Point Resilience Project - N21141R1

WIFIA Loan Amortiza:

Closing Date 7/25/2022
 Loan Amount \$ 55,499,228.00
 Interest rate 3.12%
 Maturity 9/1/2061
 Weight Average Life () 27-8

Period Start Date	Period End Date	Period Payment Date	Period Repayment Type	Disbursements in Period	Capitalized Interest	Interest Payment	Principal Repayment	Semi-annual Debt Service Payment	Ending Balance
7/25/2022	8/31/2022	9/1/2022	No Payment	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
9/1/2022	2/28/2023	3/1/2023	No Payment	\$12,461,157.00	\$161,995.05	\$0.00	\$0.00	\$0.00	\$12,623,152.05
3/1/2023	8/31/2023	9/1/2023	No Payment	\$0.00	\$196,921.18	\$0.00	\$0.00	\$0.00	\$12,820,073.23
9/1/2023	2/29/2024	3/1/2024	No Payment	\$27,680,997.00	\$559,846.12	\$0.00	\$0.00	\$0.00	\$41,060,916.35
3/1/2024	8/31/2024	9/1/2024	No Payment	\$0.00	\$640,550.30	\$0.00	\$0.00	\$0.00	\$41,701,466.65
9/1/2024	2/28/2025	3/1/2025	No Payment	\$15,357,074.00	\$850,184.85	\$0.00	\$0.00	\$0.00	\$57,908,725.50
3/1/2025	8/31/2025	9/1/2025	No Payment	\$0.00	\$903,376.12	\$0.00	\$0.00	\$0.00	\$58,812,101.62
9/1/2025	2/28/2026	3/1/2026	No Payment	\$0.00	\$917,468.79	\$0.00	\$0.00	\$0.00	\$59,729,570.41
3/1/2026	8/31/2026	9/1/2026	No Payment	\$0.00	\$931,781.30	\$0.00	\$0.00	\$0.00	\$60,661,351.71
9/1/2026	2/28/2027	3/1/2027	No Payment	\$0.00	\$946,317.09	\$0.00	\$0.00	\$0.00	\$61,607,668.80
3/1/2027	8/31/2027	9/1/2027	No Payment	\$0.00	\$961,079.64	\$0.00	\$0.00	\$0.00	\$62,568,748.44
9/1/2027	2/29/2028	3/1/2028	No Payment	\$0.00	\$976,072.48	\$0.00	\$0.00	\$0.00	\$63,544,820.92
3/1/2028	8/31/2028	9/1/2028	No Payment	\$0.00	\$991,299.21	\$0.00	\$0.00	\$0.00	\$64,536,120.13
9/1/2028	2/28/2029	3/1/2029	No Payment	\$0.00	\$1,006,763.48	\$0.00	\$0.00	\$0.00	\$65,542,883.61
3/1/2029	8/31/2029	9/1/2029	Interest Only Total	\$0.00	\$0.00	\$1,022,468.99	\$0.00	\$1,022,468.99	\$65,542,883.61
9/1/2029	2/28/2030	3/1/2030	Interest Only Total	\$0.00	\$0.00	\$1,022,468.99	\$0.00	\$1,022,468.99	\$65,542,883.61
3/1/2030	8/31/2030	9/1/2030	Interest Only Total	\$0.00	\$0.00	\$1,022,468.99	\$0.00	\$1,022,468.99	\$65,542,883.61
9/1/2030	2/28/2031	3/1/2031	Interest Only Total	\$0.00	\$0.00	\$1,022,468.99	\$0.00	\$1,022,468.99	\$65,542,883.61
3/1/2031	8/31/2031	9/1/2031	Interest Only Total	\$0.00	\$0.00	\$1,022,468.99	\$0.00	\$1,022,468.99	\$65,542,883.61
9/1/2031	2/29/2032	3/1/2032	Interest Only Total	\$0.00	\$0.00	\$1,022,468.99	\$0.00	\$1,022,468.99	\$65,542,883.61
3/1/2032	8/31/2032	9/1/2032	Interest Only Total	\$0.00	\$0.00	\$1,022,468.99	\$0.00	\$1,022,468.99	\$65,542,883.61
9/1/2032	2/28/2033	3/1/2033	Interest Only Total	\$0.00	\$0.00	\$1,022,468.99	\$0.00	\$1,022,468.99	\$65,542,883.61
3/1/2033	8/31/2033	9/1/2033	Interest Only Total	\$0.00	\$0.00	\$1,022,468.99	\$0.00	\$1,022,468.99	\$65,542,883.61
9/1/2033	2/28/2034	3/1/2034	Interest Only Total	\$0.00	\$0.00	\$1,022,468.99	\$0.00	\$1,022,468.99	\$65,542,883.61
3/1/2034	8/31/2034	9/1/2034	Fixed Principal (%)	\$0.00	\$0.00	\$1,022,468.99	\$1,966,286.51	\$2,988,755.50	\$63,576,597.10
9/1/2034	2/28/2035	3/1/2035	Interest Only Total	\$0.00	\$0.00	\$991,794.92	\$0.00	\$991,794.92	\$63,576,597.10
3/1/2035	8/31/2035	9/1/2035	Fixed Principal (%)	\$0.00	\$0.00	\$991,794.92	\$2,031,829.40	\$3,023,624.32	\$61,544,767.70
9/1/2035	2/29/2036	3/1/2036	Interest Only Total	\$0.00	\$0.00	\$960,098.38	\$0.00	\$960,098.38	\$61,544,767.70
3/1/2036	8/31/2036	9/1/2036	Fixed Principal (%)	\$0.00	\$0.00	\$960,098.38	\$2,097,372.28	\$3,057,470.66	\$59,447,395.42
9/1/2036	2/28/2037	3/1/2037	Interest Only Total	\$0.00	\$0.00	\$927,379.37	\$0.00	\$927,379.37	\$59,447,395.42
3/1/2037	8/31/2037	9/1/2037	Fixed Principal (%)	\$0.00	\$0.00	\$927,379.37	\$2,097,372.28	\$3,024,751.65	\$57,350,023.14
9/1/2037	2/28/2038	3/1/2038	Interest Only Total	\$0.00	\$0.00	\$894,660.37	\$0.00	\$894,660.37	\$57,350,023.14
3/1/2038	8/31/2038	9/1/2038	Fixed Principal (%)	\$0.00	\$0.00	\$894,660.37	\$2,162,915.16	\$3,057,575.53	\$55,187,107.98
9/1/2038	2/28/2039	3/1/2039	Interest Only Total	\$0.00	\$0.00	\$860,918.89	\$0.00	\$860,918.89	\$55,187,107.98
3/1/2039	8/31/2039	9/1/2039	Fixed Principal (%)	\$0.00	\$0.00	\$860,918.89	\$458,800.19	\$1,319,719.08	\$54,728,307.79
9/1/2039	2/29/2040	3/1/2040	Interest Only Total	\$0.00	\$0.00	\$853,761.61	\$0.00	\$853,761.61	\$54,728,307.79
3/1/2040	8/31/2040	9/1/2040	Fixed Principal (%)	\$0.00	\$0.00	\$853,761.61	\$65,542.89	\$919,304.50	\$54,662,764.90
9/1/2040	2/28/2041	3/1/2041	Interest Only Total	\$0.00	\$0.00	\$852,739.14	\$0.00	\$852,739.14	\$54,662,764.90
3/1/2041	8/31/2041	9/1/2041	Fixed Principal (%)	\$0.00	\$0.00	\$852,739.14	\$2,228,458.05	\$3,081,197.19	\$52,434,306.85
9/1/2041	2/28/2042	3/1/2042	Interest Only Total	\$0.00	\$0.00	\$817,975.19	\$0.00	\$817,975.19	\$52,434,306.85
3/1/2042	8/31/2042	9/1/2042	Fixed Principal (%)	\$0.00	\$0.00	\$817,975.19	\$524,343.07	\$1,342,318.26	\$51,909,963.78
9/1/2042	2/28/2043	3/1/2043	Interest Only Total	\$0.00	\$0.00	\$809,795.44	\$0.00	\$809,795.44	\$51,909,963.78
3/1/2043	8/31/2043	9/1/2043	Fixed Principal (%)	\$0.00	\$0.00	\$809,795.44	\$2,294,000.93	\$3,103,796.37	\$49,615,962.85
9/1/2043	2/29/2044	3/1/2044	Interest Only Total	\$0.00	\$0.00	\$774,009.03	\$0.00	\$774,009.03	\$49,615,962.85
3/1/2044	8/31/2044	9/1/2044	Fixed Principal (%)	\$0.00	\$0.00	\$774,009.03	\$589,885.96	\$1,363,894.99	\$49,026,076.89
9/1/2044	2/28/2045	3/1/2045	Interest Only Total	\$0.00	\$0.00	\$764,806.80	\$0.00	\$764,806.80	\$49,026,076.89
3/1/2045	8/31/2045	9/1/2045	Fixed Principal (%)	\$0.00	\$0.00	\$764,806.80	\$2,097,372.28	\$2,862,179.08	\$46,928,704.61
9/1/2045	2/28/2046	3/1/2046	Interest Only Total	\$0.00	\$0.00	\$732,087.80	\$0.00	\$732,087.80	\$46,928,704.61
3/1/2046	8/31/2046	9/1/2046	Fixed Principal (%)	\$0.00	\$0.00	\$732,087.80	\$2,425,086.70	\$3,157,174.50	\$44,503,617.91
9/1/2046	2/28/2047	3/1/2047	Interest Only Total	\$0.00	\$0.00	\$694,256.44	\$0.00	\$694,256.44	\$44,503,617.91
3/1/2047	8/31/2047	9/1/2047	Fixed Principal (%)	\$0.00	\$0.00	\$694,256.44	\$2,490,629.58	\$3,184,886.02	\$42,012,988.33

Period Start Date	Period End Date	Period Payment Date	Period Repayment Type	Disbursements in Period	Capitalized Interest	Interest Payment	Principal Repayment	Semi-annual Debt Service Payment	Ending Balance
9/1/2047	2/29/2048	3/1/2048	Interest Only Total	\$0.00	\$0.00	\$655,402.62	\$0.00	\$655,402.62	\$42,012,988.33
3/1/2048	8/31/2048	9/1/2048	Fixed Principal (%)	\$0.00	\$0.00	\$655,402.62	\$2,556,172.47	\$3,211,575.09	\$39,456,815.86
9/1/2048	2/28/2049	3/1/2049	Interest Only Total	\$0.00	\$0.00	\$615,526.33	\$0.00	\$615,526.33	\$39,456,815.86
3/1/2049	8/31/2049	9/1/2049	Fixed Principal (%)	\$0.00	\$0.00	\$615,526.33	\$2,621,715.35	\$3,237,241.68	\$36,835,100.51
9/1/2049	2/28/2050	3/1/2050	Interest Only Total	\$0.00	\$0.00	\$574,627.57	\$0.00	\$574,627.57	\$36,835,100.51
3/1/2050	8/31/2050	9/1/2050	Fixed Principal (%)	\$0.00	\$0.00	\$574,627.57	\$2,687,258.23	\$3,261,885.80	\$34,147,842.28
9/1/2050	2/28/2051	3/1/2051	Interest Only Total	\$0.00	\$0.00	\$532,706.34	\$0.00	\$532,706.34	\$34,147,842.28
3/1/2051	8/31/2051	9/1/2051	Fixed Principal (%)	\$0.00	\$0.00	\$532,706.34	\$2,752,801.12	\$3,285,507.46	\$31,395,041.16
9/1/2051	2/29/2052	3/1/2052	Interest Only Total	\$0.00	\$0.00	\$489,762.65	\$0.00	\$489,762.65	\$31,395,041.16
3/1/2052	8/31/2052	9/1/2052	Fixed Principal (%)	\$0.00	\$0.00	\$489,762.65	\$2,818,344.00	\$3,308,106.65	\$28,576,697.16
9/1/2052	2/28/2053	3/1/2053	Interest Only Total	\$0.00	\$0.00	\$445,796.48	\$0.00	\$445,796.48	\$28,576,697.16
3/1/2053	8/31/2053	9/1/2053	Fixed Principal (%)	\$0.00	\$0.00	\$445,796.48	\$2,883,886.88	\$3,329,683.36	\$25,692,810.28
9/1/2053	2/28/2054	3/1/2054	Interest Only Total	\$0.00	\$0.00	\$400,807.85	\$0.00	\$400,807.85	\$25,692,810.28
3/1/2054	8/31/2054	9/1/2054	Fixed Principal (%)	\$0.00	\$0.00	\$400,807.85	\$2,949,429.77	\$3,350,237.62	\$22,743,380.51
9/1/2054	2/28/2055	3/1/2055	Interest Only Total	\$0.00	\$0.00	\$354,796.74	\$0.00	\$354,796.74	\$22,743,380.51
3/1/2055	8/31/2055	9/1/2055	Fixed Principal (%)	\$0.00	\$0.00	\$354,796.74	\$3,014,972.65	\$3,369,769.39	\$19,728,407.86
9/1/2055	2/29/2056	3/1/2056	Interest Only Total	\$0.00	\$0.00	\$307,763.17	\$0.00	\$307,763.17	\$19,728,407.86
3/1/2056	8/31/2056	9/1/2056	Fixed Principal (%)	\$0.00	\$0.00	\$307,763.17	\$3,080,515.53	\$3,388,278.70	\$16,647,892.33
9/1/2056	2/28/2057	3/1/2057	Interest Only Total	\$0.00	\$0.00	\$259,707.13	\$0.00	\$259,707.13	\$16,647,892.33
3/1/2057	8/31/2057	9/1/2057	Fixed Principal (%)	\$0.00	\$0.00	\$259,707.13	\$3,146,058.42	\$3,405,765.55	\$13,501,833.91
9/1/2057	2/28/2058	3/1/2058	Interest Only Total	\$0.00	\$0.00	\$210,628.61	\$0.00	\$210,628.61	\$13,501,833.91
3/1/2058	8/31/2058	9/1/2058	Fixed Principal (%)	\$0.00	\$0.00	\$210,628.61	\$3,277,144.19	\$3,487,772.80	\$10,224,689.72
9/1/2058	2/28/2059	3/1/2059	Interest Only Total	\$0.00	\$0.00	\$159,505.16	\$0.00	\$159,505.16	\$10,224,689.72
3/1/2059	8/31/2059	9/1/2059	Fixed Principal (%)	\$0.00	\$0.00	\$159,505.16	\$3,342,687.07	\$3,502,192.23	\$6,882,002.65
9/1/2059	2/29/2060	3/1/2060	Interest Only Total	\$0.00	\$0.00	\$107,359.25	\$0.00	\$107,359.25	\$6,882,002.65
3/1/2060	8/31/2060	9/1/2060	Fixed Principal (%)	\$0.00	\$0.00	\$107,359.25	\$3,408,229.95	\$3,515,589.20	\$3,473,772.70
9/1/2060	2/28/2061	3/1/2061	Interest Only Total	\$0.00	\$0.00	\$54,190.86	\$0.00	\$54,190.86	\$3,473,772.70
3/1/2061	8/31/2061	9/1/2061	Fixed Principal (%)	\$0.00	\$0.00	\$54,190.86	\$3,473,772.70	\$3,527,963.56	\$0.00
Total				\$55,499,228.00	\$10,043,655.61	\$43,452,887.17	\$65,542,883.61	\$108,995,770.78	

Period Repayment Type Definitions:

No Payment: Interest in the period is capitalized and added to the outstanding principal balance. // Interest Only Total: Interest is paid as it accrues. // Level Payment (semiannual): Level semiannual payments of principal and interest. // Level Payment (annual p, semiannual i): This option makes the sum of one annual principal and two semiannual interest payments constant (i.e., level). // Level Payment (one payment per year): This option makes level annual payments of principal and interest and capitalizes the interest in the non-payment periods. // Fixed Principal (\$): Fixed amount in a period is paid and interest is paid as it accrues. // Fixed Principal (%): Fixed % of total max outstanding principal (i.e., draws + capitalized interest) in a period

EXHIBIT G-1

OPINIONS REQUIRED FROM COUNSEL TO BORROWER

An opinion of the counsel of the Borrower, dated as of the Effective Date, to the effect that:

(a) insofar as the laws of the State are applicable, and limited in all respects to said laws, the Borrower is a public corporation of the State having a distinct legal existence from the State, duly formed, validly existing, and in good standing under the laws of the State;

(b) the Borrower is duly authorized and empowered, under the laws of the State, including Title 46, Chapter 25 of the Rhode Island General Laws, to conduct its business, to enter into the transactions contemplated by the Related Documents, including the Indenture, the WIFIA Loan Agreement and the WIFIA Bond, to authorize the WIFIA Bond, to adopt the Resolution of the Narragansett Bay Commission No. 2022:02 adopted on March 1, 2022, and to execute and deliver, and perform its obligations under, the WIFIA Bond, the Indenture, the WIFIA Loan Agreement, and the Principal Project Contracts;

(c) the Indenture, the WIFIA Bond, the WIFIA Loan Agreement and, to the extent entered into as of the date of this opinion, the Principal Project Contracts, have been executed and delivered by the Borrower, each of the Related Documents to which the Borrower is a party constitutes the legal, valid and binding obligation of the Borrower, enforceable in accordance with their respective terms, and the performance of the Borrower's respective obligations under the Related Documents to which it is a party, have been duly authorized by all necessary organizational or regulatory action;

(d) no authorization, consent, or other approval of, or registration, declaration or other filing with any governmental authority of the United States of America or of the State is required on the part of the Borrower for the execution and delivery by such party of, and the performance of such party under, any Related Document to which it is a party other than authorizations, consents, approvals, registrations, declarations and filings that have already been timely obtained or made by the Borrower;

(e) the Borrower is not entitled to claim governmental immunity in any breach of contract action under the WIFIA Loan Agreement or the WIFIA Bond or by the Trustee under the Indenture Documents;

(f) The execution and delivery by the Borrower of, and the performance of its respective obligations under, the WIFIA Loan Agreement, the Indenture and the WIFIA Bond and the other documents contemplated by the WIFIA Loan Agreement, including the Principal Project Contracts, do not and will not (i) violate the Organizational Documents, (ii) violate existing law, court or administrative regulations, decrees, orders, state statutes or the law of the United States of America, or (iii) conflict with or constitute a breach of or default under any material contract, agreement or other instrument to which the Borrower is a party or by which it or its properties are bound; and

(g) to the best of my knowledge, and except as indicated in the WIFIA Loan Agreement, there is no action, suit, proceeding, or investigation at law or in equity before or by any court, public board, or body, pending or threatened, against or affecting the Borrower wherein an unfavorable decision, ruling, or finding would adversely affect the transactions contemplated by the WIFIA Loan Agreement, or the validity of the WIFIA Bond or the Indenture and there is no pending or threatened litigation or other proceedings which in any way questions or affects the validity of the WIFIA Bond or the documents relating thereto or any proceedings or transactions relating to the issuance, sale, and delivery of the WIFIA Bond, or which in any way contests the existence or the powers of the Borrower, or the title of any of its officers to their respective offices, and there is no litigation or proceedings pending against the Borrower which in the aggregate could have a material adverse effect on the Borrower's ability to repay its loan from the WIFIA Lender from revenue of the Borrower's wastewater system.

EXHIBIT G-2

OPINIONS REQUIRED FROM BOND COUNSEL

An opinion of bond counsel, dated as of the Effective Date, to the effect that:

(a) The Borrower is a public corporation of the State having a distinct legal existence from the State and not constituting a department of State government and has full legal right and power under the laws of the State (i) to enter into the Indenture, (ii) to enter into the WIFIA Loan Agreement, (iii) to execute and deliver to WIFIA Bond and (iv) to carry out and consummate the transactions contemplated by the Indenture, the WIFIA Loan Agreement and the WIFIA Bond.

(b) The Borrower has the right and power under Title 46, Chapter 25 of the Rhode Island General Laws (the "Borrower Act") to adopt the Resolution of the Narragansett Bay Commission No. 2022:02 adopted on March 1, 2022 (the "Resolution"). The Resolution has been duly and lawfully adopted by the Borrower, is in full force and effect, and is valid and binding and enforceable upon the Borrower, and no other authorization or action for the Resolution is required.

(c) The WIFIA Loan Documents have been duly authorized, executed and delivered by the Borrower. The WIFIA Loan Documents constitute the valid and binding obligations of the Borrower, enforceable in accordance with their terms.

(d) The WIFIA Bond is a valid special obligation of the Borrower payable solely from the revenues pledged therefor pursuant to the Resolution and the Indenture, and is equally and ratably secured with the other Bonds issued under the Indenture.

(e) No other authorization, approval, consent or other order of any governmental authority or agency is required for the authorization, execution and delivery of the WIFIA Loan Documents, and any and all statutes, ordinances, resolutions, regulations or other requirements applicable to the execution and delivery of the WIFIA Loan Documents have been complied with.

(f) To secure the payment of the principal of, interest on, and other amounts payable in respect of, the WIFIA Bond, the provisions of the Indenture create a valid security interest, in favor of the Trustee for the benefit of the Bondholders, in the Trust Estate in which a security interest can be created under the UCC. The financing statement is in appropriate form and has been filed and recorded with the Rhode Island Secretary of State, which is the only office in the State in which financing statements are required to be filed in order to perfect by filing the security interests granted to the Trustee (on behalf of the Bondholders) in the Trust Estate in which a security interest may be perfected by the filing of UCC-1 financing statements under Article 9 of the UCC. The Trustee (on behalf of the Bondholders) has a perfected security interest in the Trust Estate, to the extent that a security interest may be perfected by the filing of UCC-1 financing statements under Article 9 of the UCC, and no further action is required by the Borrower or any other person for such purposes.

(g) The Borrower is not eligible to be a debtor in either a voluntary or involuntary case under the United States Bankruptcy Code.

EXHIBIT H

FORM OF CERTIFICATE OF TRUSTEE

NARRAGANSETT BAY COMMISSION

**WIFIA Bond,
Field's Point Resiliency Improvements Project
(WIFIA – N21141RI)**

The undersigned, U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, as Trustee (as successor in interest to U.S. Bank National Association, as successor trustee to Wells Fargo Bank, N.A., as successor trustee to The Bank of New York Trust Company, N.A., as successor trustee in interest to J.P. Morgan Trust Company, National Association) (the "**Trustee**"), pursuant to the Trust Indenture by and between the Narragansett Bay Commission (the "**Borrower**") and the Trustee dated as of April 15, 2004, as amended and supplemented, including by the Thirty-First Supplemental Indenture dated July 25, 2022 (the "**Indenture**"), by its duly appointed, qualified and acting [____], certifies with respect to the above referenced bond (the "**WIFIA Bond**") dated July 25, 2022, as follows (capitalized terms used in this Certificate which are not otherwise defined shall have the meanings given to such terms in the Indenture):

1. That the Trustee is a national association duly organized and validly existing under the laws of the United States of America.

2. That the documents pertaining to the issuance of the WIFIA Bond to which the Trustee is a party were executed and the WIFIA Bond was authenticated on behalf of the Trustee by one or more of the persons whose names and offices appear on Annex One attached hereto and made part hereof, that each person was at the time of the execution of such documents and the authentication of the WIFIA Bond and now is duly appointed, qualified and acting incumbent of his or her respective office, that each such person was authorized to execute such documents and to authenticate the WIFIA Bond, and that the signature appearing after the name of each such person is a true and correct specimen of that person's genuine signature.

3. That the undersigned is authorized to act as Trustee and accept the trusts conveyed to it under the Indenture ("**Trusts**"), has accepted the Trusts so conveyed and in so accepting the Trusts and so acting is in violation of no provision of its articles of association or bylaws, any law, regulation or court or administrative order or any agreement or other instrument to which it is a party or by which it may be bound.

4. That attached to this Certificate as Annex Two is a full, true and correct copy of Articles of Association and Amended and Restated Bylaws of the Trustee and other applicable documents that evidence the Trustee's trust powers and the authority of the officers referred to above to act on behalf of the Trustee; and that these excerpts and other applicable documents were in effect on the date or dates such officers acted and remain in full force and effect today, and such excerpts and documents have not been amended since the date of the last amendment thereto shown on any such copy, as applicable.

5. That receipt is acknowledged of all instruments, certifications and other documents or confirmations required to be received by the Trustee pursuant to Section 205 (*General Provisions for Issuance of Bonds*) of the Indenture.

6. That receipt is also acknowledged of that certain WIFIA Loan Agreement, dated as of July 25, 2022 (the "***WIFIA Loan Agreement***"), between the Borrower and the United States Environmental Protection Agency, acting by and through the Administrator (the "***WIFIA Bondholder***").

7. That the Trustee also accepts its appointment and agrees to perform the duties and responsibilities of Trustee and Paying Agent for and in respect of the WIFIA Bond as set forth in the Indenture and the WIFIA Loan Agreement, including from time to time redeeming all or a portion of the WIFIA Bond as provided in Article IV (*Redemption of Bonds*) of the Indenture. In accepting such duties and responsibilities, the Trustee shall be entitled to all of the privileges, immunities, rights and protections set forth in Article VIII (*The Fiduciaries*) of the Indenture.

8. That all funds and accounts for the payment of the WIFIA Bond pursuant to the Indenture (including, but not limited to, the WIFIA Debt Service Account) have been established as provided in the Indenture.

This certificate may be delivered by the delivery of signed signature pages by electronic means, facsimile transmission, or by e-mail with a PDF copy attached, and any printed or copied versions of any signature page so delivered shall have the same force and effect as an originally signed version of such signature page. Signatures of this certificate made by electronic means shall be accompanied by an email, contemporaneous or otherwise, confirming the use of such means.

Dated: July 25, 2022

[TRUSTEE]

By: _____
Its:

ANNEX ONE TO EXHIBIT H

OFFICERS OF TRUSTEE

ANNEX TWO TO EXHIBIT H
RESOLUTIONS OF BOARD OF DIRECTORS OF TRUSTEE

EXHIBIT I

FORM OF BORROWER'S OFFICER'S CERTIFICATE

Reference is made to that certain WIFIA Loan Agreement, dated as of July 25, 2022 (the "**WIFIA Loan Agreement**"), by and among Narragansett Bay Commission (the "**Borrower**") and the United States Environmental Protection Agency, acting by and through the Administrator (the "**WIFIA Lender**"). Capitalized terms used in this certificate and not defined shall have the respective meanings ascribed to such terms in the WIFIA Loan Agreement.

In connection with Section 11(a) (*Conditions Precedent – Conditions Precedent to Effectiveness*) of the WIFIA Loan Agreement, the undersigned, Vincent J. Mesolella and Laurie Horridge, as Borrower's Authorized Representative, does hereby certify on behalf of the Borrower and not in his/her personal capacity, as of the date hereof:

- (a) pursuant to Section 11(a)(ii) (*Conditions Precedent – Conditions Precedent to Effectiveness*) of the WIFIA Loan Agreement, to the extent not previously delivered to the WIFIA Lender, attached hereto as Exhibit A are complete and fully executed copies of each Indenture Document (excluding documentation related to Additional Security and Qualified Swap Agreements), together with any amendments, waivers or modifications thereto, in each case that has been entered into on or prior to the Effective Date, and each such agreement is in full force and effect, and all conditions contained in such documents to the closing of the transactions contemplated thereby have been fulfilled or effectively waived by the WIFIA Lender in its sole discretion;
- (b) pursuant to Section 11(a)(iv) (*Conditions Precedent – Conditions Precedent to Effectiveness*) of the WIFIA Loan Agreement, (i) attached hereto as Exhibit B is a certificate to the absence of debarment, suspension or voluntary exclusion from participation in Government contracts, procurement and non-procurement matters with respect to the Borrower and its principals (as defined in 2 C.F.R. § 180.995 and supplemented by 2 C.F.R. § 1532.995) and (ii) attached as Exhibit C is the Non-Lobbying Certificate;
- (c) pursuant to Section 11(a)(vi) (*Conditions Precedent – Conditions Precedent to Effectiveness*) of the WIFIA Loan Agreement, attached hereto as Exhibit D is an incumbency certificate that lists all persons, together with their positions and specimen signatures, who are duly authorized by the Borrower to execute the Related Documents to which the Borrower is or will be a party, and who have been appointed a Borrower's Authorized Representative in accordance with Section 21 (*Borrower's Authorized Representative*) of the WIFIA Loan Agreement;
- (d) the aggregate of all funds committed to the development and construction of the Project as set forth in the Base Case Financial Model and in the Project Budget to pay Total Project Costs are sufficient to carry out the Project, pay all Total Project

Costs anticipated for the Project and achieve Substantial Completion by the Projected Substantial Completion Date;

- (e) pursuant to Section 11(a)(viii) (*Conditions Precedent – Conditions Precedent to Effectiveness*) of the WIFIA Loan Agreement, each Existing Principal Project Contract (as listed in Schedule 12(n) (*Existing Principal Project Contracts*) to the WIFIA Loan Agreement), is in full force and effect;
- (f) the Borrower has obtained all Governmental Approvals needed (i) as of the Effective Date in connection with the Project and (ii) to execute and deliver, and perform its obligations under the WIFIA Loan Agreement, and all such Governmental Approvals are final, non-appealable, and in full force and effect (and are not subject to any notice of violation, breach or revocation);
- (g) the 30-day appeal period pursuant to Rhode Island General Laws Section 42-35-15 for the DPUC Order has expired without the filing of any appeal so that the WIFIA Bond has been fully approved pursuant to all applicable laws of the State;
- (h) pursuant to Section 11(a)(x) (*Conditions Precedent – Conditions Precedent to Effectiveness*) of the WIFIA Loan Agreement, attached hereto as Exhibit E is the Base Case Financial Model, which Base Case Financial Model (i) demonstrates that projected Revenues are sufficient to meet the Loan Amortization Schedule, (ii) demonstrates compliance with the Rate Covenant for each Borrower Fiscal Year through the Final Maturity Date, (iii) reflects principal amortization and interest payment schedules acceptable to the WIFIA Lender, (iv) demonstrates that the Borrower has developed, and identified adequate revenues to implement, a plan for operating, maintaining and repairing the Project over its useful life and (v) otherwise meets the requirements of Section 11(a)(x) (*Conditions Precedent – Conditions Precedent to Effectiveness*) of the WIFIA Loan Agreement;
- (i) the Borrower (i) is authorized, pursuant to Sections 46-25-5, 46-25-58 and 46-25-59 of the Rhode Island General Laws and its Organizational Documents, to pledge, assign, and grant the Liens on the Pledged Collateral purported to be pledged, assigned, and granted pursuant to the Indenture Documents without the need for notice to any Person, physical delivery, recordation, filing or further act; (ii) has delivered to the WIFIA Lender time-stamped copies of UCC-1 financing statements covering the Pledged Collateral, in form and substance satisfactory to the WIFIA Lender, that have been filed with the Secretary of State of the State to perfect such Liens; (iii) has recorded or filed, or caused to be recorded or filed, for record in such manner and in such places as are required all other documents and instruments, and taken or caused to be taken all other actions, as are necessary or desirable to establish and enforce the Lien on the Pledged Collateral (for the benefit of the WIFIA Lender and the other Secured Parties) to the extent contemplated by the Indenture Documents and this Agreement; and (iv) has paid, or caused to be paid, all taxes and filing fees that are due and payable in connection with the execution, delivery or recordation of any Indenture

Documents and this Agreement or any instruments, certificates or financing statements in connection with the foregoing;

- (j) pursuant to Section 11(a)(xiii) (*Conditions Precedent – Conditions Precedent to Effectiveness*) of the WIFIA Loan Agreement, (i) attached hereto as Exhibit F is a true, correct and complete copy of the final NEPA Determination, which document has not been revoked or amended on or prior to the date hereof, (ii) the Borrower has complied with all other applicable federal, state or local environmental review and approval requirements with respect to the Project, and (iii) the Borrower has complied with all applicable requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 *et seq.*) and Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*);
- (k) pursuant to Section 11(a)(xv) (*Conditions Precedent – Conditions Precedent to Effectiveness*) of the WIFIA Loan Agreement, (i) the Borrower's Federal Employer Identification Number is 06-1471715, (ii) the Borrower's Data Universal Numbering System number is 14-477-5335, and (iii) the Borrower has registered with the federal System for Award Management (www.SAM.gov);
- (l) pursuant to Section 11(a)(xvi) (*Conditions Precedent – Conditions Precedent to Effectiveness*) of the WIFIA Loan Agreement, each of the insurance policies obtained by the Borrower in satisfaction of the conditions in Section 14(f) (*Affirmative Covenants – Insurance and Condemnation*) of the WIFIA Loan Agreement is in full force and effect, and no notice of termination thereof has been issued by the applicable insurance provider;
- (m) pursuant to Section 11(a)(xvii) (*Conditions Precedent – Conditions Precedent to Effectiveness*) of the WIFIA Loan Agreement, attached hereto as Exhibit G is a copy of the Borrower's Organizational Documents, as in effect on the Effective Date (and certified by the Secretary of State of the State, to the extent applicable), which Organizational Documents are in full force and effect and have not been amended since the date of the last amendment thereto shown on the certificate of the Secretary of State of the State;
- (n) pursuant to Section 11(a)(xviii) (*Conditions Precedent – Conditions Precedent to Effectiveness*) of the WIFIA Loan Agreement, attached hereto as Exhibit H is a copy of (i) the WIFIA Supplemental Indenture, (ii) all other resolutions, ordinances, or supplements (as the case may be), if any, authorizing the Borrower to execute and deliver, and to perform its respective obligations under, the WIFIA Loan Documents to which it is a party, and (iii) all further instruments and documents as are necessary, appropriate or advisable to effectuate the foregoing resolutions and to consummate and implement the transactions contemplated by such resolutions and the WIFIA Loan Documents, and in each case such documents have not been subsequently modified, rescinded or amended, are in full force and effect in the form adopted, and are the only documents required and adopted by the Borrower relating to the matters described therein;

- (o) pursuant to Section 11(a)(xx) (*Conditions Precedent – Conditions Precedent to Effectiveness*) of the WIFIA Loan Agreement, the Borrower certifies that no performance security instrument is required to be delivered to the Borrower pursuant to any Principal Project Contract as of the Effective Date;
- (p) the representations and warranties of the Borrower set forth in the WIFIA Loan Agreement and in each other Related Document to which the Borrower is a party are true and correct on and as of the date hereof, except to the extent that such representations and warranties expressly relate to an earlier date, in which case such representations and warranties were true and correct as of such earlier date; and
- (q) (i) the maximum principal amount of the WIFIA Loan (excluding any interest that is compounded and capitalized in accordance with the terms hereof), together with the amount of any other credit assistance provided under the Act to the Borrower, does not exceed forty-nine percent (49%) of reasonably anticipated Eligible Project Costs and (ii) as required pursuant to § 3908(b)(9) of the Act, the total federal assistance provided to the Project, including the maximum principal amount of the WIFIA Loan (excluding any interest that is compounded and capitalized in accordance with the terms hereof), does not exceed eighty percent (80%) of Total Project Costs.

This certificate may be delivered by the delivery of signed signature pages by electronic means, facsimile transmission, or by e-mail with a PDF copy attached, and any printed or copied versions of any signature page so delivered shall have the same force and effect as an originally signed version of such signature page. Signatures of this certificate made by electronic means shall be accompanied by an email, contemporaneous or otherwise, confirming the use of such means.

IN WITNESS WHEREOF, the undersigned has executed this certificate as of the date first mentioned above.

NARRAGANSETT BAY COMMISSION,
by its authorized representative

By: _____
Name:
Title: Authorized Person

EXHIBIT D TO EXHIBIT I
INCUMBENCY CERTIFICATE

The undersigned certifies that he/she is the [Secretary] of Narragansett Bay Commission, a public corporation organized and existing under the laws of the State of Rhode Island, (the “**Borrower**”), and as such he/she is authorized to execute this certificate and further certifies that the following persons have been elected or appointed, are qualified, and are now acting as officers or authorized persons of the Borrower in the capacity or capacities indicated below, and that the signatures set forth opposite their respective names are their true and genuine signatures. He/She further certifies that any of the officers listed below is authorized to sign agreements and give written instructions with regard to any matters pertaining to the WIFIA Loan Documents as the Borrower’s Authorized Representative (each as defined in that certain WIFIA Loan Agreement, dated as of the date hereof, between the Borrower and the United States Environmental Protection Agency, acting by and through the Administrator):

<u>Name</u>	<u>Title</u>	<u>Signature</u>
[_____]	[_____]	_____
[_____]	[_____]	_____
[_____]	[_____]	_____
[_____]	[_____]	_____
[_____]	[_____]	_____

This certificate may be delivered by the delivery of signed signature pages by electronic means, facsimile transmission, or by e-mail with a PDF copy attached, and any printed or copied versions of any signature page so delivered shall have the same force and effect as an originally signed version of such signature page. Signatures of this certificate made by electronic means shall be accompanied by an email, contemporaneous or otherwise, confirming the use of such means.

IN WITNESS WHEREOF, the undersigned has executed this certificate as of this 25th day of July, 2022.

NARRAGANSETT BAY COMMISSION,
by its authorized representative

By: _____
Name:
Title:

EXHIBIT J

FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION

[Letterhead of Borrower]

[Date]

United States Environmental Protection Agency
c/o WIFIA Director
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Project: FIELD'S POINT RESILIENCY IMPROVEMENTS PROJECT (WIFIA – N21141RI)

Dear Director:

This Notice is provided pursuant to Section 16(h)(ii) (*Reporting Requirements – Notices*) of that certain WIFIA Loan Agreement (the “**WIFIA Loan Agreement**”), dated as of July 25, 2022, by and between Narragansett Bay Commission (the “**Borrower**”) and the United States Environmental Protection Agency, acting by and through its Administrator (the “**WIFIA Lender**”).

Unless otherwise defined herein, all capitalized terms in this Notice have the meanings assigned to those terms in the WIFIA Loan Agreement.

I, the undersigned, in my capacity as the Borrower’s Authorized Representative and not in my individual capacity, do hereby certify to the WIFIA Lender that:

- (a) on *[insert date Substantial Completion requirements were satisfied]*, the Project satisfied each of the requirements for Substantial Completion set forth in the *[Insert reference to the concession agreement, design-build or similar agreement for the Project]*;
- (b) Substantial Completion has been declared under each of the above-referenced agreements and copies of the notices of Substantial Completion under such agreements are attached to this certification; and
- (c) Substantial Completion, as defined in the WIFIA Loan Agreement, has been achieved.

This certificate may be delivered by the delivery of signed signature pages by electronic means, facsimile transmission, or by e-mail with a PDF copy attached, and any printed or copied versions of any signature page so delivered shall have the same force and effect as an originally signed version of such signature page. Signatures of this certificate made by electronic means shall be accompanied by an email, contemporaneous or otherwise, confirming the use of such means.

NARRAGANSETT BAY COMMISSION,
by its authorized representative

By: _____

Name:

Title:

EXHIBIT K

FORM OF QUARTERLY REPORT

Set forth below is an example monthly report of the Borrower. Each quarterly report shall combine the Borrower's monthly reports regarding the implementation of the Project for the applicable quarter, providing Project status for each of the seven sub-projects and information concerning the procurement, engineering, construction, permitting and implementation of the Project, including information of the nature reflected in the example monthly report.

September 1, 2020



TO: Laurie A. Horridge
Executive Director

FROM: Richard Bernier, P.E.
Director of Construction and Engineering

SUBJECT: Monthly Report for the Month of August 2020

ENGINEERING SECTION

Contract 114.0600- RIPDES Climate Improvements for NBC Facilities:

In accordance with Part I.E.4 of our RIPDES Permit, we submitted a draft Resiliency Report to RIDEM on November 25, 2019 and the Report was approved by the department on April 20, 2020.

All assets at risk of flooding were assessed using RIDEM's approved method of FEMA Firm Base Flood Elevations (+2-ft. of freeboard for non-critical assets and +3-ft. of freeboard for critical assets).

The Resiliency Report presents a tiered approach schedule for when the NBC may wish to consider implementing various corrective actions over a 30-year planning period. Potential facility modifications are presented in timeline "buckets" based on near-, medium- and long-term improvements. Using this approach, the NBC can revisit assessed climate change projections and adjust the report's suggested remediation strategies accordingly over the 30-year planning period.

Due to confidentiality related concerns with the Resiliency Report's details, we developed an abridged version of the Report that is appropriate for public viewing. Upon request, this abridged version of the report can be forward to RIDEM for distribution to others.

During the month of August 2020 we (Tom Uva and Dave Bowen) received several calls from Pam Rubinoff at the Coastal Resilience and Extension, Coastal Resources Center & Sea Grant section of the URI Graduate School of Oceanography. Pam was interested in discussing our Resiliency Report findings and NBC's assessment of potential infrastructure vulnerabilities associated with climate change, specifically storm surge in Narragansett Bay. During separate discussions, Tom and Dave each acknowledge our completed Resilience Report and emphasized its confidential status. Pam is reportedly conducting an independent evaluation on behalf various stakeholders in the state (i.e. Brown University, URI, several politicians, etc.) to develop a concise summary of potential vulnerability concerns in and around the Port of Providence. Reportedly her research is associated with a pilot program to model the combined coastal and inland impacts of an extreme regional storm event. Due to our proximity to

the port she was interested in our known vulnerabilities and what implementation measures are considering to harden our facilities. Due to confidentiality concerns Dave kept our response very general and vague, however did indicate the NBC would be interested in hearing more about future grant and funding programs if they become available. Pam did ask for a copy of our Resiliency Report and Dave forwarded the abridged report version for her internal use. Pam also inquired about the potential impacts on stormwater and NBC's approach to mitigating related concerns. Dave clarified that the NBC is not responsible for separate storm drainage systems as they are owned, operated and maintained by other agencies (i.e. cities, towns, RIDOT, etc.). Due to confidentiality concerns Pam agreed to send us a draft copy of her assessment report for review and comment prior to distributing it to others. In response to these conversations we are now invited to participate on a steering committees conference call on September 10, 2020 (10:00AM – 11:30AM) to discuss their ongoing works associated with the Providence Pilot Study – Modelling Coastal and Inland Impacts from Extreme Storms in the study area.

Contract 202.00 FY19 WWTF Improvements:

The project's amended work scope consists of eighteen (18) tasks associated with various capital improvements at our Field's Point facilities.

In an attempt to expedite work and minimize project costs the work associated with replacing the Gravity Thickener Building's Air Handling Unit (AHU) was removed from Wright-Pierce's detailed design scope. Utilizing Wright-Pierce's basis-of-design documents staff was able to procure the needed improvement works through NBC's GSA Multiple Award Schedule/Agreement. In accordance with approved procurement methods, staff selected Johnson Controls, Inc. from the GSA Vendor Listing, who submitted a proposal for \$244,000. The Board approved Resolution 2020:18 in June, which authorized a PO to be issued. Staff conducted a Kick-Off meeting in July. The project's HUR and ductwork Shop drawings were received and sent to Wright-Pierce for review.

Staff conducted several virtual meetings and calls with Wright-Pierce in August to advance various work activities:

Work associated with evaluating the Task 8 – CSO Tunnel Odor Control System was completed in June 2020. WP retained the specialty technical services of VNA Consultants to complete detailed air modelling of our Phase 1 and 2 CSO tunnel system. Wright-Pierce and VNA's completed modelling efforts recommend a phased improvement approach, starting with the replacement of damaged air louvers to improve the overall efficiency and effectiveness of our existing odor control system. On Friday August 29th, Wright-Pierce inspected various Gate and Screening Structure louvers to obtain necessary design information and the project's detailed design effort remains ongoing.

The detailed design work associated with the Task 10 – Campus-wide Fire Alarm System Improvements remains ongoing. Wright-Pierce submitted the tasks 60% preliminary design documents to the State Fire Marshall and Providence Fire Department in July and their review remains ongoing. Wright-Pierce submitted the task's 90% design documents on August 14th and our

internal review is ongoing. A meeting is scheduled for September 9, 2020 with the State Fire Marshall (Robert Couture), Providence Fire Marshall (Andrew Wentz), and Providence Fire Alarm Inspector (Joe Schindler) to review the project's preliminary design documents. Due to unforeseen scheduling delays with the local and state officials, Wright-Pierce now intends to complete the project's detailed design effort in the next few weeks with the expectation that the project will be publicly advertised and bid in September. At present, the project is scheduled to be presented for award during the October Board Meeting.

Following staff recommendations, the Board approved Resolution 2020:15 in June authorizing Wright-Pierce to complete detailed design services associated with four work tasks (Task 7 - Screw Lift Pumping Station Corrosion Control Work; Task 8 – Odor Control System Improvements; Task 9 - Storm Water Compliance Improvements at the Sludge Dewatering Building and a new Task 19 – Resurfacing of the COB Parking Lot to address needed drainage and cracking concerns). On August 29, 2020 Wright-Pierce inspected the FP Stormwater Pumping Station to obtain necessary design information. Design of the COB parking lot restorations remains ongoing. Wright-Pierce has estimated the cost of repairs will be approximately \$185,000.

Wright-Pierce is scheduled to complete the project's detailed design services for all tasks later this fall and we intend to advertise the project and solicit bids in early January 2021.

CSO Phase II Facilities:

303.04 – Awaiting OK from legal counsel on whether we can make payment for several easements that have not yet been paid.

303.15C WCSOI OF046:

IM has scheduled installation of a meter at the surcharging manhole next month.

Contract 308.00 CSO Phase III Facilities

General CSO

NBC submitted a Master Permit application to CRMC in March, which included proposed Phase 3A facilities. CRMC sent comments to NBC which included a requirement that NBC provide the disposal plan for tunnel muck. We provided a response to their comments and updated the Master Plan to include the operations and maintenance buildings, BP generator, and UV building. CRMC seemed to accept NBC's responses as they published a public notice for the Master Plan Amendment. ***The public notice period ended on August 16, 2020. The Master Plan will be submitted for Council approval in October at the earliest. If the Council approves the Master Plan, NBC should expect to receive approval 2-3 weeks if approved at the Council meeting.***

A presentation about the Macomber Field and 1304 High Street GSI projects was provided to attendees of a Zoom meeting sponsored by the Narragansett Bay Estuary Program on August 26.

The draft memo for the tunnel ventilation design was submitted.

DB Procurement

Interviews with the teams were held on August 4 and 5.

Both DB teams presented their technical proposals to the CEO Committee on August 12.

308.03-CSO 205 Facilities

Consultant: Wright Pierce

Monthly Progress Meeting: 8/20/20

Progress Update: Wright Pierce submitted the 60% plans to Stantec. The updated OPCC has increased to \$5 million which reflects the inclusion of a retaining wall and bike path into the design. Wright Pierce was directed to develop a bid form that incorporates as much of the work as possible into the lump sum and establishes unit prices for items that cannot be quantified.

308.04 & 308.05- CSO 210/211/213/214/217 Facilities

Consultant: Beta

Monthly Progress Meeting: 8/6/20 and 8/20/20

Progress Update:

Beta had previously submitted an OPCC estimate of \$21 million for their 30% design submittal. This was a significant increase over the 10% OPCC of \$8.4 million. Stantec and MWH Constructors reviewed the 30% plans and developed a list of value engineering concepts. A workshop was held on August 6 to discuss these concepts. This discussion continued during the monthly progress meeting on August 20. Beta is reviewing these concepts and will respond in writing about the feasibility of these concepts.

One notable item of concern for Contract IIIA-5 is the presence of a 16-inch high-pressure cast iron gas main. This gas main is thought to be very old and is approximately 60 feet from the proposed 48-inch CSO interceptor pipe on the Tidewater property. In June, Stantec sent an email to National Grid that asked whether this gas main was scheduled to be replaced and if not, asked if they could specify a safe distance from which to conduct NBC's work. National Grid stated that the cast iron gas main is not scheduled for replacement. National Grid provided their encroachment guidelines. Based on these guidelines, Beta determined that the edge of the sheeting must be at least 25 feet from the gas main for the open cut section of pipe and that the sheeting for the jacking pit for the microtunneled section of pipe must be at least 10 feet from the gas main. National Grid also recommended that the sheets be vibrated rather than driven into the ground. There are also stubs from the cast iron gas main that extend into our alignment. They will have to be abandoned. National Grid is working

on an estimate for this work. **We may also request an estimate for the replacement of the high-pressure gas main.**

308.06-CSO 218 Facilities

Consultant: Kleinfelder

Monthly Progress Meeting: 8/19/20

Progress Update: Kleinfelder has resumed progress towards the 60% design stage. Kleinfelder is modifying the design of the gate and screening structure so that screening of the flow is accomplished at the Lower BVI Interceptor Relief Structure and Floatables Control Diversion Structure. The bar screens will also act to serve as safety screens at both facilities. Both the Diversion Structure and the Lower BVI Interceptor Relief will also have hydraulic gates to stop flow from discharging to the tunnel. The former gate and screening structure is now a gate and junction structure. During the monthly progress meeting, we discussed the design of the gate and screening structure. Kleinfelder proposed a “two-level” junction structure that would reduce the amount of materials required to construct the facility. They were asked whether the labor to form the structure might eliminate any savings associated with reduction of materials. Kleinfelder will investigate this request. *During the August meeting, Kleinfelder had not yet confirmed whether the two-level structure was more cost effective than a single level structure. They had incorporated the VE concepts into the civil drawings but not the structural drawings. They also inquired whether NBC would want to break out the work proposed for the floatables control project since the CSO 218 project is not expected to be completed for many years. They were told that this work will not be broken out as a separate project.*

308.07/Phase IIIB-1-Regulator Modifications

Consultant: Tighe and Bond

Monthly Progress Meeting: N/A

Progress Update: Tighe and Bond was given approval to move forward with the field work needed for regulator modification design work for CSOs 212,

308.10C- Bucklin Point Final Clarifiers and Flow Splitters

Consultant: CDM

Monthly Progress Meeting: N/A

The monthly progress meeting was cancelled for the month of August as there were no outstanding action items. CDM has been instructed to stop design on the

The change order for the EM and the Lab agreed to sample for parameters necessary to calibrate the Bucklin Point biological model. EM will collect 14 continuous days of composite samples and the lab will sample for the following parameters:

- Primary effluent tested for BOD, TSS, VSS and TKN, COD; soluble (filtered) COD; filtered, flocculated COD; soluble (filtered) BOD; and ammonia N
- Final effluent tested for BOD, TSS, total N, ammonia-N, NO₂NO₃-N, (filtered) COD, soluble (filtered) TKN, and TKN

Phase IIIB-4 Upper BVI Facilities

Gordon Archibald had previously submitted a \$55K request for out of scope work. They were asked to submit additional information related to this request, which has not yet been done yet.

Contract 401.01P- Field's Point WWTF Electrical Improvements: Engineering will reassess the draft RFQ/P and coordinate the project's future advertisement and procurement.

Contract 401.02-WWTF Electrical Improvements:

1. Add PLC system for the Omega and Saylesville Pump Stations. Work is being performed by Dittman and Greer and our in-house staff. The project's PLC is installed, and the contractor is waiting for confirmation from NBC staff that Dittman and Greer can be called in to install new hardware and begin wiring changes for testing. The Omega Street Pump Station work is currently scheduled to be completed by October 2020.
2. Arc Flash Study for Bucklin Point and Fields Point. Bids were opened in February 2019 and the project was awarded to Hallam ICS for \$97,880.

Hallam initiated field investigations at the BP and FPWWTFs in April and work remains ongoing.

Staff worked with National Grid to address various technical questions raised by Hallman ICS. All the Hallman ICS questions to National Grid have been answered and related coordination works remain ongoing.

Hallman is scheduled to deliver the project's written report by September 7, 2020 and the project's ARC Flash equipment labelling services are scheduled to be completed in September 2020.

Contract 810.00D - BPWWTF UV Disinfection Improvements (and Bucklin Point WWTF Standby Power Reliability Improvements Project):

In accordance with the terms of Resolution 2020:01, which was approved by the Board in January 2020, CDM-Smith (CDM) continues to work on the project's detailed design phase services for the proposed new UV facilities. In addition, the Resolution also authorized CDM to evaluate and design an additional standby power generator for the BPWWTF per the terms of our RIDEM Consent Agreement.

Based on CDM's recommendations staff agreed to implement a formal Pre-Selection process to identify the preferred UV technology for use at Bucklin Point.

A UV Equipment Pre-Selection RFP was publicly advertised on April 6, 2020 and technical proposals were received on April 27, 2020. We received proposals from three reputable UV system manufacturers (e.g. TrojanUV, Ozonia, and Xylem-Wedeco). The proposals were reviewed by CDM and internal staff in June and a recommendation for

pre-selection award was presented at the June 2020 Board Meeting. Resolution No. 2020:22 was approved by the Board in June and authorizes staff to preselect Trojan Technologies to supply disinfection equipment for \$929,510 to the successful bidder for the future construction project. Staff prepared and issued a Pre-Selection Agreement Letter to Trojan, who executed the Agreement on August 20, 2020.

CDM submitted the project's Basis-of-Design Report and 30% plans on August 3, 2020 and the documents remain under review by staff. Engineering and Operations conducted a conference call on August 14th to discuss CDM's proposed approach to fully disinfect and discharge the plant's secondary effluent flow by gravity against an approximate 62-year flood level in the Seekonk River, which exceeds the requirements of TR-16 to maintain full treatment up to and including the 25-year flood level. Our internal review remains ongoing.

CDM will be inspecting the Dry Weather Pumping Station on Wednesday September 2nd to enhance their understanding of the design capabilities of our existing pumping system.

Standby Power Generator:

Staff continues to work on the project's various permit applications. Staff submitted the project's Freshwater Wetlands Permit application to CRMC/RIDEM on Tuesday, July 2, 2020 with the expectation that the department would issue an Insignificant Wetlands Permit for the proposed work activities. CDM received review comments from both CRMC and RIDEM. Following discussion with NBC staff, CDM modified their proposed stormwater mitigation/ treatment design and submitted a revised more simplistic design approach for regulatory review and approval.

In accordance with CRMC recommendations, the Phase 3 CSO Project's CRMC Application was amended in June/ July to include the proposed Standby Power Generator improvements and the UV Disinfection System Improvements (*the amended application also included our proposed Project 817.00 Operations Building Improvements*). The revised CRMC application remains under review, however staff has heard that the revised application may receive a favorable review.

The project's IFC documents were submitted to the State Building Commissioner's Office and State Fire Marshall in June. We recently responded to several electrical comments from the state electrical plan reviewer and the review process remains ongoing.

Contract 816.00D - BPWWTF Improvements:

Screening and Grit Building Boiler Replacement. One of the building's primary heating boilers failed due to excessive corrosion. The boiler was replaced with a small model Weil-McLain stainless steel heat exchanger boiler.

The boiler replacement works started in November 2019 and are complete. As part of this work, we also replaced two damaged heating coils in Air Handling Unit (AHU) Nos. 1 and 2.

We bid another project to replace the second boiler system at the Screening and Grit Building. Work was approved and is being performed by NexGen. This project is approximately 90 % complete and is scheduled to be finished in September 2020.

Digester Complex AHU System Improvements. The existing Air Handling Unit (AHU) and ventilation system within the Digester Complex dates back to the facility's original construction and does not provide adequate ventilation for the building complex. The aging ventilation system is problematic, undersized and needs to be replaced. A PO was issued to Wilkinson for \$18,500 to evaluate the facility's existing system and complete detailed design services associated with an improved and updated ventilation system.

Wilkinson submitted draft design drawings for the proposed new AHU and energy recovery unit in December. The assignment's updated preliminary design documents (plans and technical specification) were submitted in March.

Due to many technical challenges and the complexities associated with the multi-disciplined aspects of the project, we intend to include this work as part of the future Contract No. 816 Bucklin Point improvement project.

Contract 817.00D - BPWWTF Operations Building:

Over the past several months, Vision 3 completed their contractual work scope. They presented various conceptual siting options, interior space layout concepts and draft 3D renderings for the proposed Operations and Maintenance/ Storage buildings. Based on an internal meeting with NBC's Management Team Vision 3 refined the project's computerized 3D renderings model.

Vision 3 completed the project's Basis-of-Design Report in July 2020. The completed deliverable documents will be used to formulate the basis of the project's future design-build procurement documents. The Engineering and Construction staff are actively developing an appropriately detailed Request for Qualifications and Proposals document necessary to publicly advertise and solicit competitive bids from qualified Design-Build Teams. Associated work activities remain ongoing and staff anticipates bidding the design-build project in September 2020.

To supplement the quality of the project's design-build procurement documents, we retained Pare Corporation to perform environmental and hazardous materials assessment study of the existing Administration Building which will be demolished as part of the future design-build project. On August 11, 2020, Pare's subconsultant, Smith & Wessel conducted a building survey, obtained core samples of the building's roofing system for subsequent laboratory analysis. Pare also conducted additional soil test pits on August 21, 2020 to screen for environmental soil contamination at the proposed work site. The report is scheduled to be completed in late September.

Asset Management/Hansen:

Manhole rim elevations provided for all surveyed assets in the pitman street area for OF 023 and the collections system in the immediate area including part of

CSO phase II facilities in the area. Engineering has decided to use this information and compile all information already acquired for the pitman street regulators to develop a conclusive and comprehensive analysis of the flow capacity and flow conditions.

ID creation and GIS oversight provided for CCTV of Branch Avenue junction chamber and the incoming interceptor, from Canada pond, upstream. Construction repair contract for the junction chamber pending additional inspection results.

Engineering and technical support provided to IM. Newly scanned and updated plans placed into the database.

Primary GIS server license transfer on Hold as per IT due to COVID 19. This will result in limited functionality for advanced users but will not interfere with daily operations of all NBC users at this point. Update meeting held with IT. This is ongoing.

GIS coverage for all NBC regulators has been created and is now under modification for further development. This is ongoing.

Hansen Pipe Ratings project resumes for all pipes in the NBC District

Work continues modifications to the collection system

Work continues record plans and wastewater treatment plant updates

CONSTRUCTION SECTION

Contract 120.00C – Biogas Cogeneration System Bucklin Point WWTF

NGrid has given us the approval to proceed with the witness test. Biospark finished their work in mid-February 2020 and the NGrid witness test was performed Feb. 25 and 26, 2020.

Some issues were identified (wiring, programming and operational). Once these issues are resolved the witness test will be redone. This is not unusual. All issues were resolved that could be resolved without the treatment plant putting all power on one bus bar, then switching to the other bus bar. This was scheduled for March 17, 2020 but due to COVID 19 the NBC has not been able to accommodate the contractor request. This work will be on hold until the State of Emergency as declared by the Governor is lifted. The contractor has been asked to submit a schedule to finish all necessary testing now that the COVID 19 restriction is being relaxed. Daniel O'Connell's Sons (DOC), Audet and Square D were on site on July 1, 2020 to update programming for the relays. Independent testing was completed on August 18 through 20, 2020 and the NGrid witness test is scheduled for September 1, 2020.

As of August 31, 2020, this project is approximately 97% complete and approx. 40 months behind schedule due to delay in obtaining DEM permit and NGRID interconnect agreement.

Contract 202C – FY 2019 Fields Point WWTF Improvements

The Board approved the award of this contract to Daniel O’Connell’s Sons (DOC) at the June 23, 2020 meeting. The Notice to Proceed will be issued on September 8, 2020 setting the Substantial Completion Date at March 5, 2021. The preconstruction meeting was held on August 25, 2020.

Contract 304.44 - MVI Central Falls Branch Replacement

John Rocchio Corp. has completed all original contract work.

Work began on February 25, 2020 replacing the twin 48” drains and has been completed. Work is ongoing on the field restoration.

This project was declared substantially complete on October 11, 2019.

Contract 304.67C – Improvements to Interceptors FY 2019

All lining has been completed except for one stretch near Amtrak property. We are waiting for Amtrak permission. Rehabilitation of manholes is also complete.

As of August 31, 2020, this project is 85% complete and on schedule.

Contract 308.08C – Phase III CSO Program GSI Demonstration Project

Grass sod installation began on August 26, 2020

As of August 31, 2020, this project is 77% complete and on schedule.

Contract 308.09C – GSI – Macomber Stadium

Turf installation was completed in June of 2020. Work on the drainage structures in High Street is complete. Finish work is ongoing in arears around the turf field, loam and seed, plantings, etc.

As of August 31, 2020, this project is 90% complete and on schedule.

Contract 308.13C – Building Demolition and Site Preparation – 250 Front Street and Nassau Street

Three of the houses on Nassau Street and 250 Front Street have been demolished. Asbestos abatement was ongoing during August of 2020 at the Masonic Temple. Asbestos was also abated at 672 Roosevelt Street.

As of August 31, 2020, this project is 46% complete and on schedule.

Contract 810 – Bucklin Point WWTF Standby Power Reliability Improvements

The Board approved the award of this contract to Biszko Building Systems (Biszko) at the June 23, 2020 meeting. The Notice to Proceed was issued on August 31, 2020 setting the Substantial Completion Date at October 3, 2021. The preconstruction meeting was held on August 6, 2020.

Contract 909.00C – Office Renovations

COB –Mill City has completed renovation of the second floor. Window replacement is 95% complete. Work is ongoing on the third floor. Demolition is almost complete, and drywall has been installed for the new office and conference room in the Legal section. Ceiling tile has been installed.

As of August 31, 2020, this project is 52% complete and on schedule.

Contract 909.00R – COB Roof/Building Leak Repair

The Board approved the award of this contract to The RD Preservation Co. (RDP). The Notice to Proceed will be issued on September 3, 2020 setting the Substantial Completion Date at February 28, 2021. The preconstruction meeting was held on July 30, 2020.



Attachments: Schedules: 120.00C, 202.00C, 304.44C, 304.67C, 308.08C, 308.09C, 308.13C, 810.00C, 909.00C and 909.00R
COR logs: 120.00C, 304.44C, 304.67C, 308.08C, 308.09C, 308.13C and 909.00C
Construction Budgets

cc: M. Goulet; T. Uva; K. Giebink; J. McCaughey

**CONTRACT 120.00C
BIOGAS COGENERATION SYSTEM BPWWTF
PROJECT SCHEDULE**

YEAR	2015						2017	
MONTH	JAN	FEB	MARCH	APRIL	MAY	JUNE	MARCH	MAY
Advertise for Bids	14							
Pre-bid Conference	27	29						
Open Bids		10	24					
Issue Notice to Proceed					15	18		
Initiate Construction						30		
Substantial Completion								14



Staff Contact -- Richard Bernier or Greg Waugh
 Engineer -- Brown and Caldwell
 Contractor-- Daniel O'Connell's Sons
 Construction Cost -- \$7,021,937
 Amount Paid to Date -- \$6,570,349



SCHEDULED 
 ACTUAL 



**CONTRACT 202.00C
FY 2019 WWTF IMPROVEMENTS
PROJECT SCHEDULE**

YEAR	2020						2021		
MONTH	MAY	JUN	JUL	AUG	SEPT	OCT	JAN	FEB	MARCH
Advertise for Bids	5								
Pre-bid Conference	13								
Open Bids		4							
Issue Notice to Proceed				1	8				
Initiate Construction					1				
Substantial Completion									5

Staff Contact -- Rich Bernier
 Engineer -- Wright Pierce
 Contractor--Daniel O'Connell's Sons
 Construction Cost -- \$1,553,000
 Amount Paid to Date -- \$0

SCHEDULED 
 ACTUAL 

<p style="text-align: center;">CONTRACT 304.44C MVI CENTRAL FALLS BRANCH REPACEMENT PROJECT SCHEDULE</p>								
YEAR	2018						2019	
MONTH	MAY	JUNE	JULY	AUG	SEPT	OCT	SEPT	OCT
Advertise for Bids	7							
Pre-bid Conference	21							
Open Bids		11	14					
Issue Notice to Proceed				1	20			
Initiate Construction					15	1		
Substantial Completion							19	11
<p>Staff Contact -- Rich Bernier Engineer -- Louis Berger Group Contractor-- John Rocchio Corp. Construction Cost -- \$11,760,239.28 Amount Paid to Date -- \$11,494,003</p>								
							SCHEDULED	
							ACTUAL	

<p align="center">CONTRACT 304.57C 78" INTERCEPTOR REPLACEMENT PROJECT SCHEDULE</p>									
YEAR	2018						2019		
MONTH	APRIL	MAY	JUNE	JULY	AUG	OCT	AUG	OCT	
Advertise for Bids	16								
Pre-bid Conference		3							
Open Bids			12	15					
Issue Notice to Proceed					1	10			
Initiate Construction					15	9			
Substantial Completion							9	11	
<p>Staff Contact -- Rich Bernier Engineer -- Stantec Contractor-- Cardi Corp. Construction Cost -- \$7,152,353 Amount Paid to Date -- \$7,056,091</p>									
							SCHEDULED 		
							ACTUAL 		

**CONTRACT 304.67C
IMPROVEMENTS TO INTERCEPTORS FY 2019
PROJECT SCHEDULE**

YEAR	2019							2020
MONTH	MARCH	APRIL	MAY	JUNE	JULY	OCT	NOV	APRIL
Advertise for Bids	5							
Pre-bid Conference	12							
Open Bids	26							
Issue Notice to Proceed			20			9		
Initiate Construction				17		28		
Substantial Completion								6

Staff Contact -- Rich Bernier
 Engineer -- None
 Contractor-- Insituform
 Construction Cost -- \$2,980,712.55
 Amount Paid to Date -- \$2,395,921.28

SCHEDULED 

ACTUAL 

**CONTRACT 308.08C
CSO PHASE III - 1304 HIGH STREET DEMONSTRATION
PROJECT SCHEDULE**

YEAR	2019					2020		
MONTH	MAY	JUNE	JULY	AUG	SEPT	JAN	FEB	MARCH
Advertise for Bids	1							
Pre-bid Conference	16							
Open Bids	30							
Issue Notice to Proceed			1	12				
Initiate Construction				1	9			
Substantial Completion							28	

Staff Contact -- Rich Bernier

Engineer -- Stantec

Contractor-- Cardi Corp.

Construction Cost -- \$1,729,305

Amount Paid to Date -- \$1,269,806.71

SCHEDULED 

ACTUAL 

**CONTRACT 308.09C
CSO PHASE III GSI PROJECT - MACOMBER STADIUM
PROJECT SCHEDULE**

YEAR	2019					2020		
MONTH	AUG	SEPT	OCT	NOV	DEC	JUN	JULY	AUG
Advertise for Bids	14							
Pre-bid Conference	27							
Open Bids		10						
Issue Notice to Proceed			15	6				
Initiate Construction			28	1				
Substantial Completion								2

Staff Contact -- Rich Bernier

Engineer -- Stantec

Contractor-- J. H. Lynch & Sons

Construction Cost -- \$5,572,237.80

Amount Paid to Date -- \$4,769,383.58

SCHEDULED 

ACTUAL 

CONTRACT 308.13C
CSO PHASE III - BUILDING DEMOLITION AND SITE PREPARATION - 250 FRONT STREET AND NASSAU STREET
PROJECT SCHEDULE

YEAR	2020							
MONTH	JAN	FEB	MRCH	APL	SEPT	OCT	NOV	DEC
Advertise for Bids	13							
Pre-bid Conference	28							
Open Bids		11						
Issue Notice to Proceed			24					
Initiate Construction			26					
Substantial Completion						6		

Staff Contact -- Greg Waugh
 Engineer -- None
 Contractor-- J. R. Vinagro Corp
 Construction Cost -- \$1,022,065
 Amount Paid to Date -- \$433,438.45

SCHEDULED
 ACTUAL

CONTRACT 810.00C
BPWWTF STANDBY POWER RELIABILITY IMPROVEMENTS
PROJECT SCHEDULE

YEAR	2020					2021		
MONTH	MAY	JUN	JUL	AUG	SEP	SEP	OCT	DEC
Advertise for Bids	5							
Pre-bid Conference	12							
Open Bids		2						
Issuance Notice to Proceed				1	13			
Initiate Construction					1			
Substantial Completion							3	

Staff Contact -- Richard Bernier

Engineer -- CDM Smith

Contractor-- Biszko Building Systems

Construction Cost -- \$4,725,000



Amount Paid to Date -- \$0

SCHEDULED



ACTUAL



CONTRACT 909C COB RENOVATIONS PROJECT SCHEDULE								
YEAR	2019							2020
MONTH	MAY	JUNE	JULY	AUG	SEPT	OCT	DEC	AUG
Advertise for Bids	14							
Pre-bid Conference	20							
Open Bids		4 11						
Issue Notice to Proceed				1	2			
Initiate Construction						15	9	
Substantial Completion								10
Staff Contact -- Rich Bernier Engineer -- RGB Contractor-- Mill City Corp Construction Cost -- \$3,901,835 Amount Paid to Date -- \$1,945,948.93								
							SCHEDULED	
							ACTUAL	

**CONTRACT 909R
COB EXTERIOR ENVELOPE LEAK REPAIRS
PROJECT SCHEDULE**

YEAR	2020						2021	
MONTH	MAY	JUNE	JULY	AUG	SEPT	OCT	JAN	FEB
Advertise for Bids	8							
Pre-bid Conference	19							
Open Bids		9						
Issue Notice to Proceed				1	3			
Initiate Construction					1			
Substantial Completion								28


Staff Contact -- Rich Bernier


Engineer -- RGB

Contractor-- R. D. Preservation Company, Inc.

Construction Cost -- \$1,348,309

Amount Paid to Date -- \$0

SCHEDULED 

ACTUAL 

COR LOG
 BIOGAS COGENERATION SYSTEM BUCKLIN POINT
 CONTRACT 120.00C

COR	DESCRIPTION	Date	Reason	Status (Awaiting)	Last Action		Original Estimate	Negotiated Cost	Denied/ Withdrawn	Appvd	CO
					Date	Action					
01	Change Generator Model	08/05/15	CR	XX	XX	XX	XX	XX	02/17/17	XX	XX
02	Upgrade Power Transformers to Meet DOE 2016 Efficiency Standards	09/03/15	Code/Reg	XX	XX	XX	\$ 19,430.00	\$ 19,352.00	XX	10/08/15	1-1
03	ESS Additional Costs	10/01/15	Code/Reg	XX	XX	XX	\$ 15,505.00	\$ 15,323.00	XX	01/12/17	1-2
04	Reduced Cost for Application Generator Fees	10/01/15	CR	XX	XX	XX	XX	XX	12/27/16	XX	XX
05	Deletion of Spaces in MCC 2 (Combined with COR 06)	10/15/15	CR	XX	XX	XX	XX	XX	01/24/15	XX	XX
06	Change Switchgear From Arc Resistant, Remove Starter for EF-1, Remove PM-850 in Mcc-2	10/15/15	CR	XX	XX	XX	\$ (28,332.00)	\$ (28,332.00)	XX	03/31/16	1-3
07	Revised Conduit / Wire / Control to 3 Way Control Valve	11/03/15	C	XX	XX	XX	XX	XX	09/26/17	XX	XX
08	Changes to Methane Gas Piping	12/28/15	EE	XX	XX	XX	\$ 36,953.00	\$ 39,964.00	XX	02/22/17	1-4
09	Eliminate Canopy	01/07/16	CR	XX	XX	XX	\$ (78,541.00)	\$ (78,541.00)	XX	03/31/16	1-5
10	Add Two VFDs to Gas Blowers	01/12/16	EW	XX	XX	XX	XX	XX	02/02/16	XX	XX
11	BioSpark Provide Blower Control System	01/12/16	EW	XX	XX	XX	XX	XX	11/01/17	XX	XX
12	Modeling Associated Costs	02/02/16	CODE/REG	XX	XX	XX	XX	XX	12/27/16	XX	XX
13	Catalytic Reduction System	02/29/16	EW	XX	XX	XX	\$ 59,642.00	\$ 59,642.00	XX	05/18/16	1-6
14	Miscellaneous Concrete Repairs	04/01/16	EW-OPS	XX	XX	XX	XX	XX	08/03/16	XX	XX
15	Changes in Protective Relaying RFI 14	05/03/16	CR	XX	XX	XX	XX	XX	10/26/17	XX	XX
16	Construct Golf Cart Storage Area	05/24/16	EW-OPS	XX	XX	XX	\$ 14,934.00	\$ 16,126.00	XX	03/20/17	1-7
17	Provide Gas Supply Pipe and Meter to New Facility	08/17/16	EW	XX	XX	XX	XX	XX	10/10/17	XX	XX
18	PLC Upgrades	04/04/17	EW-OPS	XX	XX	XX	\$ 66,437.00	XX	07/24/17	XX	XX
19	Costs Increases Related to Time Delay	02/15/17	C	XX	XX	XX	\$ 24,199.14	XX	05/16/18	XX	XX
20	Costs and Savings for Changes to Containment and Retaining Wall	04/14/17	CR	XX	XX	XX	XX	XX	05/16/18	XX	XX
21	Reimburse Travel Expenses to Spain for FAT	05/08/17	CR	XX	XX	XX	\$ (2,024.00)	XX	07/11/17	XX	XX
22	Generator Grounding Issue	05/23/17	C	XX	XX	XX	\$ 19,802.00	\$ 21,016.00	XX	09/26/17	2-1
23	Insulation on H2S Tanks	05/25/17	EW	XX	XX	XX	\$ 19,379.00	\$ 19,379.00	XX	07/11/18	3-1
24	Gravel for Backfilling	06/09/17	C	XX	XX	XX	\$ 22,292.00	\$ 11,123.00	XX	06/27/18	3-2
25	Fiber in Lieu of Copper	06/13/17	EW-OPS	XX	XX	XX	\$ 23,005.00	\$ 23,005.00	XX	09/26/17	2-2
26	Additional Elect Duct Reinforcing Bars	06/13/17	EW	XX	XX	XX	XX	XX	05/16/18	XX	XX
27	Costs Related to UL Listing	07/25/17	C	XX	XX	XX	XX	XX	08/30/17	XX	XX
28	Glycol Feeds	08/23/17	EW-OPS	XX	XX	XX	XX	XX	11/01/17	XX	XX
29	Reduce Generator Output	09/06/17	EW	XX	XX	XX	XX	XX	10/10/17	XX	XX
30	Add BTU Meter and Associated Flow Meter	09/20/17	EW	XX	XX	XX	\$ 26,607.00	\$ 26,301.00	XX	11/21/17	2-3
31	Power Meter	10/10/17	EW/CR	XX	XX	XX	\$ 10,907.00	\$ 10,662.00	XX	11/21/17	2-4
32	Additional Paving	10/11/17	EW	XX	XX	XX	\$ 10,521.45	\$ 10,961.00	XX	12/07/17	2-5
33	Add PRV in Heat Exchanger Building	10/16/17	C	XX	XX	XX	\$ 1,374.00	\$ 1,385.00	XX	11/07/17	2-6
34	Addition of Six Butterfly Valves	10/11/17	EW	XX	XX	XX	\$ 3,568.00	\$ 3,547.00	XX	11/21/17	2-7
35	Reduced Grounding Costs	10/16/17	CR	XX	XX	XX	XX	XX	09/18/18	XX	XX
36	Balancing COR for Bid Items 4 - 10	10/18/17	CR	XX	XX	XX	\$ (285,893.00)	\$ (285,893.00)	XX	11/21/17	2-8
37	Provide Stone/Riprap Slope	11/05/17	EW	XX	XX	XX	\$ 26,010.91	\$ 17,500.00	XX	12/07/17	2-9

Construction Budgets as of August 2020

Ongoing Projects

CONTRACT NO.	DESCRIPTION	CONTRACTOR	PERCENT COMPLETE	LOW BID	CONTRACT AMOUNT TO DATE	CONTRACT AMOUNT INCREASE	PERCENT INCREASE	APPROVED CHANGES NOT IN CONTRACT
CSO Phase III								
308.08C	GSI Demonstration - 1304 High Street	Cardi Corp.	77%	\$1,714,250	\$1,729,305	\$15,055	0.88%	\$0
308.09C	GSI - Macomber Stadium	J. H. Lynch & Sons	90%	\$4,995,400	\$5,572,238	\$576,838	11.55%	\$115,907
308.11C	1304 High Street Demolition	J. R. Vinagro Corp	100%	\$222,185	\$154,067	(\$68,118)	-30.66%	\$0
308.13C	250 Central Ave and Nassau St. Demolition	J. R. Vinagro Corp	46%	\$730,167	\$1,022,065	\$291,898	39.98%	\$0
			<i>SUBTOTAL</i>	\$7,662,002	\$8,477,675	\$523,775	10.65%	\$115,907
Other Capital Projects								
109.08C	FPWWTF Blower Improvements Phase II	Hart Engineering Corp.	97%	\$7,828,500	\$7,576,567	(\$251,933)	-3.22%	\$0
120.00C	Biogas Cogeneration System Bucklin Point	Daniel O'Connel's Sons	97%	\$6,970,000	\$7,021,937	\$51,937	0.75%	\$28,920
304.44C	MVI Central Falls Branch Replacement	John Rocchio Corp.	96%	\$8,931,799	\$11,760,239	\$2,828,440	31.67%	\$0
304.57C	78" Interceptor Replacement	Cardi Corp.	97%	\$6,869,300	\$7,152,353	\$283,053	4.12%	\$0
304.66C	Improvements to Interceptors FY 18	Insituform	95%	\$1,455,194	\$1,455,194	\$0	0.00%	\$30,278
304.67C	Improvements to Interceptors FY 19	Insituform	85%	\$2,949,673	\$2,980,713	\$31,040	1.05%	\$37,047
305.03C	BVI Easement Restoration - Wetlands	Cardi Corp	99%	\$539,500	\$485,393	(\$54,107)	-10.03%	\$0
909.00C	Corporate Office Building Renovation	Mill City Corp	52%	\$2,999,760	\$3,945,343	\$945,583	31.52%	\$0
			<i>SUBTOTAL</i>	\$38,543,726	\$42,377,739	\$3,834,013	9.95%	\$96,245
			TOTAL ONGOING PROJECTS	\$46,205,728	\$50,855,414	\$4,357,788	10.06%	\$212,152
			TOTAL COMPLETED PROJECTS	\$620,359,538	\$659,906,368	\$39,289,449	6.33%	\$0
			GRAND TOTAL	\$666,565,266	\$710,761,782	\$43,647,237	6.63%	\$212,152

Construction Budgets as of August 2020

Completed Projects

CONTRACT NO.	DESCRIPTION	CONTRACTOR	PERCENT COMPLETE	LOW BID	FINAL AMOUNT	CONTRACT AMOUNT INCREASE	PERCENT INCREASE	APPROVED CHANGES NOT IN CONTRACT
CSO Phase I								
01:302.04	MRI	John Rocchio Corp.	100%	\$4,536,201	\$5,071,428	\$535,227	11.80%	\$0
01:302.05	Floatables Demonstration Facility	PCM	100%	\$746,414	\$724,480	-\$21,934	-2.94%	\$0
01:302.06	Main Spine Tunnel	Shank/Balfour Beatty	100%	\$163,527,245	\$173,423,650	\$9,896,405	6.05%	\$0
01:302.07	Foundry shaft Site Demo	Fleet Environmental	100%	\$438,600	\$409,994	(\$28,606)	-6.52%	\$0
01:302.08	OF 004 & 061	R. P. Iannuccillo & Sons	100%	\$7,396,000	\$8,324,692	\$928,692	12.56%	\$0
01:302.09	OF 009 & 010 Emergency Overflow	Barletta Heavy Div.	100%	\$4,544,000	\$4,430,585	(\$113,415)	-2.50%	\$0
01:302.10	OF 032 - Charles Street	Modern Continental	100%	\$8,977,000	\$10,356,289	\$1,379,289	15.36%	\$0
01:302.11	Woon. River Int.	Waish Const. Of Illinois	100%	\$4,868,377	\$6,927,107	\$2,058,730	42.29%	\$0
01:302.13	Regulators	Rosciti Construction	100%	\$2,016,766	\$1,923,481	(\$93,285)	-4.63%	\$0
01:302.14	Tunnel Pump Station & OF 067	Hart Engineering Corp.	100%	\$54,185,000	\$56,368,437	\$2,183,437	4.03%	\$0
302.14 OC	Tunnel Odor Control	Hart Engineering Corp.	100%	\$1,389,795	\$1,376,007	(\$13,788)	-0.99%	\$0
01:302.15	OF 006 & 007	Barletta Heavy Div.	100%	\$8,894,444	\$8,880,913	(\$13,531)	-0.15%	\$0
01:302.20	CSO Land Acquisition	E. W. Burman	100%	\$6,698,916	\$6,687,451	(\$11,465)	-0.17%	\$0
			SUBTOTAL	\$268,218,758	\$284,904,513	\$16,685,755	6.22%	\$0
CSO Phase II								
303.02C	OF 106 Facilities	J. H. Lynch & Sons	100%	\$3,688,936	\$5,270,108	\$1,581,172	42.86%	\$0
303.03C	WCSOI - Main	Barletta Heavy/Shank/Balfour	100%	\$59,995,000	\$72,401,395	\$12,406,395	20.68%	\$0
303.04C	SCSOI - Main	Northeast Remsco Constr	100%	\$18,657,000	\$19,584,445	\$927,445	4.97%	\$0
303.05C	OF 027	John Rocchio Corp	100%	\$6,580,587	\$9,333,759	\$2,753,172	41.84%	\$0
303.06C	OF 037 - West	C. B. Utility	100%	\$7,429,700	\$8,366,925	\$937,225	12.61%	\$0
303.07C	OF 037 - South	John Rocchio Corp	100%	\$7,766,822	\$6,946,363	(\$820,459)	-10.56%	\$0
303.08C	OF 037 - North	DiGregorio Inc.	100%	\$7,367,301	\$6,333,048	(\$1,034,253)	-14.04%	\$0
303.09C	WCSOI- Regulator	Grove Construction	100%	\$894,000	\$853,678	(\$40,322)	-4.51%	\$0
303.10C	WCSOI - North	Cardi Corp	100%	\$5,368,000	\$5,487,194	\$119,194	0.00%	\$0
303.11C	WCSOI - West	DiGregorio Inc.	100%	\$6,848,518	\$10,151,689	\$3,303,171	48.23%	\$0
303.12C	SCSOI - Regulator	R. P. Iannuccillo & Sons	100%	\$598,000	\$621,253	\$23,253	3.89%	\$0
303.13C	WCSOI - Demolition	A. A. Asbestos Abatement	100%	\$194,850	\$108,112	(\$86,738)	-44.52%	\$0
303.14C	WCSOI - OF 054	DiGregorio Inc.	100%	\$2,368,683	\$2,404,870	\$36,187	1.53%	\$0
306.00C	Floatables Control Facility OF 205, 219 & 220	John Rocchio Corp	100%	\$4,202,036	\$4,420,068	\$218,032	5.19%	\$0
			SUBTOTAL	\$128,270,497	\$147,012,799	\$18,742,302	14.61%	\$0

EXHIBIT L

FORM OF PUBLIC BENEFITS REPORT

Pursuant to Section 11(a)(xiv) of the WIFIA Loan Agreement (as defined below), Narragansett Bay Commission (the “**Borrower**”) is providing this Public Benefits Report in connection with the Field’s Point Resiliency Improvements Project (WIFIA ID – N21141RI). Capitalized terms used in this certificate and not defined shall have the respective meanings ascribed to such terms in the WIFIA Loan Agreement dated [on or about the date hereof][] (the “**WIFIA Loan Agreement**”), between the Borrower and the United States Environmental Protection Agency, acting by and through the Administrator.

Reporting Period: [Prior to the Effective Date][within ninety (90) days following the Substantial Completion Date][within ninety (90) days following the fifth (5th) anniversary of the Substantial Completion Date]

- (i) **The number of total jobs and direct jobs projected to be created by the Project during the period between the Effective Date and the Substantial Completion Date:**

WIFIA projects that the Project will create [] total jobs, of which the Borrower projects [] will be direct jobs.

- (ii) **Indicate (yes or no) whether the Project will assist the Borrower in complying with applicable regulatory requirements, and if yes, describe how the project assists with regulatory compliance:**

Yes

If yes, additional description: []

No

- (iii) **The Project will assist the Borrower with the following environmental measure:**

Amount by which the project will provide new, expanded, improved, more reliable, more resilient, or more efficient treatment capacity for wastewater treatment (measured in MGD capacity at Substantial Completion):

The FPWWTP improvements will provide 77 MGD of expanded, improved, more reliable or more resilient, or more efficient treatment capacity for wastewater treatment at Substantial Completion.

NARRAGANSETT BAY COMMISSION⁸

By: _____
Name:
Title:

⁸ To be executed by Borrower's Authorized Representative.

EXHIBIT M

FORM OF NON-LOBBYING CERTIFICATE

The undersigned, on behalf of Narragansett Bay Commission, hereby certifies, to the best of his or her knowledge and belief, that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Borrower, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of the WIFIA Loan.

(b) If any funds other than proceeds of the WIFIA Loan have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the WIFIA Loan, the Borrower shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

(c) The Borrower shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

Capitalized terms used in the certificate and not defined shall have the respective meanings ascribed to such terms in the WIFIA Loan Agreement, dated as of July 25, 2022 (the "**WIFIA Loan Agreement**"), by and between the United States Environmental Protection Agency, acting by and through the Administrator (the "**WIFIA Lender**"), and the Borrower, as the same may be amended from time to time.

This certification is a material representation of fact upon which reliance was placed when the WIFIA Lender entered into the WIFIA Loan Agreement. Submission of this certification is a prerequisite to the effectiveness of the WIFIA Loan Agreement imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

This certificate may be delivered by the delivery of signed signature pages by electronic means, facsimile transmission, or by e-mail with a PDF copy attached, and any printed or copied versions of any signature page so delivered shall have the same force and effect as an originally signed version of such signature page. Signatures of this certificate made by electronic means shall be accompanied by an email, contemporaneous or otherwise, confirming the use of such means.

Dated: July 25, 2022

NARRAGANSETT BAY COMMISSION,
by its authorized representative

By: _____
Name: _____
Title: _____

APPENDIX: WIFIA SPECIFICATION PACKAGE AND BID CONTRACT LANGUAGE

Last Updated: November 2022

This is a reference document that provides all necessary contract language for WIFIA funded projects. Please note that some of the contract language in this package is required and must be included verbatim and some is suggested. For *Suggested Contract 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.

ECONOMIC AND MISCELLANEOUS AUTHORITIES

DEBARMENT AND SUSPENSION AND PROHIBITIONS RELATING TO VIOLATIONS OF CWA AND CAA WITH RESPECT TO FEDERAL CONTRACTS, GRANTS, OR LOANS

Suggested Contract Language:

Debarment and Suspension. 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 (per Executive Order 12549, 51 FR 6370, February 21, 1986) or who is prohibited under Section 306 of the Clean Air Act or Section 508 of the Clean Water Act 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

Suggested Contract Language:

Federal Lobbying Restrictions (31 U.S.C 1352). 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, AND EQUAL EMPLOYMENT OPPORTUNITY AUTHORITIES

AGE DISCRIMINATION ACT, SECTION 504 OF THE REHABILITATION ACT, TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, AND SECTION 13 OF THE CLEAN WATER ACT

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). (42 U.S.C 2000D, *et. seq*)
- b. Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities. (29 U.S.C. 794, supplemented by EO 11914, 41 FR 17871, April 29, 1976 and EO 11250, 30 FR 13003, October 13, 1965)
- c. The Age Discrimination Act of 1975, which prohibits age discrimination. (42 U.S.C 6101 *et. seq*)
- 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.

EQUAL EMPLOYMENT OPPORTUNITY

Required Contract Language. *Note the requirements include three separate sections to include in contracts: EEO, Standard Federal Equal Employment Opportunity Construction Contract Specifications, and Segregated Facilities. This language must be included verbatim:*

Equal Employment Opportunity (EEO). 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). (EO 11246, 30 FR 12319, September 28, 1965)

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. (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.

Required EEO language in bid solicitations only (or equivalent). Goals for minority participation must be filled in for the locality of work.

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:

Timetables	Goals for minority participation for each trade	Goals for female participation in each trade
	Insert goals for each year ²	6.9% ³

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.

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 (insert description of the geographical areas where the contract is to be performed giving the state, county and city, if any).

² Goals can be found at: <https://www.dol.gov/agencies/ofccp/construction>

³ Nationwide goal for all covered areas

PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN PROCUREMENT UNDER EPA FINANCIAL ASSISTANCE AGREEMENTS

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 the [Project]. The six good faith efforts are found at: <https://www.epa.gov/grants/disadvantaged-business-enterprise-program-requirements#sixgoodfaithefforts>.

AMERICAN IRON AND STEEL (AIS) REQUIREMENT

Suggested Contract Language:

The Contractor acknowledges to and for the benefit of **[Insert WIFIA Borrower Name]** (“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.

LABOR LAWS AND STANDARDS

Note that the language below addresses Davis Bacon and Related Acts and incorporates the WIFIA borrower as an authorized representative, in accordance with the WIFIA loan agreement, to ensure compliance with this federal requirement.

Required Contract Language.

Compliance with Davis-Bacon and Related Acts.

(a) 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 acts listed in 29 C.F.R. § 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) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its

subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)

(A) The WIFIA assistance recipient, [name of WIFIA borrower], on behalf of the U.S. Environmental Protection Agency (EPA), shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The WIFIA assistance recipient shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

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

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

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

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the WIFIA assistance recipient agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent to the Administrator of the Wage and Hour Division (WHD Administrator), U.S. Department of Labor, Washington, DC 20210. The WHD Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the WIFIA assistance recipient or will notify the WIFIA assistance recipient within the 30-day period that additional time is necessary.

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

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

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

(iv) If the contractor does not make payments to a trustee or other third person, the contractor

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

(2) Withholding. [name of WIFIA borrower], shall upon written request of the WIFIA Director or an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the WIFIA Director may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii) {no text here}

- (A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to [name of WIFIA borrower] . The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <https://www.dol.gov/agencies/whd/forms/wh347> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to [name of WIFIA borrower], for transmission to the EPA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to [name of WIFIA borrower]).
- (B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
- (1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
 - (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
 - (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.
- (D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
- (iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of [name of the borrower, EPA, or the Department of Labor, and shall permit such

representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the EPA may, after written notice to the [name of WIFIA borrower], take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees –

- (i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the WHD Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to

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

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

- (5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.
- (6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
- (7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
- (8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
- (9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and [name of WIFIA borrower], EPA, the U.S.

Department of Labor, or the employees or their representatives. (10) Certification of eligibility.

- (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) Contract Work Hours and Safety Standards Act. The following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section shall be inserted in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by § 5.5(a) or § 4.6 of part 4 of this title. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$25 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. The [name of WIFIA borrower] shall upon its own action or upon written request of an authorized representative of the Department of Labor, or the EPA, withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
- (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors

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

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

LATEST UPDATES ON FEDERAL REQUIREMENTS

BUILD AMERICA, BUY AMERICA ACT

Other language may be included on contracts for clarity on this federal requirement if an applicable waiver applies. For example, if the WIFIA program has determined program waiver coverage, indicate in contract documents, “This Project is covered under the WIFIA Program Waiver (June 22, 2022), which waives BABA requirements.”

Suggested Contract Language:

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

The Contractor acknowledges to and for the benefit of (“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 Funding Authority, as a lender or awardee to the Purchaser for the funding of its project, 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

Suggested Contract Language:

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

SAMPLE
SECTION 01300

SUBMITTALS

PART 1 GENERAL

1.01 DESCRIPTION OF REQUIREMENTS

- A. This Section specifies the general methods and requirements of submissions applicable to the following work-related submittals: Shop Drawings, Product Data, and other information as specified herein. Detailed submittal requirements will be specified in the technical specification sections.
- B. All submittals shall be clearly identified by reference to Specification Section, Paragraph, Drawing No. or Detail as applicable. Submittals shall be clear and legible and of sufficient size for sufficient presentation of data.

1.02 SCOPE OF WORK

- A. The Contractor shall submit shop drawings on all equipment and materials, structural details, piping layouts and all miscellaneous items to be incorporated into the Work. All shop drawings shall be submitted using the transmittal form furnished by the Program Manager.
- B. Such drawings shall be project-specific and shall show the principal dimensions, weight, structural and operating features, space required, clearances, type and/or brand of finish or shop coat, etc., depending on the subject of the drawing. When it is customary to do so, when the dimensions are of particular importance, or when so specified, the drawings shall be certified by the manufacturer or fabricator as correct for the Contract.
- C. When so specified or if considered, in advance, by the Program Manager to be acceptable, manufacturer's specifications, catalog data, descriptive matter, illustrations, etc., may be submitted in place of shop and working drawings.
- D. The Contractor shall be responsible for the prompt and timely submittal of all shop and working drawings so that there shall be no delay to the Work due to the absence of such drawings. Prior to the submittal of any shop drawings, the Contractor shall submit a schedule of proposed shop drawing transmittals. The schedule shall identify the subject matter of each transmittal, the corresponding specification section number and the proposed date of submission. During the progress of the Work the schedule shall be revised and resubmitted as necessary.
- E. The Contractor shall review shop drawings and product data, including those by subcontractors, prior to submission to determine and verify the following:
 - 1. Field measurements
 - 2. Field construction criteria
 - 3. Catalog numbers and similar data
 - 4. Conformance with the Specifications

- F. No material or equipment shall be purchased or fabricated especially for the Contract until the required shop and working drawings have been submitted as hereinabove provided and approved for conformance to the Contract requirements. All such materials and equipment and the work involved in their installation or incorporation into the Work shall then be as shown in and represented by said drawings.
- G. Until the necessary approvals have been made, the Contractor shall not proceed with any portion of the Work (such as the construction of foundations), the design or details of which are dependent upon the design or details of work, materials, equipment or other features for which review is required.
- H. All shop and working drawings shall be submitted to the Program Manager by and/or through the Contractor, who shall be responsible for obtaining shop and working drawings from his subcontractors and returning reviewed drawings to them.
- I. If a shop drawing shows any deviation from the Contract requirements, the Contractor shall make specific mention of the deviations in the Transmittal Form furnished by the Program Manager and provide a description of the deviations in a letter attached to the submittal.
- J. The review of shop and working drawings hereunder will be general only, and shall not relieve, diminish or alter in any respect the responsibilities of the Contractor under the Contract Documents and in particular, the specific responsibility of the Contractor for details of design and dimensions necessary for proper fitting and construction of the work as required by the Contract and for achieving the result and performance specified thereunder.
- K. Should the Contractor submit equipment that requires modifications to the structures, piping, electrical conduit, wires and appurtenances, layout, etc., detailed on the Drawings, he shall also submit details of the proposed modifications. If such equipment and modifications are accepted, the Contractor, at no additional cost to the Owner, shall do all work necessary to make such modifications.

1.03 SHOP DRAWINGS AND PRODUCT DATA

- A. Shop drawings as specified in individual work Sections include, but are not necessarily limited to, custom-prepared data such as fabrication and erection/installation (working) drawings, scheduled information, setting diagrams, actual shopwork manufacturing instructions, custom templates, special wiring diagrams, coordination drawings, individual system or equipment inspection and test reports including performance curves and certifications, as applicable to the Work.
- B. Product data as specified in individual Sections, include, but are not necessarily limited to, standard prepared data for manufactured products (sometimes referred to as catalog data), such as the manufacturer's product specification and installation instructions, availability of colors and patterns (submitted as physical units or color chips, painted coupons, etc. – photocopies of colors shall not be accepted), manufacturer's printed statements of compliances and applicability, roughing-in diagrams and templates, catalog cuts, product photographs, production or quality control inspection and test reports and certifications, and mill reports as applicable to the Work.

1.04 SUBMITTAL PROCEDURES

- A. Contractor shall upload all submittals to the Procore project website. Submittals will be downloaded by Program Manager for review and uploaded back to the Procore project website once review is complete. Hardcopies or electronic submissions by means other than as noted herein (e.g., email, compact disc, USB drive) will not be accepted.
- B. Submittals of a physical nature, such as material samples, shall be delivered to Program Manager at their place of business or Contractor shall arrange for sample pickup by Program Manager at the project site. In these instances, Contractor shall upload transmittal cover page to the Procore project website for tracking purposes.
- C. Contractor shall retain one hardcopy of each approved submittal at the project site for reference during the work.
- D. Transmit all submittals with cover page provided by the Program Manager. Make submittals promptly in accordance with approved schedule, and in such sequence as to cause no delay in the Work or in the work of any other contractor.
- E. Sequentially number the transmittal cover page. Resubmittals shall have original number with an alphabetic suffix.
- F. Identify Contract, Contractor, Subcontractor and/or Supplier; pertinent drawing sheet and detail number(s), and specification section number, as appropriate. Clearly indicate model and options being proposed and strike out all non-relevant data. Identify the building, equipment or structure to which the drawing applies.
- G. All submittals must be cross-referenced to the section of the specifications to which they relate to.
- H. Only drawings that have been checked and corrected by the fabricator should be submitted to the Contractor by his subcontractors and vendors. Prior to submitting drawings to the Program Manager, the Contractor shall stamp and sign them certifying that review, verification of products required, field dimensions, adjacent construction work, and coordination of information, is in accordance with the requirements of the Work and Contract Documents.
- I. All technical submittals or calculations shall bear the stamp and signature of a Professional Engineer registered in the State of Rhode Island.
- J. Schedule submittals in accordance with the Progress Schedule. Coordinate submission of related items.
- K. Identify variations from Contract Documents and product which may be detrimental to successful performance of the completed Work.
- L. Revise and resubmit submittals within 14 days. Identify all changes made since previous submittal.
- M. All shop drawings submitted by subcontractors for approval shall be sent directly to the Contractor for checking. The Contractor shall be responsible for their submission at the proper time so as to prevent delays in delivery of materials.

- N. The Contractor shall check all subcontractor's shop drawings to verify measurements, size of members, materials, and details to satisfy himself that they conform to the intent of the Drawings and Specifications. Shop drawings found to be inaccurate or otherwise in error shall be returned to the subcontractors for correction before submission to the Program Manager for approval.
- O. All details on shop drawings submitted for approval shall show clearly the relation of the various parts to the main members and lines of the structure, and where correct fabrication of the work depends upon field measurements, such measurements shall be made and noted on the drawings before submitted for approval.
- P. Project work, materials, fabrication, and installation shall conform with approved shop drawings and product data.

1.05 SUBMITTALS REQUIRED

- A. Submit a list of Shop Drawings indicating specification section number, contents, proposed numbering system, and time schedule for preparation and submission for all Shop Drawings for the Contract. This list shall be provided within 30 days after the Notice to Proceed.
- B. Submittals shall include, where applicable,:
 - 1. The date of submission and the dates of any previous submissions.
 - 2. The Project title and number
 - 3. Contractor identification.
 - 4. The names of:
 - a. Contractor
 - b. Supplier
 - c. Manufacturer
 - 5. Identification of the product, with the specification section number, page and paragraph(s).
 - 6. Field dimensions, clearly identified as such.
 - 7. Relation to adjacent or critical features of the Work or materials.
 - 8. Applicable standards, such as ASTM or Federal Specification numbers.
 - 9. Identification of deviations from Contract Documents.
 - 10. Identification of revisions on resubmittals.
 - 11. A blank space suitably sized for the Contractor and the Program Manager stamps.

1.06 REVIEW OF SHOP DRAWINGS, PRODUCT DATA AND WORKING DRAWINGS

- A. The review of shop drawings and data will be for general conformance with the design concept and Contract Documents. They shall not be construed:
 - 1. as permitting any departure from the Contract requirements;
 - 2. as relieving the Contractor of responsibility for any errors, including details, dimensions, and materials;
 - 3. as approving departures from details furnished by the Program Manager, except as otherwise provided herein.
- B. The Contractor remains responsible for details and accuracy, for coordinating the work with all other associated work and trades, for selecting fabrication processes, for techniques of assembly, and for performing work in a safe manner.

- C. If the shop drawings or data as submitted describe variations and show a departure from the Contract requirements which the Program Manager finds to be in the interest of the Owner and to be so minor as not to involve a change in Contract Price or time for performance, the Program Manager may return the reviewed drawings without noting an exception.
- E. Submittals will be returned to the Contractor with a code indicating whether or not the submittal was approved and whether or not it has to be resubmitted.
- E. Resubmittals will be handled in the same manner as first submittals. On resubmittals, the Contractor shall direct the Program Manager's attention, by use of revision triangles or other clear, written notation, to revisions other than the corrections requested by the Program Manager on previous submissions. Such revisions shall be so noted on the letter of transmittal and on the resubmitted shop drawings. All such revisions which are not clearly identified shall be made at the risk of the Contractor. The Contractor shall make corrections as may be required by the Program Manager to all work done because of this type revision that is not in accordance with the Contract Documents.
- F. Partial submittals may not be reviewed. The Program Manager will be the only judge as to the completeness of a submittal. Submittals not complete will be returned to the Contractor and will be considered "Not Approved" until resubmitted. The Program Manager may at his option provide a list or mark the submittal directing the Contractor to the areas that are incomplete.
- G. Repetitive Review
 - 1. Shop drawings and other submittals will be reviewed no more than twice at the Owner's expense. All subsequent reviews will be performed at times convenient to the Program Manager and at the Contractor's expense, based on the Program Manager's then prevailing rates. The Contractor shall reimburse the Owner for all such fees invoiced to the Owner by the Program Manager. Submittals are required until approved.
 - 2. Any need for more than one resubmission, or any other delay in obtaining Program Manager's review of submittals, will not entitle Contractor to extension of the Contract Time.
- H. If the Contractor considers any correction indicated on the shop drawings to constitute a change to the Contract Documents, the Contractor shall give written notice thereof to the Program Manager at least seven working days prior to release for manufacture.
- I. When the shop drawings have been completed to the satisfaction of the Program Manager, the Contractor shall carry out the construction in accordance therewith and shall make no further changes therein except upon written instructions from the Program Manager.

1.07 DISTRIBUTION

- A. Distribute reproductions of approved shop drawings and copies of approved product data, where required, to the job site file.

1.08 GENERAL PROCEDURES FOR SUBMITTALS

- A. Coordination of Submittal Times: Prepare and transmit each submittal sufficiently in advance of performing the related work or other applicable activities, or within the time specified in the individual work sections of the Specifications, so that the installation will not be delayed by

processing times including disapproval and resubmittal (if required), coordination with other submittals, testing, purchasing, fabrication, delivery and similar sequenced activities. No extension of time will be authorized because of the Contractor's failure to transmit submittals sufficiently in advance of the Work.

1.09 PROFESSIONAL ENGINEER (P.E.) CERTIFICATION FORM

- A. If specifically required in other related Sections, submit a P.E. Certification for each item required, in the form attached to this Section, completely filled in and stamped.

PART 2 PRODUCTS (NOT USED)

PART 3 EXECUTION (NOT USED)

END OF SUBMITTALS

P.E. CERTIFICATION FORM

The undersigned hereby certifies that he/she is a professional engineer registered in the State of Rhode Island and that he/she has been employed by

_____ to design
(Name of Contractor)

(Insert P.E. Responsibilities)

in accordance with Section _____ for the

(Name of Project)

The undersigned further certifies that he/she has performed the design of the _____
_____, that said design is in conformance
(Name of Project)

with all applicable local, state and federal codes, rules, and regulations, and that his/her signature and P.E. stamp have been affixed to all calculations and drawings used in, and resulting from, the design.

The undersigned hereby agrees to make all original design drawings and calculations available to the

(Insert Name of Owner)

or Owner's representative within seven days following written request therefor by the Owner.

P.E. Name

Contractor's Name

Signature

Signature

Address

Title

P.E. License No.
Rhode Island stamp.

Address

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SAMPLE
SECTION 01600

MATERIAL AND EQUIPMENT

PART 1 GENERAL

1.01 DESCRIPTION

- A. Install equipment and materials as specified and as indicated in accordance with the requirements of the specification sections in Divisions 2 through 16, and in accordance with the general installation requirements specified herein.
- B. Provide transportation, handling, storage, and protection of all materials and equipment as specified herein.

PART 2 PRODUCTS

2.01 PRODUCTS

- A. Do not use materials and equipment removed from existing premises, except as specifically required by the Contract Documents.
- B. Where similar Products (such as grease fittings, flexible couplings, etc.) are used on different pieces of equipment or in different areas within the Work, standardize the Products by providing all Products from the same supplier.

2.02 GENERAL MATERIAL AND EQUIPMENT REQUIREMENTS

- A. These requirements shall constitute the acceptable minimum standards for the equipment specified herein. Should these requirements conflict with the Supplier's recommendations or the requirements in Divisions 2 through 16, or in any way be less stringent than Supplier's requirements or the requirements in Divisions 2 through 16, they shall be superseded by the more stringent of the Supplier's requirements or the requirements in Divisions 2 through 16.
- B. Bolts, Anchor Bolts and Nuts
 - 1. Furnish bolts, anchor bolts nuts, washers, plates and bolt sleeves. Anchor bolts shall have washers and hexagonal nuts.
 - 2. Provide stainless steel anchor bolts, nuts, washers, plates, and bolt sleeves unless otherwise indicated or specified.
 - 3. Furnish expansion bolts with malleable iron and lead composition elements.
 - 4. Unless otherwise specified, stud, tap, and machine bolts and nuts shall conform to the requirements of ASTM Standard Specification for Carbon Steel Externally and Internally Threaded Standard Fasteners, Designation A307-80. Use Hexagonal nuts of the same

quality of metal as the bolts. All threads shall be clean cut and shall conform to ANSI Standard B1.1-1974 for Unified Inch Screw Threads (UN and UNR Thread Form).

5. Bolts, anchor bolts, nuts, and washers specified to be galvanized shall be zinc coated, after being threaded, by the hot-dip process in conformity with the ASTM Standard Specifications for Zinc (Hot Galvanized) Coatings on Products Fabricated from Rolled, Pressed, and Forged Steel Shapes, Plates, Bars and Strip, Designation A123-78, or the ASTM Standard Specifications for Zinc Coating (Hot Dip) on Iron and Steel Hardware, Designation A153-80.
6. Bolts, anchor bolts, nuts, and washers specified to be stainless steel shall be certified SAE Type 316 stainless steel.

C. Grease Fittings

1. Provide extension fittings and tubing on all grease fittings that are installed so that equipment can be lubricated from the operating level without the use of ladders, staging, or shutting down the equipment. Tubing shall be of corrosion resistant materials compatible with the material to which it is attached.

D. Concrete Inserts

1. Use concrete inserts for hangers to completely support the maximum load that can be imposed by the hangers used in the inserts. Provide inserts for hangers of a type which will permit adjustment of the hangers both horizontally (in one plane), and vertically, and locking of the hanger head or nut. Galvanize all inserts by the hot-dip process in conformity with the ASTM Standard Specification for Zinc (Hot-Galvanized) Coatings on Products Fabricated from Rolled, Pressed, and Forged Steel Shape, Plates, Bars and Strip, Designation A123-78, or the ASTM Standard Specifications for Zinc Coating (Hot Dip) on Iron and Steel hardware, Designation A153-80.
2. Inserts cast in concrete shall be furnished by the Subcontractor for the trade whose work requires them and delivered to the Contractor for installation.

E. Sleeves

1. Unless otherwise indicated or specified, form openings for the passage of pipes, conduits, and circular ducts through floors and walls using sleeves of standard weight, galvanized-steel pipe conforming to ASTM A53. Provided sleeves shall be of ample diameter to pass the pipe and its insulation, if any, and to permit expansion. Provide sleeves that are flush at the walls and at the bottom of slabs. Sleeves must project one inch above the finished floor surface. Threaded nipples shall not be used as sleeves.
2. Sleeves in exterior walls below ground or in walls that have liquids on one or both sides shall have a 2-inch annular fin of 1/8 in. plate welded with a continuous weld completely around the sleeve at mid-length. Sleeves shall be hot-dipped galvanized after the fins are attached.
3. Sleeves cast in concrete shall be furnished by the Subcontractor for the trade whose work requires them and delivered to the Contractor for installation.

4. Sleeves in masonry walls shall be furnished by the Subcontractor for the trade whose work requires them and delivered to the Masonry subcontractor for installation.
5. Sleeves to be sealed with mechanical seals shall comply with the requirements of Section 01172.
6. Submit electronically plan drawing on sleeves.

F. Equipment Drive Guards

1. Provide all equipment driven by open shafts, belts, chains, or gears with all-metal guards enclosing the drive mechanism. Construct guards of galvanized sheet steel, galvanized woven wire, or expanded metal set in a frame of galvanized steel members. Secure guards in position by steel braces or straps which will permit easy removal for servicing the equipment. The guards shall conform to all safety codes and regulations.

G. Protection Against Electrolysis

1. Where dissimilar metals are used in conjunction with each other, provide insulation between adjoining surfaces to eliminate direct contact and any resultant electrolysis. Provide bituminous insulation, heavy bituminous coatings, nonmetallic separators or washers, impregnated felt, or similar arrangement.

H. Equipment Foundations

1. The Contractor shall furnish the necessary materials and construct suitable concrete foundations for all equipment installed by him, even though such foundations may not be indicated on the Drawings. The tops of foundations shall be at such elevations as will permit grouting as specified below.
2. All such equipment shall be installed by skilled mechanics and in accordance with the instructions of the manufacturer.

PART 3 EXECUTION

3.01 TRANSPORTATION, DELIVERY AND HANDLING

- A. Transport and handle items in accordance with manufacturer's instructions.
- B. Schedule delivery to reduce long term on-site storage prior to installation and/or operation. Under no circumstances shall equipment be delivered to the site more than one month prior to installation without written authorization from the Engineer.
- C. Coordinate delivery with installation to ensure minimum holding time for items that are hazardous, flammable, easily damaged or sensitive to deterioration.
- D. Deliver products to the site in manufacturer's original sealed containers or other packing systems, complete with instructions for handling, storage, unpacking, protecting and installing.

- E. All items delivered to the site shall be unloaded and placed in a manner which will not hamper the Contractor's normal construction operation or those of subcontractors and other contractors and will not interfere with the flow of necessary traffic.
- F. Provide necessary equipment and personnel to unload all items delivered to the site.
- G. Promptly inspect shipment to assure that products comply with requirements, quantities are correct, and items are undamaged. Notify Engineer verbally, and in writing, of any problems.

3.02 STORAGE AND PROTECTION

- A. Store and protect products in accordance with the manufacturer's instructions, with seals and labels intact and legible.
- B. At least 30 days prior to storing equipment, submit to the Engineer for approval, a protective maintenance schedule, based on Supplier's instructions, detailing proposed procedures for each piece of equipment placed into storage. On equipment placed in storage, permanently attach equipment maintenance record card. The record card shall indicate the protective procedure to be taken, the date work is actually performed, and signature of the Contractor's technician actually performing the work. Equipment will not be approved for release from storage unless all record cards are signed and dated.
- C. Store loose granular materials on solid flat surfaces in a well-drained area. Prevent mixing with foreign matter.
- D. Cement and lime shall be stored under a roof and off the ground and shall be kept completely dry at all times. All structural, miscellaneous and reinforcing steel shall be stored off the ground or otherwise to prevent accumulations of dirt and grease, and in a position to prevent accumulations of standing water and to minimize rusting. Beams shall be stored with the webs vertical. Precast concrete shall be handled and stored in a manner to prevent accumulations of dirt, standing water, staining, chipping or cracking. Brick, block and similar masonry products shall be handled and stored in a manner to reduce breakage, cracking and spalling to a minimum.
- E. All mechanical and electrical equipment and instruments subject to corrosive damage by the atmosphere if stored outdoors (even though covered by canvas) shall be stored in a weathertight building to prevent injury. The building may be a temporary structure on the site or elsewhere, but it must be satisfactory to the Engineer. Building shall be provided with adequate ventilation to prevent condensation. Maintain temperature and humidity within range required by manufacturer.
 - 1. All equipment shall be stored fully lubricated with oil, grease and other lubricants unless otherwise instructed by the manufacturer.
 - 2. Moving parts shall be rotated a minimum of once weekly to insure proper lubrication and to avoid metal-to-metal "welding". Upon installation of the equipment, the Contractor shall start the equipment, at least half load, once weekly for an adequate period of time to ensure that the equipment does not deteriorate from lack of use.

3. Lubricants shall be changed upon completion of installation and as frequently as required thereafter during the period between installation and acceptance. New lubricants shall be put into the equipment at the time of acceptance.
- F. Prior to installation of the equipment, the Contractor shall have the manufacturer inspect the equipment and certify that its condition has not been detrimentally affected by the long storage period. Such certifications by the manufacturer shall be deemed to mean that the equipment is judged by the manufacturer to be in a condition equal to that of equipment that has been shipped, installed, tested and accepted in a minimum time period. As such, the manufacturer will guaranty the equipment equally in both instances. If such a certification is not given, the equipment shall be judged to be defective. It shall be removed and replaced at the Contractor's expense.
- G. All materials which, in the opinion of the Engineer, have become so damaged as to be unfit for the use intended or specified shall be promptly removed from the site of the work and the Contractor shall receive no compensation for the damaged material or its removal.
- H. Storage locations must be approved by the Engineer.

3.03 GENERAL MATERIAL AND EQUIPMENT INSTALLATION REQUIREMENTS

- A. These requirements shall constitute the acceptable minimum standards for installing the equipment specified herein. Should these requirements conflict with the Supplier's recommendations or in any way be less stringent than the Supplier's requirements, they shall be superseded by the Supplier's requirements.
- B. Bolts, Anchor Bolts, and Nuts
 1. Set anchor bolts and expansion bolts as indicated and as specified. If anchor bolts are set before the concrete has been placed, use templates. Where indicated, or specified, provide anchor bolts with square plates at least 4 in. by 4 in. by 3/8 in., or with square heads and washers set in the concrete forms with pipe sleeves, or both. If anchor or expansion bolts are set after the concrete has been placed, do all drilling and grouting or caulking without damaging the structure or finish by cracking, chipping, or spalling.
- C. Equipment Foundations and Grouting
 1. In setting pumps, motors, and other grouted equipment, make an allowance of at least one inch for grout under the equipment bases. Use steel shims to level and adjust the bases. Shims may be left embedded in the grout, in which case they shall be installed neatly and inconspicuous in the completed work. Use non-shrink grout.
 2. Mix and place grout in accordance with the recommendations of the Supplier and as specified. Place grout through the grout holes in the base, work outward and under the edges of the base, and across the rough top of the concrete foundation to a peripheral form to provide a chamfer around the top edge of the finished foundation.
 3. After the grout has hardened, remove all forms, hoppers, and excess grout. Patch all exposed grout surfaces, give a burlap-rubbed finish, and paint with at least two coats of an acceptable paint in accordance with specifications.

D. Sleeves and Openings

1. Provide all chases or openings for the installation of the Work, or cut the same in existing Work. Provide all sleeves or forms at the Work, and set them as indicated and as specified, and in ample time to prevent delays. Locate all chases, openings, and sleeves as specified and indicated. If the location is not specified or indicated locate all openings to avoid interference with equipment and piping.
2. If these openings and/or sleeves were not provided prior to concrete placements, the Contractor shall provide and set them afterwards at no additional cost to the Owner. Confine the cutting to smallest extent possible. In no case shall piers or structural members be cut without the written consent of the Engineer.
3. Fit around, close up, repair, patch, and point around the work specified herein to the satisfaction of the Engineer.
4. Perform all of this work by workman using small hand tools. Do not use power tools except where, in the opinion of the Engineer, the type of tool proposed can be used without damage to any work or structures and without interference with the operation of any facilities. The Engineer's concurrence with the type of tools shall not in any way relieve or diminish the responsibility of the Contractor for such damage, or interference resulting from the use of such tools.
5. Do not cut or alter the work of any subcontractor or any other contractor, nor permit any subcontractor to cut or alter the work of any other contractor or subcontractor, except with the written consent of the contractor or subcontractor whose work is to be cut or altered, and with the written consent of the Engineer. All cutting and patching or repairing made necessary by the Contractor or any subcontractors shall be done at no additional cost to the Owner.
6. Install sealing materials as specified in Section 01172.

END OF SECTION

SAMPLE
SECTION 01730

OPERATION, MAINTENANCE AND INSTRUCTION MANUALS

PART 1 GENERAL

1.01 SCOPE

- A. In general, operation and maintenance manuals or instruction manuals shall be provided for all equipment and systems provided in Divisions 11, 14, 15 and 16 and VFDs in Section 01174 whether or not specifically specified in the individual sections in these divisions. Operation and maintenance manuals and instruction manuals shall also be provided wherever specifically required by sections in any other division.

1.02 QUALITY ASSURANCE

- A. Prepare instructions and data by personnel experienced in operation, maintenance, and care of described products.

1.03 FORMAT FOR ALL OPERATION, MAINTENANCE, AND INSTRUCTION, MANUALS

- A. Prepare data in form of an instructional manual for electronic submittal with final approved version in hardcopy.
- B. Binders (Final Approved Manual): Commercial quality, three-ring binders for 8 1/2 x 11-inch sheets, with cleanable, durable, hardback, plastic covers; two-inch maximum ring size. Front cover shall have a clear pocket for inserting an 8-1/2 x 11-inch title card. The spine shall also have clear full length pocket for inserting a spine title card. The spine shall be a minimum of one-inch wide. When multiple binders are used, correlate data into related, consistent groupings. Provide a table of contents in each manual. .
- C. Front Cover and Spine Title Cards (Final Approved Manual): Front cover title card shall be 8-1/2 x 11-inch size and shall be of white, 60 lb. paper stock. Identify each binder cover and spine with typed or printed title OPERATION AND MAINTENANCE MANUAL or INSTRUCTION MANUAL, as appropriate. Include Narragansett Bay Commission's name and logo, and identify subject matter of manual including equipment tag numbers and equipment location.
Example:

OPERATION AND MAINTENANCE MANUAL

NARRAGANSETT BAY COMMISSION

LOGO

- D. Arrange contents by systems under section numbers, and in sequence of the Table of Contents.
- E. Provide tabbed fly leaf for each separate product and system, with typed description of product on tab.
- F. Text: Manufacturer's printed data, or typewritten data.
- G. Drawings: Provide with reinforced, punched, binder tab. Bind 8-1/2 x 11-inch and 11 x 17-inch size drawings in with text; fold larger drawings to fit into clear plastic 8-1/2 x 11-inch pockets. For folded drawings, drawing title blocks shall be visible after drawing is folded.
- H. For each product or system: List names, addresses, and telephone numbers of subcontractors and suppliers, including local source of supplies and replacement parts.
- I. Product Data: Mark each sheet to clearly identify specific products, component parts, and data applicable to actual items furnished. Delete inapplicable information.
- J. Drawings: Supplement product data to illustrate relations of component parts of equipment and systems, and to show control and flow diagrams.
- K. Text: As required to supplement product data, provide logical sequence of instructions for each procedure incorporating manufacturer's instructions.
- L. Warranties, Guarantees, and Bonds: Bind a copy of each into the manuals.
- M. Provide all calibration data, and initial control, alarm, and other operational settings

1.04 MANUALS FOR EQUIPMENT AND SYSTEMS

- A. Each Item of Equipment and Each System: Include description of unit or system and component parts. Identify function, normal operating characteristics and limiting conditions. Include performance curves, with engineering data and tests, and complete nomenclature and identification number of replaceable parts.
- B. Complete maintenance instructions shall be submitted on all equipment and shall include preventive and corrective maintenance.
- C. All products, systems, equipment, electrical wiring, instrumentation wiring, and personnel protection systems wiring presented in this manual shall have tag numbers corresponding to contract drawings and specifications. In the event numbers do not exist, the Engineer will specify a series of numbers.

- D. Panelboard Circuit Directories: Provide electrical service characteristics, controls, and communications.
 - E. Include shop drawings and wiring diagrams which have been updated as necessary to reflect the as installed conditions and features of the equipment and systems.
 - F. Operating Procedures: Include start-up, break-in, and routine normal operating instructions and sequence. Include regulation, control, starting, stopping, shut-down, safety, and emergency instructions. Include summer, winter, and any special operating instructions.
 - G. Provide servicing and lubrication schedule, and list of lubricants required. Cross-reference lubricants to products offered by at least three major lubricant suppliers.
 - H. Include manufacturer's printed operation and maintenance instructions.
 - I. Include sequence of operation by controls manufacturer.
 - J. Provide original manufacturer's parts list, cut-away or blow-up drawings, illustrations, assembly drawings, and diagrams required for maintenance. Parts lists shall be in sufficient detail for easily ordering replacements
 - K. Provide list of original manufacturer's spare parts, current prices, and recommended quantities to be maintained in storage.
 - L. Provide control diagrams by controls manufacturer, updated as necessary to reflect as-installed conditions.
 - M. Include test and balancing reports.
 - N. Additional Requirements: As specified in individual product specification sections.
- 1.05 MANUAL FOR MATERIALS AND FINISHES
- A. Building Products, Applied Materials, and Finishes: Include product data with catalog number, size, composition, and color and texture designations, all reflecting the as-installed products. Provide information for re-ordering custom manufactured products.
 - B. Instructions for Care and Maintenance: Include manufacturer's recommendations for cleaning agents and methods, precautions against detrimental agents and methods, and recommended schedule for cleaning and maintenance.
 - C. Moisture Protection and Weather Exposed Products: Include product data listing applicable reference standards, chemical composition, and details of installation. Provide recommendations for inspections, maintenance, and repair.
 - D. Additional Requirements: As specified in individual product specification sections.

1.06 SUBMITTALS

- A. Operation and maintenance manuals and instruction manuals are required for all applicable items specified in the contract documents as well as for any equipment or material items provided under change orders.
- B. Submit electronic draft manuals no later than when the equipment is delivered to the project site in accordance with the procedures specified in Section 01300. The Engineer will review the manuals and, if the manuals are satisfactory, the Engineer will issue the appropriate review action. . If the Engineer has comments, the Engineer will return the electronic copy with comments to the Contractor.
- C. After the Contractor addresses the Engineer's Comments, the Contractor shall submit electronically the revised manual to the Engineer. When the manuals are satisfactory the Contractor shall submit four hard copies of the manual. Final approval of the manuals by the Engineer will be contingent upon the Engineer receiving satisfactory responses to comments, and satisfactory additional information, from the Contractor.
- D. All manuals pertaining to equipment or systems being started up in particular phase must be approved prior to start-up of that phase.

PART 2 PRODUCTS

Not used.

PART 3 EXECUTION

Not used.

END OF SECTION

SAMPLE
SECTION 01740

WARRANTIES

PART 1 GENERAL

1.01 SCOPE OF WORK

- A. This Section specifies general administrative and procedural requirements for warranties required by the Contract Documents, including manufacturers' standard warranties on products and special warranties.

1.02 DEFINITIONS

- A. Standard Product Warranties are preprinted written warranties published by individual manufacturers for particular products and are specifically endorsed by the manufacturer to the Owner.
- B. Special Warranties are written warranties required by or incorporated in the Contract Documents, either to extend time limits provided by standard warranties or to provide greater rights for the Owner.

1.03 RELATED WORK

- A. General closeout requirements are included in Section 01650.
- B. Additional requirements for warranties for the Work and products and installations that are specified to be warranted, are included in the individual Sections of Divisions 2 through 16, if necessary.

1.04 SUBMITTALS

- A. Electronically submit written warranties to the Owner prior to the date fixed by the Engineer for Substantial Completion. If the Certificate of Substantial Completion designates a commencement date for warranties other than a date of Substantial Completion for the Work, or a designated portion of the Work, submit written warranties.
- B. When a designated portion of the Work is completed and occupied or used by the Owner, by separate agreement with the Contractor during the construction period, submit properly executed warranties to the Engineer within fifteen days of completion of that designated portion of the Work.
- C. When a special warranty is required to be executed by the Contractor, or the Contractor and a subcontractor, supplier or manufacturer, prepare a written document that contains appropriate terms and identification, ready for execution by the required parties. Submit a draft to the Engineer for approval prior to final execution.
- D. Refer to individual Sections of Divisions 2 through 16 for additional requirements, and particular requirements for submittal of special warranties.

1.05 EQUIPMENT WARRANTIES

- A. All equipment supplied shall be warranted for a period of one (1) year by the manufacturer and the Contractor. The warranty period shall commence upon Substantial Completion, which is defined in Section CA - Agreement, Articles 34 and 35 and in Section 01650.
- B. The equipment shall be warranted to be free from defects in workmanship, design, and materials. If any part of the equipment should fail during the warranty period, it shall be replaced at no expense to the Engineer.
- C. The manufacturer's warranty period shall run concurrently with the Contractor's warranty period.
- D. The replacement or repair (including the cost of parts and labor) of those items normally consumed in service, such as pump packing, oil, grease, and the like, shall be considered as part of routine preventive maintenance by the Owner and are not included in the Warranty and Guarantees.

1.06 WARRANTY REQUIREMENT

- A. Related Damages and Losses: When correcting warranted Work that has failed, remove and replace other Work that has been damaged as a result of such failure or that must be removed and replaced to provide access for correction of warranted Work.
- B. Reinstatement of Warranty: When Work covered by a warranty has failed and been corrected by replacement or rebuilding, reinstate the warranty by written endorsement. The reinstated warranty shall be equal to the original warranty with an equitable adjustment for depreciation.
- C. Replacement Cost: Upon determination that Work covered by a warranty has failed, replace or rebuild the Work to an acceptable condition complying with requirements of Contract Documents. The Contractor is responsible for the cost of replacing or rebuilding defective Work regardless of whether the Owner has benefited from use of the Work through a portion of its anticipated useful service life.
- D. Owner's Recourse: Written warranties made to the Owner are in addition to implied warranties, and shall not limit the duties, obligations, rights and remedies otherwise available under the law, nor shall warranty periods be interpreted as limitations on time in which the Owner can enforce such other duties, obligations, rights, or remedies.
- E. Rejection of Warranties: The Engineer reserves the right to reject warranties and to limit selections to products with warranties not in conflict with requirements of the contract Documents.
- F. Disclaimers and Limitations: Manufacturer's disclaimers and limitations on product warranties do not relieve the Contractor of the warranty on the Work that incorporates the products, nor does it relieve suppliers, manufacturers, and subcontractors required to countersign special warranties with the Contractor.

PART 2 PRODUCTS - (NOT USED)

PART 3 EXECUTION - (NOT USED)

END OF SECTION

**CERTIFICATION REGARDING DEBARMENT &
SUSPENSION AND OTHER RESPONSIBILITY MATTERS**
(for compliance with all federal, state and local funding related requirements)

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

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

Name and Title of Authorized Agent

Company

Signature of Authorized Agent

Date

NBC Project / Contract No.

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

DISCLOSURE QUESTIONNAIRE

Please answer “Yes” for any event that occurred, in whole or in part, during the past three (3) years. Please attach additional pages explaining the nature and circumstances of each disclosed matter. Failure to respond to each question and/or to provide adequate explanations may lead to the rejection of the Proposal.

For the purposes of these questions: (A) a bid, SOQ, proposal, response, or agreement submitted for the Project is a “Proposal”; (B) a person or entity that submits a Proposal is a “Respondent”; (C) a Respondent and each of its owners, directors, officers, employees, agents, and representatives is a “Respondent Party”; and (D) “Debarment” means an oral or written finding or decision barring, suspending, or otherwise limiting a person’s or entity’s right to engage in any business activity with a governmental entity.

		YES	NO
1.	Has a federal, state, or local governmental entity proposed or issued a Debarment against a Respondent Party?		
2.	Is there a past, pending, or threatened civil, criminal, administrative, or regulatory proceeding involving allegations that a Respondent Party: (a) made one or more material misrepresentations or omissions in a business transaction or (b) engaged in an act or omission in a business transaction that resulted in alleged damages that are greater than or equal to 10% of the Respondent’s annual revenues?		
3.	Has a customer: (a) terminated a contract with Respondent for cause/default or (b) accepted damages from Respondent in lieu of contractual termination for cause/default?		
4.	Is there any reason why NBC might be prohibited from doing business with a Respondent Party?		
5.	Has a Respondent Party had any professional license or certificate suspended or revoked?		
6.	Has a Respondent Party been convicted of a felony criminal offense?		
7.	Has Respondent sought bankruptcy protection in a United States Bankruptcy Court?		

The undersigned warrants that: (1) (s)he is the _____ [TITLE] of _____ [RESPONDENT]; (2) (s)he is authorized to make the representations, warranties, and covenants in this Agreement on Respondent’s behalf; and (3) under penalty of perjury, the warranties and covenants set forth in this Agreement are true and correct.

Signature: _____

Date: _____

CERTIFICATION REGARDING FEDERAL LOBBYING

The undersigned, for himself/herself and on behalf of the prospective Proposer, certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned or the prospective Proposer, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Agreement for Professional and Technical Consulting Services between the prospective Proposer and the COMMISSION, and the extension, continuation, renewal, amendment, or modification of the same.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Agreement for Professional and Technical Consulting Services between the prospective Proposer and the COMMISSION, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," (Attachment) in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under this Agreement for Professional and Technical Consulting Services between the prospective Proposer and the COMMISSION) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this Agreement for Professional and Technical Consulting Services between the prospective Proposer and the COMMISSION was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Name and Title of Authorized Agent

Name of Organization

Signature of Authorized Agent

Date

NBC Project/Contract No.

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C.1352

Approved by OMB

4040-0013

1. * Type of Federal Action: <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	2. * Status of Federal Action: <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	3. * Report Type: <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change For Material Change Only: year <input type="text"/> quarter <input type="text"/> date of last report <input type="text"/>
---	---	---

4. Name and Address of Reporting Entity:
 Prime SubAwardee Tier if known:

* Name

* Street 1 Street 2

* City State Zip

Congressional District, if known:

6. * Federal Department/Agency:

7. * Federal Program Name/Description:

CFDA Number, if applicable:

8. Federal Action Number, if known:

9. Award Amount, if known:
\$

10. a. Name and Address of Lobbying Registrant:

Prefix * First Name Middle Name

* Last Name Suffix

* Street 1 Street 2

* City State Zip

b. Individual Performing Services (including address if different from No. 10a)

Prefix * First Name Middle Name

* Last Name Suffix

* Street 1 Street 2

* City State Zip

11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when the transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

* Signature:

* Name: Prefix * First Name Middle Name
* Last Name Suffix

Title: Telephone No.: Date:

**SUBMIT IN SEPARATE FOLDER MARKED “PRICE PROPOSAL” WITH
00416 Unit Prices Form for Contract Price Adjustments for Additional Work**

SECTION 00415

PROPOSAL FORM

ARTICLE 1 – PROPOSAL RECIPIENT

- 1.01 This Proposal is directed to:
- Narragansett Bay Commission
NBC Corporate Office Building
1 Service Road
Providence, RI 02905
- 1.02 This Proposal shall be submitted to the Commission per Section 00100, Request for Proposal.
- 1.03 The undersigned Proposer proposes and agrees, if this Proposal is accepted, to: execute a Statement of Intent with the Commission; provide Shop Drawings and submittals as indicated in the Statement of Intent; and enter into a subcontract with Commission’s construction Contractor for the Lincoln Septage Receiving Facility Improvements Project as a Supplier to provide material and equipment and provide services as specified or indicated in the Proposal Documents, for the prices and within the times indicated in this Proposal, and in accordance with the other terms and conditions of the Proposal Documents and the Statement of Intent.

ARTICLE 2 – PROPOSER’S ACKNOWLEDGEMENTS

- 2.01 Proposer accepts all of the terms and conditions of the Proposal Documents including those in the Instructions to Proposers (Section 00215).
- 2.02 This Proposal shall remain subject to acceptance until award of the construction contract, (anticipated to be April 2026). Adjustments, if any, will be based upon changes in the pricing index identified in the Statement of Intent, between the date of this Proposal and the issue date of the Bidding Documents for construction and/or upon award of a construction contract.

2.03 Proposer acknowledges receipt of the following Addenda.

<u>Addendum No.</u>	<u>Addendum Date</u>
_____	_____
_____	_____
_____	_____

ARTICLE 3 – PROPOSER’S REPRESENTATIONS

- 3.01 Proposer has examined and carefully studied the Proposal Documents and other related data identified in the Proposal Documents.
- 3.02 Proposer has reviewed the delivery point and site where the equipment is to be installed and field services will be provided and become familiar with and is satisfied as to the observable local conditions that may affect cost, progress, or the furnishing of equipment and field services, if required to do so by the Proposal Documents, or if, in Proposer’s judgment, any local condition may affect cost, progress, or the furnishing of equipment and field services.
- 3.03 Proposer is familiar with and is satisfied as to all Laws and Regulations in effect as of the date of the Proposal that may affect cost, progress and the furnishing of equipment and field services.
- 3.04 Proposer has carefully studied, considered, and correlated the information known to Proposer; information commonly known to sellers of similar goods doing business in the locality of the delivery point and the site where the equipment will be installed or where field services will be provided; information and observations obtained from Proposer’s visits, if any, to the delivery point and the site where the equipment will be installed or where field services will be provided; and any reports and drawings identified in the Proposal Documents regarding the delivery point and the site where the equipment will be installed or where field services will be provided, with respect to the effect of such information, observations, and documents on the cost, progress, and performance of Seller's obligations under the Proposal Documents.
- 3.05 Proposer has given the Commission written notice of all conflicts, errors, ambiguities, or discrepancies that Proposer has discovered in the Proposal Documents, and the written resolution (if any) thereof by the Commission is acceptable to Proposer.
- 3.06 The Proposal Documents are generally sufficient to indicate and convey understanding of all terms and conditions for furnishing the equipment and field services for which this Proposal is submitted.

ARTICLE 4 – PROPOSER’S CERTIFICATIONS

- 4.01 The Proposal is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation.
- 4.02 Proposer has not directly or indirectly induced or solicited any other Proposer to submit a false or sham Proposal and has not solicited or induced any individual or entity to refrain from Proposal.
- 4.03 Proposer has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for pre-selection. For the purposes of this Paragraph:
- A. “corrupt practice” means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the Proposal process;
 - B. “fraudulent practice” means an intentional misrepresentation of facts made (a) to influence the Proposal process to the detriment of the Commission, (b) to establish Proposal prices at artificial non-competitive levels, or (c) to deprive the Commission of the benefits of free and open competition;
 - C. “collusive practice” means a scheme or arrangement between two or more Proposers, with or without the knowledge of the Commission, a purpose of which is to establish Proposal prices at artificial, non-competitive levels; and
 - D. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the Proposal process or affect the pre-selection.

ARTICLE 5 – BASIS OF PROPOSAL

5.01 Proposer will provide the equipment and services specified for the following price(s) under a subcontract with construction Contractor for the Lincoln Septage Receiving Facility Improvements. Proposer must complete all items.

PROPOSAL PRICE SHALL EXCLUDE RI SALES AND USE TAX.

Furnish and deliver a fully automatic, self-cleaning, septage receiving unit and its associated electrical and controls equipment; 1-year warranty; and services by a manufacturer’s field service engineer to perform field services in accordance with the Specifications included in the Proposal Documents.

TOTAL LUMP SUM PROPOSAL PRICE

_____ Dollars and _____ Cents \$ _____
(Use words) *(Use figures)*

5.02 Unit Prices for Additional Work

- A. Include a separate price for each item in the Unit Prices Form for Additional Work included in Section 00416. These prices will be used in determining responsiveness but will not be used in evaluating Proposer’s Proposal price. These prices will be included as a requirement in the construction contract for Contract Price Adjustments for the items listed and may be applied at the Commission’s option.

ARTICLE 6 – CONTRACT PROVISIONS

6.01 The Proposer agrees to the inclusion of the certain provisions with regard to the pre-selected equipment as set forth in Section 00215, subject to the terms and conditions of the actual construction contract and Supplier subcontract.

ARTICLE 7 – ITEMS CONSTITUTING ENTIRE PROPOSAL

7.01 The following documents are submitted with and made a condition of this Proposal in separately marked folders.

- “PRICE PROPOSAL” – 00415 Proposal Form and 00416 Unit Prices Form for Contract Price Adjustments for Additional Work and required submittals. Also include the Proposal Security in a sealed envelope as detailed in Section 00215 Instruction to Proposers.
- “TECHNICAL PROPOSAL” – 00435 Information, Schedules and Data, 00450 Non-Collusion Affidavit

ARTICLE 8 – PROPOSAL SUBMITTAL

8.01 This Proposal is submitted by:

A Corporation

Corporation Name: _____

State of Incorporation: _____

Type: _____
(General Business, Professional, Service, other)

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

Name *(typed or printed)*: _____

Title: _____

(CORPORATE SEAL)
Attest: _____
(Signature of Corporate Secretary)

Business Address: _____

Phone & Facsimile Nos: _____

Email address: _____

Date of qualification to do business as out-of-state corporation: _____

A Limited Liability Company (LLC)

LLC Name: _____

State in which organized: _____

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

Name *(typed or printed)*: _____

Title: _____

Business Address: _____

Phone & Facsimile Nos: _____

Email address: _____

A Joint Venture

First Joint Venturer Name:

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

Name *(typed or printed)*: _____

Title: _____

Business Address: _____

Phone & Facsimile Nos: _____

Email address: _____

Second Joint Venturer Name:

By:

(Signature – attach evidence of authority to sign)

Name *(typed or printed)*:

Title:

Business Address:

Phone & Facsimile Nos:

Email address:

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

A Partnership

Partnership Name: _____ (SEAL)

By:

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

Name *(typed or printed)*:

Business Address:

Phone & Facsimile Nos:

Email address:

An Individual

Name (*typed or printed*): _____

By: _____
(Individual's signature)

Doing business as: _____

Business Address: _____

Phone & Facsimile Nos: _____

Email address: _____

SUBMITTED ON:
EIN/FEIN::

Communications concerning this Proposal shall be addressed to:

Name _____

Title _____

Business Address _____

Telephone No. _____

Facsimile No. _____

Email Address _____

END OF SECTION

**SUBMIT IN SEPARATE FOLDER MARKED “PRICE PROPOSAL”
 WITH 00415 PROPOSAL FORM**

SECTION 00416

**UNIT PRICES FORM FOR CONTRACT PRICE ADJUSTMENTS
 FOR ADDITIONAL WORK**

Include a separate price for each item described below. These prices may be included in the Commission’s construction contract for Contract Price Adjustments for the items listed and may be applied at the Commission’s option after award of the construction contract. Additional Services of Field Service Engineer

Additional services by a manufacturer’s field service engineer to perform field services specified including living expenses	Per Diem	\$
--	----------	----

ARTICLE 1 – REPLACEMENT COMPONENTS AND SPARE PARTS

Line Item	Cost
Guide Bars	\$
Screen Spray Nozzles	\$
Cleaning Brushes	\$
Hook Links and Elements Spacers	\$
Grid Axles	\$
Screen Motor	\$
Washpress Motor	\$
Valve Actuators	\$
Additional Items (Write It Additional Replacement Items)	
	\$
	\$
	\$
	\$

ARTICLE 2 – LICENSING AND SUBSCRIPTION

Additional cost for required licensing and subscriptions related to hauler access station and management software.	Per Year	\$
--	----------	----

ARTICLE 3 – EXTENDED WARRANTY SERVICES CONTRACT

Extended Manufacturer’s Warranty Service Contract providing the recommended manufacturer’s services. Submit proposed Service Contract Form	Additional Cost Per Year
Year 1	INCLUDED
Year 2	\$
Year 3	\$
Year 4	\$
Year 5	\$

END OF SECTION

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**SUBMIT IN SEPARATE FOLDER MARKED “TECHNICAL PROPOSAL” WITH
SECTION 00450 NON-COLLUSION AFFIDAVIT**

SECTION 00435

INFORMATION, SCHEDULES AND DATA

Proposers shall:

- complete all entries in the tables contained in ARTICLES 1 through 6 inclusive; and
- submit required Drawings per ARTICLE 7.

Failure to submit all required information, data, documents and completed and executed forms may be cause for rejection.

ARTICLE 1 – PROPOSER’S QUALIFICATIONS

1.01 The following statements of experience and general qualifications of Proposer are submitted as part of the Proposal and Proposer represents and guarantees the truthfulness and accuracy thereof.

- A. Proposer has been in business continuously for the past 10 years.
- B. Proposer must have minimum experience in the continuous manufacturing of equipment comparable to that required by the Specifications.

Number of Years’ Continuous Experience	
	As prime manufacturer
	As equipment supplier

- C. Following is a list of **at least 10 projects** Proposer’s organization has completed for use in municipal wastewater facilities that have been in satisfactory operation **for at least 5 years** for which Proposer has manufactured or supplied equipment that is similar in type, character and magnitude to that required by the Specifications.

Client/Owner Name/Address	Project Name/Location	CURRENT Contact Name, Phone, Email	Time Period

D. The names and addresses of the members of the Board of Directors of the corporation, or the names and addresses of all persons and parties interested in this Proposal as partners of a partnership or as individuals, are as follows.

Name	Address	Telephone No.

E. Following is a list of all projects Proposer has undertaken in the last 5 years which have resulted in partial or final settlement of the contract by arbitration or litigation.

Name of Client and Project	Contact Name/ Telephone No.	Original Contract Amount	Total Claims	Arbitrated or Litigated Amount of Settlement of Claims

F. Reference is hereby made to the following bank or banks as to the financial responsibility of the Proposer.

Name of Bank	Address	Contact Name and Telephone No.

ARTICLE 2 – SUPPORT SERVICES

Item	Fill in
Number of service technicians in USA	
Number of service technicians in New England	
Location of closest service facility to Lincoln, RI	

- 2.01 Submit evidence including resumes of staff that Proposer maintains and has readily available trained field service personnel who are thoroughly familiar, in detail, with the equipment to be furnished and who capable of directing any major or minor repair work which may be required on the equipment. All staff shall be manufacturer certified to perform services.
- 2.02 Submit evidence that including resumes of shop service personnel and facility who have had experience in the repair of comparable equipment to ensure the dependability of the equipment. Indicate if the shop facilities are not owned by Proposer or the original manufacturer and are to be maintained by contract.

ARTICLE 3 – SERVICE, MAINTENANCE, AND RECOMMENDED SPARE PARTS

Item	Units/ Information Required	Fill in
SEPTAGE RECEIVING EQUIPMENT		
Name of service company		
Location of service personnel	City & State	
Guaranteed time to site for service (hours)	hours	
INSTRUMENTATION		
Name of service company		
Location of service personnel	City & State	
Guaranteed time to site for service (hours)	hours	
CONTROLS		
Name of service company		
Location of service personnel	City & State	
Guaranteed time to site for service (hours)	hours	

- 3.01 Submit a list recommended spare parts in addition to those included the Proposal pricing which may be purchased at the Owner’s option. Additional recommended spare part prices shall be listed, priced F.O.B. Project Site excluding sales tax.
- 3.02 Submit recommended preventative maintenance schedule including a narrative description of tasks, access and tools required.

ARTICLE 4 – REPLACEMENT FREQUENCY AND LEAD TIME FOR MAJOR AND SPARE PARTS

Replacement Frequency	Item	Units	Lead Time for Wear Items
	Guide Bars	Days	
	Screen Spray Nozzles	Days	
	Cleaning Brushes	Days	
	Hook Links and Element Spacers	Days	
	Grid Axles	Days	
	Screen Motor	Days	
	Washpress Motor	Days	
	Additional Replacement Items (Write In Additional Replacement Parts)		
		Days	
		Days	
		Days	
		Days	

ARTICLE 5 – TECHNICAL DATA

Item	Units/ Information Required	Fill in
Manufacturer name and model		
Screen Opening Size (Maximum)	mm	
Minimum Hydraulic Capacity (at 3% solids)	gpm	
Physical dimensions of each unit	L x W x H in feet	
Dimensions of each unit with recommended maintenance clearances	L x W x H in feet	
Screen Inlet Connection Size	in	
Wash Press Outlet Connection Size	In	
Screw Liner Material		
Screw Liner Replacement/Repair Frequency	years	
INSTRUMENTATION		
Manufacturer name		
Number of units		
CONTROLS		
PLC Manufacturer name	Local:	
OIT Manufacturer name	Local:	
Number of units		
ENERGY DEMANDS		
Screen Motor Horsepower	HP	
Wash Press Motor Horsepower	HP	
Total Power Requirement for Equipment Package	kW	
WATER DEMANDS		
Screen Maximum Spray Wash Requirement	gpm	
	PSI	
Wash Press Maximum Spray Wash Requirement	gpm	
	PSI	

- 5.01 Submit catalog data showing the overall characteristics of the proposed equipment including manufacturers and specific part numbers for each component and installation details.
- 5.02 Submit detailed information on Management software, including screen printouts of software pages and key features.

ARTICLE 6 – CONFORMANCE WITH CONTRACT DOCUMENTS

6.01 Proposers shall review the technical Specification(s) included in the Proposal Documents and indicate below whether the proposed equipment will conform with the requirements of the technical Specification(s).

ITEM	Conformance? (Circle One)
Specification Section 11305 Septage Receiving Equipment	Y N

6.02 If the Proposer indicated “N” (non-conformance with the Specification(s) listed above), provide additional details and proposed alternative(s) in the space below. Include additional sheets if necessary.

ARTICLE 7 – EQUIPMENT DRAWINGS

7.01 Proposers shall submit the following Drawings.

- Dimensional Drawings of equipment to be provided with clearances required for maintenance, including but not limited to, overall dimensions and electrical requirements. Drawings shall conform to the requirements of the submittal requirements indicated in the technical Specifications.

END OF SECTION

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**SUBMIT IN SEPARATE FOLDER MARKED "TECHNICAL PROPOSAL" WITH
SECTION 00435 INFORMATION, SCHEDULES, AND DATA**

SECTION 00450

NON-COLLUSION AFFIDAVIT

_____, being duly sworn, depose
and, under the penalty of perjury, say that the following is true:

1. I am the person responsible within my firm for the final decision as to the price(s) and amount of this Proposal or, if not, that I have written authorization, enclosed herewith, from that person to make the statements set out below on his or her behalf and on the behalf of my firm.
2. The price(s) and amount of this Proposal have been arrived at independently, without collusion, consultation, communication, or agreement for the purpose of restricting competition with any other contractor, competitor, Proposer, or potential Proposer.
3. Unless otherwise required by law, neither the price(s) nor the amount of this Proposal have been disclosed to any other firm or person who is a Proposer, competitor, or potential Proposer on the Project, and will not be so disclosed either directly or indirectly prior to Proposal opening.
4. No attempt has been made or will be made to solicit, cause, or induce any firm, partnership, corporation, or person to submit or not submit a Proposal on this Project, or to submit a Proposal higher than the Proposal of this firm, or submit an intentionally high or noncompetitive Proposal or other form of complementary Proposal, or for the purpose of restricting competition.
5. The Proposal of my firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary Proposal.
6. My firm has not offered or entered into a subcontracting agreement regarding the purchase of materials or services from any firm or person, or offered, promised, or paid cash or anything of value to any firm or person, whether in connection with this or any other Project, in consideration for an agreement or promise by any firm or person to refrain from proposing or to submit a complementary Proposal on the Project.
7. My firm has not accepted nor been promised any subcontract or agreement regarding the sale of materials or services to any firm or person, and has not been promised or paid cash or anything of value to any firm or person, whether in connection with this or any other project, in consideration for my firm's submitting a complementary Proposal or agreeing to do so, on the Project.

8. I have made a diligent inquiry of all members, officers, employees, and agents of my firm with responsibilities relating to the preparation, approval, or submission of my firm's Proposal on the Project and have been advised by each of them that he or she has not participated in any communication, consultation, discussion, agreement, collusion, act, or other conduct inconsistent with any of the statements and representations made in this affidavit.

Company Name

Signature

Company Position

Date: _____

Attest: _____

Date: _____

END OF SECTION

SECTION 11305

SEPTAGE RECEIVING EQUIPMENT

PART 1 – GENERAL

1.01 SUMMARY

- A. Furnish, install, test and place into satisfactory operating condition septage receiving equipment consisting of a screen with wash press and hauler offload station as specified herein.
- B. Provide all related appurtenances, including but not limited to, motors, wiring, attachments, control panels, anchors, supports, and all related accessories to comprise a complete operational septage receiving system. All appurtenances, accessory equipment, and auxiliaries for a complete septage receiving system shall be provided.

1.02 REFERENCES

- A. Reference Standards
 - 1. American Institute of Steel Construction (AISC)
 - a. AISC/ANSI 360 Specification for Structural Steel for Buildings
 - b. AISC/ANSI 121 Standard Definitions for Use in the Design of Steel Structures
 - 2. American Gear Manufacturers Association (AGMA)
 - a. AGMA 6013-B16 Standard for Industrial Enclosed Gear Drives
 - 3. ASTM International (ASTM)
 - a. ASTM A 193/A 193M Standard Specification for Alloy-Steel and Stainless Steel Bolting for High-Temperature or High Pressure Service and Other Special Purpose Applications
 - b. ASTM A 269/A 269M Standard Specification for Seamless and Welded Austenitic Stainless Steel Tubing for General Service
 - c. ASTM A 276 Standard Specification for Stainless Steel Bars and Shapes
 - d. ASTM A 322 Standard Specification Steel Bars, Alloy, Standard Grades
 - e. ASTM A 351/A 351M Standard Specification for Castings, Austenitic, for Pressure-Containing Parts

- f. ASTM A 403/A 403M Standard Specification for Wrought Austenitic Stainless Steel Piping Fittings
- g. ASTM A 48/A 48M Standard Specification for Gray Iron Castings
- h. ASTM A 507 Standard Specification for Drawing Alloy Steel, Sheet and Strip, Hot-Rolled and Cold-Rolled
- i. ASTM A 666 Standard Specification for Annealed or Cold-Worked Austenitic Stainless Steel Sheet, Strip, Plate and Flat Bar
- j. ASTM F 593 Standard Specification for Stainless Steel Bolts, Hex Cap Screws, and Studs
- k. ASTM F 594 Standard Specification for Stainless Steel Nuts
- 4. American Welding Society (AWS)
 - a. AWS D1.1/D1.1M Structural Welding Code
 - b. AWS QC1 Standard for AWS Certification of Welding Inspectors
- 5. American Water Works Association (AWWA)
 - a. AWWA C 540 Power Actuating Devices for Valves and Sluice Gates
- 6. U.S. Environmental Protection Agency (EPA)
 - a. EPA SW-846.3-3 Test Methods for Evaluating Solid Waste: Physical/Chemical Methods
- 7. National Electrical Manufacturers Association (NEMA)
 - a. NEMA ICS 1 Industrial Control and Systems: General Requirements
 - b. NEMA MG 1 Standard for Motors and Generators
- 8. Society for Protective Coatings (SSPC)
 - a. SSPC SP 6 Joint Surface Preparation Standard: Commercial Blast Cleaning
 - b. SSPC SP 10 Joint Surface Preparation Standard: Near-White Metal Blast Cleaning

1.03 SUBMITTALS

- A. Submit the following in accordance with Division 01 General Requirements.
- B. Shop Drawings
 - 1. Shop drawings shall show layout and dimensions of equipment, major components, key alignment locations and locations of bolt holes. Drawings

shall also indicate where access points for maintenance and operations are located on the equipment. Drawings shall show critical field dimensions identified by the Supplier. Shop drawings shall include electrical and control wiring diagrams for the equipment including motor wiring diagrams, control wiring diagrams, and grounding requirements.

C. Product Data

1. Submit sufficient product data to verify compliance with the specifications and to illustrate the construction and assembly of the products. Include compliance of materials and components with applicable standards. List the manufacture, model, weights of major components, and lifting points. Include catalog cuts, illustrations, schedules and diagrams illustrating size, physical appearance and other characteristics of materials, systems or equipment.
2. Product data shall include but is not limited to a complete list of equipment and materials, including Supplier's descriptive data and technical literature, performance charts, and installation instructions. Include warrantee language for the equipment and all related appurtenances. Include the net weight of the equipment, motor and baseplate. Provide details of each motor including size, hp, service factor, insulation rating, efficiency, full load/locked rotor current, dimensions and power factor.
3. Submit written documentation of all control set points which include but are not limited to VFD set points and hard-wired interlock switch set points to protect the equipment from damage and to ensure proper equipment operation and function.
4. Submit fully commented PLC program and a data exchange list with control panel shop drawing.

D. Submit evidence of experience and installation list in accordance with Article 1.04 below.

E. Submit qualifications for Certified Welding Inspectors and Non-Destructive Testing Inspectors.

F. Submit qualifications for the Supplier's Service Engineer.

G. Suppliers Field Reports

1. The Supplier shall provide Field Test Booklets for each unit including but not limited to written certification of proper installation, initial adjustments, and satisfactory operations, dated and signed by a Supplier's representative. Each test report shall indicate the final position and set points of controls.

2. The Supplier shall provide a Certificate of Proper Installation for each unit.
- H. Operation and Maintenance Data
1. Submit operation and maintenance data in accordance with Division 01 General Requirements. In addition to the requirements of Division 01, the manual shall include but is not limited to the following:
 - a. A complete bill of materials
 - b. Startup, normal, shut down, and emergency operating instructions
 - c. Lubrication and maintenance instructions
 - d. Guides to troubleshooting
 - e. A numbered parts list and predicted life of parts subject to wear
 - f. Test data and performance curves
 - g. Installation instructions
 - h. Written warranty statement
 2. Operation and maintenance data shall also include all required cuts, drawings, equipment lists, descriptions, etc., which are required to instruct operation and maintenance personnel unfamiliar with such equipment.

1.04 QUALIFICATIONS OF SUPPLIER

- A. Materials and equipment shall be the standard products of a Supplier regularly engaged in the production of such products and shall essentially duplicate items that have been in satisfactory use in identical applications in other wastewater treatment facilities. The Supplier shall have a minimum of five (10) years of documented experience in the design and production of septage receiving equipment of "all types", and not less than five (5) years of experience in the production of equal or larger sized models/designs of the exact equipment as specified herein.
- B. The Supplier shall provide an installation list of at least ten (10) similar installations, including contact names and phone numbers. Equipment shall be supported by a service organization that is, in the opinion of the Engineer, reasonably convenient to the site to ensure parts and service can be acquired in a timely fashion.

1.05 DELIVERY, STORAGE, AND HANDLING

- A. Finished surfaces of all exposed inlets and outlets shall be protected by wooden blank flanges, strongly built and securely bolted thereto. Finished iron or steel surfaces not painted shall be properly protected to prevent rust and corrosion. All equipment delivered to the site shall be stored in accordance with the Supplier's instructions. Electrical equipment shall be stored in weatherproof, ventilated enclosures.

- B. All spare parts shall be packed in containers bearing labels clearly designating the contents and respective pieces of equipment for which they are intended. All spare parts shall be delivered at the same time as the equipment.
- C. All equipment delivered and placed in storage shall be provided with protection from the weather, humidity, temperature variations, dirt, dust, or other contaminants in accordance with the Supplier's written instructions.
- D. Off-load equipment at the installation site using equipment of sufficient size and design to prevent damage to the equipment. Immediately after off-loading, inspect all equipment for shipping damage or missing parts. Any damage or discrepancy shall be noted in a written claim with the shipper prior to accepting delivery. Validate all serial numbers and parts lists with the shipping documentation. Notify the Supplier of any unacceptable conditions with the shipper.
- E. All fabricated assemblies shall be shipped in the largest sections permitted by carrier regulations. The Supplier shall properly match mark all sections for ease of field erection. All components shall be erected immediately upon receipt from the Supplier or stored in strict conformance with the recommendations provided by the Supplier.

1.06 WARRANTY

- A. The Supplier shall provide a full and comprehensive warranty for all equipment specified in this section. The equipment shall be warranted to be free from defects in workmanship, design, and materials for a period of one (1) year, excepting only those items which are normally consumed in service such as oils, grease, packing, gaskets, O-rings, etc. If any parts of the equipment supplied under this section should fail during the Supplier's warranty period, replacement of parts or the unit itself shall be provided. The units shall be restored to active working service at no expense to the Owner of the equipment. The Supplier shall incur all costs including but not limited to parts, labor, service, technicians, shipping, and handling required for restoration of equipment to active service as required under the Supplier's warranty.
- B. The Supplier's warranty shall commence at the date of substantial completion or partial utilization.

1.07 MAINTENANCE

- A. Furnish one (1) set of all special tools required to completely assemble, disassemble, or maintain the equipment. Special tools shall refer to oversized or specially dimensioned tools, special attachments or fixtures, or any similar items.

PART 2 – PRODUCTS

2.01 GENERAL

- A. All materials and equipment shall be as specified. All equipment shall be suitable for continuous and/or intermittent operation under the specified design conditions. Materials and equipment shall be new and unused, except for testing as required. Where two or more pieces of equipment performing the same function are required, they shall be duplicate products of the same Supplier.
- B. There shall be no significant change in vibration and/or noise level over the entire specified range of operating conditions. The motor sizing shall provide a minimum of 25% reserve motor horsepower beyond the maximum torque rating of the equipment.
- C. All rotating parts of the equipment shall operate throughout the specified performance range without excessive end thrust, vibration, or noise. Defects of this type that cannot be eliminated by installation adjustments shall be sufficient cause for rejection of the equipment.
- D. Unless otherwise specified, the equipment, including welded fabricates, shall be manufactured from Type 304L austenitic stainless steel shapes (rods, angles, and channels), pipes, and sheets with a finish conforming to ASTM A 666 standards. All stainless steel components shall be electro-polished or passivated to obtain maximum corrosion resistance. All mechanical parts shall be designed and constructed to handle the forces that may be exerted on the unit during fabrication, shipping, erection, and proper operation in the field.

2.02 SEPTAGE RECEIVING UNIT

- A. General
 - 1. The septage receiving unit shall be designed to screen municipal septage. The screen shall wash, transport, and discharge material into a wash press. The wash press shall dewater, compact and discharge the screenings.
 - 2. All open spaces of the screen shall be positively cleaned via spray water. The unit shall be entirely enclosed such that spray water, aerosols or leakage do not contaminate the operating floor and to prevent odor nuisance.
 - 3. Due to the abrasive nature of grit found in septage, there shall be no plastic-to-plastic or plastic-to-metal wearing surfaces in the unit.
- B. Unit Descriptions
 - 1. Provide the following septage receiving equipment:

Tag #	Description	Location
ST-XXX	Septage Receiving Equipment	Lincoln Septage Receiving Facility

C. Process Design Conditions

- The septage receiving equipment specified in this Section shall meet the following design criteria under the specified range of performance and site design service conditions:

SEPTAGE RECEIVING EQUIPMENT DESIGN CRITERIA	
Number of Units	1
Process Fluid	Municipal Septage
Installation Location	Indoor
Influent Solids Concentration	0.5 to 6% solids
Screen Aperture Opening Size (Maximum)	6 mm
Minimum Hydraulic Capacity at 3% Solids	625 gpm
Screen Capacity	53 ft ³ /hr
Wash Press Capacity	212 ft ³ /hr
Number of Inlet Connections	1
Rock Trap	No
Flanged Odor Control Connection Size	NA
Wash Press Dewatered Screenings Discharge Location	Bagger System into Dumpster
Electrical Hazard Area	Class 1 Division 2
Maximum Spray Water Requirements	56 gpm @ 100 psi
Screen Motor Horsepower (Maximum)	3 HP
Wash Press Motor Horsepower (Maximum)	7.5 HP
Power Supply	460 V/60 Hz/3 Phase

- The wash press shall produce dewatered screenings capable of passing the EPA Paint Filter Test as described in method 9095 of EPA Publication SW 486.
- Water requirement for wash press may be intermittent, not continuous

D. Materials of Construction

- Provide materials of construction for system components as follows:
 - Tank: Type 304L stainless steel
 - Screenings Washer Guide Bars: Hardox 400 or UHMWPE
 - Screen Housing and Screen: Type 304L stainless steel
 - Screen Roller Bearings: High-strength nylon

- e. Cleaning Brushes: High-strength nylon or polypropylene
- f. Brush Backings and Clamps: Type 304L stainless steel
- g. Screenings Transport Screw: Type 304L stainless steel or epoxy-coated high-strength alloy steel
- h. Screenings Transport Screw Lower Bushing: Bronze
- i. Gear Box Housing: ASTM A48 Class 30 cast iron
- j. Spray Bar Pipe and Fittings: Minimum Schedule 40S Type 304L stainless steel
- k. Spray Wash System Nozzles: Type 304L stainless steel
- l. Spray Wash System Hose: Flexible PVC or neoprene
- m. Spray Wash System Manual Valves and Strainers: Brass
- n. Motor Housing: ASTM A48 Class 30 cast iron

E. Tank

- 1. The tank shall be minimum 1/8" thick and shall include a trough for screenings deposit. A mounting flange shall be provided around the perimeter of the trough for connection of a transitional hopper that directs the screenings from the screen into the trough (washing zone). The hopper shall be minimum 3/32" thick.
- 2. The tank shall include perforations in the washing and compaction zones to direct the excess water to the drain pan.
- 3. The lower body of the compaction zone shall be welded construction with a minimum of 10 mm end plates for maximum torsion resistance. The bottom of the compaction zone shall be curved to promote maximum cleaning and minimum depositing of materials.
- 4. Access cover
 - a. The compaction zone shall be provided with a gasketed access cover. Cover shall be hinged and latched and shall incorporate a safety interlock switch in order to prevent operation of the unit with the access cover open.
- 5. Drain Pan/Catch Pan
 - a. The pan shall be an integral part of the tank and shall collect the spent wash water and filtrate from the dewatered screenings. The pan shall include several bolted inspection openings.
 - b. The pan shall allow wash water from the spray wash system manifold to flush the trough for cleaning purposes. A flushing

connection shall be provided to discharge the drained water back to the upstream side of the screen.

6. High Level Alarm

- a. Provide instrumentation to monitor the liquid level in the tank upstream of the screen. Activation of a high-level alarm shall cause the septage receiving unit inlet valve(s) to shut.

F. Screen

1. The operation of the rotating screen and spray wash system shall be automatically initiated when septage is offloaded into the unit.

2. Screen

a. Option A

- 1) The screen shall be cylindrical in shape and be installed parallel to the direction of flow. The screen shall continuously rotate in one direction. A perforated plate shall be welded around the entire perimeter of the screen.
- 2) The perforated plate aperture sizing shall be as previously specified. Bars or wedge wire shall not be acceptable screen media.
- 3) The screen shall have internal flights to retain loose solids during rotation and convey them to a screenings collection trough prior to entering the wash press. The screenings collection trough shall extend beyond the influent end of the screen to maximum solids capture.
- 4) A cleaning brush shall be located on the exterior to aid the spray system in removing solids from the perforated plate openings.

b. Option B

- 1) The screen shall be a continuous screening belt consisting of heavy-duty stainless steel laced links connected in parallel and separated by spacers to maintain specified opening.
- 2) Links, hooks, and screening lifting members must be manufactured out of stainless steel. Plastic is not acceptable.
- 3) The seal shall be continuous from grade level through the water flow forming an uninterrupted closure between the traveling screen grid and the stationary frame. The seal shall

be fixed to the screen frame and adjustable so that it will remain in contact with the rotating screen belt at all times.

- 4) The continuous belt will rotate within a heavy-duty stainless steel static support frame that shall stand at a 60-degree angle in the channel.
- 5) The spray bar will be positioned behind the rotating belt and will backwash the solids into a discharge hopper manufactured from stainless steel. The wash water will be used to continuously flush the screenings directly into the Washing Compactor.

3. Screen Drive

- a. The screen shall use a single drive for screening and conveying the screening material to the wash press. Belt drives and hydraulic drives shall not be acceptable for this project. Gearmotors shall have a minimum AGMA Class I rating.
 - 1) Option A: The screen shall be driven by pinion gear positively engaged in a chain which is fixed to the drive end of the screen.
 - 2) Option B: The screen shall be driven by a flange mounted gear reducer utilizing a spur gear and bull gear assembly. Gear reducers shall be right-angle helical-bevel type.
 - 3) Option C: The screen will be driven by drive sprockets that shall support and rotate the grid assembly. The gear reducer shall be directly coupled to a heavy-duty shaft.

G. Wash Press

1. Screenings Transport Screw

- a. A shafted screw shall transport screenings from the tank trough (washing zone) into the compaction zone and shall force the dewatered screenings out the discharge. The screenings transport screw shall be 316SS or AR400 steel and designed for maximum torsion resistance in the screw.
- b. Screw flights in the compaction zone shall have an abrasion resistant plate welded to the flights. The last flight of the screw shall have hard metal seams welded around the external surface of the flight. Screw flights shall have a minimum thickness of 13/32".
- c. Lower Screw Support

- 1) Option A: The screenings transport screw shall be supported by a minimum of six guide bars. Guide bars shall be bolted to the inside of the tank from the exterior for easy access and removal. The guide bars shall be minimum 13/32" thick. Welded guide bars shall be not allowed.
 - 2) Option B: The screenings transport screw shall be supported by a sealed, self-lubricating lower bushing. The lower bushing shall be designed such that it does not take any thrust load from the transport screw.
 - 3) Option C: The screenings transport screw shall be supported at the compaction end by hardened steel wear and anti-rotation bars designed to prevent the compacted screening from spinning within the compaction zone.
- d. If required, a brush shall be attached to the screenings transport screw for the full length of the perforated washing zone.
2. Wash Press Drive
 - a. The motor shall be connected to the input of a helical gear reducer which is flange-mounted to the end of the compaction zone. The output of the gear reducer shall either be direct-coupled to the screw or be coupled to a pinion gear which drives a bull gear connected to the screw. The gearmotor shall have a minimum AGMA Class II rating.
 - b. The motor shall have the capability to reverse the screw, to clear or clean out any blockages that prevents the screw from rotating.
- H. Dewatered Screenings Disposal
1. Dewatered screenings shall be discharged into a continuous bagging system attached to a flanged adapter at the end of the wash press. The bagging device shall use endless bags to contain and encase dewatered screenings. The screenings bagging attachment shall be designed to be fitted with continuous hose that is factory mounted to a field replaceable cassette.
- I. Spray Wash System
1. The septage receiving unit spray wash system shall consist of piping, flexible hose and a series of nozzles which shall be designed to evenly distribute wash water to all washing points on the unit. All piping, tubing, solenoid valves, manual isolation valves, electrically actuated valves and strainers to be mounted on the septage receiving unit as part of the spray wash system shall be provided by the Supplier.

2. The screen shall be provided with a minimum of one spray bar for surface cleaning. The spray bar shall flush solids and shall operate only while the screen is operating.
3. The wash press shall be provided with a minimum of one spray bar for screw surface cleaning. Wash water shall be directed against the rotation of the screw flights in the inlet hopper, into the press zone of the wash press and subsequently into the drain pan.
4. A water strainer shall be provided of a size suitable for connection to the spray wash water piping and the maximum flow and pressure conditions previously specified. The water filter shall be a stacked filter element design with 20-mesh (800 micron) filter elements.

J. Solenoid Valves

1. Provide solenoid control valves designed and constructed in accordance with the following requirements and design criteria.
 - a. Size: 3/8-inch to 3-inch – based on system requirements
 - b. End connections: threaded NPT.
 - c. Valve body: cast brass or cast bronze – packless.
 - d. Port type: full port.
 - e. Valve position: normally closed.
 - f. Service required: open/close.
 - g. Seat and seal: EPDM or Viton.
 - h. Internal parts: 304 stainless steel.
 - i. Minimum safe working pressure: 150 psi.
 - j. Valve design: 2-way – slow close type.
 - k. Valve action (valves smaller than 1-inch): direct acting.
 - l. Valve action (valves 1-inch and larger): pilot operated.
 - m. Minimum differential pressure: 0 psi.
 - n. Maximum differential pressure: 5 psi.
 - o. Power supply: 115 Volt, 1 Phase, 60 Hertz.

2.03 OFFLOAD STATION

A. Unit Descriptions

1. Provide the following offload stations as a part of the Work specified.

Tag #	Description	Location
MV-XXX	Flow Control Valve	Indoor
FE/FIT-XXX	Flow Meter	Indoor
SP-XXX	Septage Offload Station Panel	Outdoor

B. Process Design Conditions

1. Each of the septage offload stations specified in this section shall meet the following design criteria under the specified range of performance and site design service conditions:

FLOW CONTROL VALVE DESIGN CRITERIA	
Number of Valves	1
Valve Type	Ball
Valve Size	Match Septage Equipment Inlet Piping Diameter
Process Fluid	Municipal Septage
Service Required	Open/Close
Power Supply	120 Volt, 1 Phase, 60 Hertz
Electrical Hazard Area	Class 1 Division 2
Enclosure Rating Minimum	NEMA 7
Installation Location	Indoor
Control Space Heater	No
Pushbutton Station	Remote

FLOW METER DESIGN CRITERIA	
Number of Flow Meters	1
Flow Meter Type	Magnetic
Flow Meter Size	Match Septage Equipment Inlet Piping Diameter
Flow Range	0.032ft/s and 108ft/s
End Connections	Flanged
Transmitter Mounting	Remote
Installation Location	Indoor
Power Supply	460 V/60 Hz/3 Phase
Electrical Hazard Area	Class 1 Division 2
Enclosure Rating	NEMA 7
Empty Tube Detection	No

HAULER ACCESS STATION DESIGN CRITERIA	
Number of Units	1
Installation Location	Outdoor, Covered
Power Supply	120 VAC
Electrical Hazard Area	Unclassified
Enclosure Rating Minimum	NEMA 4X

A. Materials of Construction

1. Provide materials of construction for system components as follows:
 - a. Valve Body: PVC
 - b. Valve Elastomers: Nitrile (Buna-N) or EPDM
 - c. Valve Actuator Enclosures: Aluminum, cast iron or steel
 - d. Valve Actuator Worms and Power Gearing: Alloy steel or bronze
 - e. Valve Actuator Limit Switch Gearing: Steel or bronze
 - f. Valve Actuator Motor Housing: ASTM A 48 Class 30 cast iron
 - g. Flow Meter Tube: Carbon steel
 - h. Flow Meter Liner: PTFE or hard rubber
 - i. Flow Meter Electrode and Ground: Type 316 stainless steel
 - j. Flow Meter Transmitter: ABS or aluminum

- k. Hauler Access Station Housing, Keys and Bezels: Type 304 stainless steel

B. Inlet Valve

1. PVC Ball Valve – Type 21

- a. Provide PVC ball valves suitable for use on septage receiving equipment and as specified. The valves shall be industrial type manufactured to ASTM F1970. All PVC ball valves shall be constructed from PVC Type I, per ASTM D1784, Cell Classification 12454. All O-rings shall be compatible with the pumped fluid as specified and as recommended by the valve manufacturer. All valves shall have a stem with double O-ring seals. All valve handles shall be polypropylene with a built-in lockout mechanism. All valve union nuts shall have Buttress threads. All valve components shall be replaceable without removing the valve from the piping line.
 - 1) Size: 1/2 Inch to 8 Inch - Match to piping size as shown on the Drawings
 - 2) End Connections: Flanged ANSI 150
 - 3) Valve Body, Ball, Carrier, End Connector & Stem: PVC
 - 4) Valve Seat: EPDM
 - 5) Maximum Line Pressure: 235 psi
 - 6) Valve Operator: Lever

2. All PVC ball valves of the same type, style and duty shall be supplied by a single manufacturer. All PVC ball valves shall be a product of the following manufacturer:

- a. Asahi/America Inc.
- b. Spears Manufacturing Company
- c. Hayward Industrial Products Inc.
- d. Or approved equal

C. Flow Meter

- 1. The flow tube shall have a coil resistance of 7 - 16Ω and shall be capable of processing signals from fluids that are travelling between 0.04ft/s and 39.37ft/s. The transmitter shall be FM approved for the Electrical Hazard Area previously specified.

2. Flow meters shall be Rosemount 8700 series or approved equal.

D. Hauler Access Station

1. General
 - a. Hauler access to the station shall be established using a unique PIN
2. Enclosure
 - a. Outer door shall be provided such that when closed the septage offload area can be washed down without damaging the internally mounted devices.
 - b. Internal swing-out door
 - c. Lockable full-grip handle with 3-point latch
 - d. Drip shield
 - e. Thermal protection
 - f. Instruction prompts
3. Operator Interface Display Unit
 - a. Anti-glare, low reflection coating
 - b. LED type, 1000 NIT brightness,
 - c. VGA input
 - d. -30°C to 80°C temperature range
 - e. USB type interface
4. Interface Keypad
 - a. Keypad shall be daylight-visible display, outdoor-rated and separate from the display unit. The display shall provide log-on instructions and real time status for the hauler and prompt for additional information as required.
 - b. USB type interface
 - c. Audible tone feedback
5. Communication Controller
 - a. Hauler access stations shall continue to function normally even without a network connection. All hauler transaction data shall be stored in a local solid state drive. USB flash drive or SD card type data storage shall not be acceptable. Once network connection is established, all transaction data shall be automatically synchronized and stored securely in an IT managed SQL database.

- b. Ethernet connection
 - c. Dual LAN ports
 - d. Minimum 6 USB ports
6. Programmable Logic Controller (PLC)
- a. Ethernet connection
 - b. Allen-Bradley MicroLogix 1400, or approved equal
 - c. Configurable spare analog and digital I/O
 - d. RS232 printer interface
 - e. Detachable terminals
 - f. Non-volatile memory
7. Receipt Dispenser
- a. Contact thermal printer shall print a receipt for each hauler after each transaction. Receipt dispenser shall be backlit with an integral auto-cutter and anti-paper jam system (self-feeding, self-correcting).
 - b. Once a transaction has been completed, the printer shall (within 10 seconds) print and cut a receipt within 10 seconds of transaction completion and inform the hauler that a receipt has been printed. A low paper alarm shall be configured with the management software to indicate that the receipt paper roll must be changed.
 - c. Maintenance activities such as changing the receipt paper shall be maintained without requiring Arc Flash protective clothing and without performing high risk work. Motor starters or other high voltage devices shall be located in a separate control panel.
 - d. Each printed receipt shall include the following:
 - 1) Date and Time of Transaction
 - 2) Station ID and Ticket Number
 - 3) Hauler ID
 - 4) Volume Unloaded
 - 5) Product Type ID
 - 6) Elapsed Time
 - 7) pH Reading
 - 8) Alarm ID

- 9) Appropriate site contact information
- e. RS232 and USB data port
8. Pilot Devices
 - a. Heavy Duty, 30mm. AB Type 800H or approved equal
 - b. Provided as required
9. Ethernet Switch (Unmanaged)
10. Management Software
 - a. Hauler access stations shall include the necessary software to allow a local or remote networked PC to seamlessly interface with the station using an Ethernet connection.
 - b. The software shall be web based with unlimited users, utilizing Microsoft Internet Information Services (IIS).
 - c. The software shall allow for connections to an unlimited number of networked hauler access stations.
 - d. The software shall monitor the hauler access stations and automatically upload hauler transaction data to the networked PC.
 - e. An unlimited number of users shall have access to the web interface for hauler and data management.
 - f. The data from each hauler transaction shall be collected and stored in a secure encrypted SQL database. The following data shall be collected:
 - 1) Site ID
 - 2) Station ID
 - 3) Ticket number
 - 4) Hauler ID
 - 5) Date and time of transaction
 - 6) Volume offloaded
 - 7) Additional process analyzer data
 - 8) Product type ID
 - 9) Alarm ID

- 10) Five (5) additional fields shall be available for the administrator to define
 - g. The software shall be used to configure the flow meter communicating with the associated hauler access station.
 - h. An interface shall be provided to allow the user to view hauler transaction data and enter/edit information when necessary. The software shall have a built-in sorting tool that allows the user to create multiple data views. The software shall have a “Main Screen” view that displays all transaction data divided into the following sections:
 - 1) Transaction Log
 - 2) Customers
 - 3) Truck Status
 - 4) Customer Balances
 - 5) Link to Reports
 - i. The software shall allow the user to define the hauler access station’s operating time schedule. If the station is closed, a message will alert the hauler that the station is closed.
 - j. Hauler and Truck Features
 - 1) The software shall allow the user to create a list of haulers that can be billed. The software shall not limit the number of hauler accounts that can be created.
 - 2) The software shall allow the user to create multiple truck accounts and link these accounts to the corresponding hauler. The software shall not limit the number of trucks that can be assigned to each hauler.
 - 3) The user shall be able to enter hauler ID numbers, PINs, and truck details including capacity, weight, and vehicle information into the system.
 - 4) Each hauler shall receive a 4-digit PIN for each truck. PIN assignment can be unique per owned truck or common to all owned trucks, depending on the facility and customer preference. The software shall auto-generate customer PINs or shall allow the administrator to manually assign PINs to customers.

- 5) The software shall allow the user to enable or disable a truck's access privilege. Once disabled, a hauler's access will immediately be denied. A message shall be displayed upon log-in at the hauler station informing the hauler to contact the office.
- k. Waste Type Features
- 1) The software shall allow the facility to define a rate to be charged per 1,000 units of waste offloaded. The software shall allow the user to define these units (gallons, liters, etc.). The user shall also be able to set different rates for the same waste type such as in-county vs. out-of-county customer.
 - 2) When accessing the station, the hauler shall be prompted at log-in to identify the waste type to be unloaded.
- l. Status and Alarm Features
- 1) The user shall monitor the current hauler/truck total flow, waste type, valve status, equipment faults, and additional user-defined variables in real time via Ethernet.
 - 2) The user shall be able to remotely monitor alarms at the hauler access station. Alarms make the station unusable or may prevent a hauler from unloading. These alarms include:
 - a) E-Stop pressed
 - b) Printer low paper
 - c) Equipment fault
 - d) Septage unit high level
 - e) Optional user-defined alarm (20 available)
- m. Reporting, Billing, and Payment Features
- 1) The user shall be able to manage each hauler on either a debit or credit basis and choose whether customers shall pay prior to or after using the hauler access station.
 - 2) The software shall debit account balances automatically and auto-deactivate the truck's access privilege should the hauler's balance drop below the minimum set by the user.
 - 3) The software shall allow the user to bill based on a truck capacity basis, a metered basis or by manual entry.

- 4) The software shall allow the user to enter payments if required. The total balance shall automatically recalculate once a payment is applied. A hauler's account that has been deactivated shall be automatically reactivated once payment is received.
- 5) The user shall be able to use the features of the software to substantiate the data recorded from each transaction and accurately calculate the total cost on a per hauler basis.
- 6) The software shall have multiple pre-formatted reports that will, at a minimum, show activity with daily totals, statements, and customer and truck usage. The software shall also allow generation of billing statements that can be exported for accounting use. The reports and billing statements shall be easily exported into PDF, CSV, XLS, and other formats.

2.04 MOTORS

- A. Unless otherwise specified, all motors shall be totally enclosed, fan-cooled and designed for 460 volts, 3 phase, 60 hertz service. All motors shall be NEMA "Premium Efficiency" design and rated for the Electrical Hazard Area previously specified. All motors shall be capable of meeting the NEMA-rated maximum number of equally spaced starts per hour.
- B. Motor efficiency shall meet published EPACT and/or NEMA efficiency ratings. Motors that do not meet EPACT efficiency ratings shall not be acceptable. All motors shall have a NEMA B design rating. All stator windings and leads shall have a minimum Class F or H insulation rating.
- C. In variable speed applications, all windings shall be rated for inverter duty in accordance with NEMA MG1, Part 31 standards to reduce damage caused by voltage spikes associated with variable frequency drives (VFDs). Motors that do not utilize inverter spike resistant windings shall not be acceptable.
- D. The combined service factor of all motors shall be a minimum of 1.0 without a VFD or 1.15 with a VFD. The motor horsepower shall be selected such that the unit is non-overloading over the entire specified performance range. All motors shall conform to NEMA MG 1 or IEC Class N standards.

2.05 HARDWARE

- A. All bolts, nuts, anchors, washers, appurtenances and related fastening hardware shall be Type 316 stainless steel. All stainless steel components shall be electro-polished or pacified for maximum corrosion resistance. All stainless steel bolts shall comply with ASTM F 593. Stainless steel nuts shall comply with ASTM F 594.

2.06 FINISHING

- A. All external ferrous metallic surfaces shall be sandblasted to SSPC SP 6 standards, given one coat of the Supplier's epoxy primer 4-6 MDFT and be provided with the Supplier's standard epoxy coating system at the factory prior to shipment. Coatings shall be resistant to sewage, high humidity, hydrogen sulfide, and other chemicals normally found in wastewater.
- B. Galvanized, stainless steel, brass, bronze, aluminum, FRP and plastic components shall not be painted.
- C. The following items shall be finished in accordance with the Supplier's standard practice suitable for the specified end use environment: motors, gearmotors, speed reducers, chains, sprockets, shafts, exposed drive train elements, and pushbutton stations.

2.07 WELDING

- A. All welding in the factory shall use shielded arc, inert gas, MIG or TIG method. All welded connections shall develop the full strength of the connected elements and all joined or lapped surfaces shall be completely seal welded with a minimum 3/16-inch fillet weld. Filler wire shall be added to all welds to provide for a cross section equal to or greater than the parent metal. Butt welds shall fully penetrate to the interior surface and gas shielding to the interior and exterior of the joint shall be provided. All welding shall be in accordance with the latest edition of the American Welding Society (AWS) standards. Field welding of stainless steel components shall not be permitted without written approval of the Engineer. Sharp projections of cut or sheared edges of ferrous metals shall be ground to a radius by multiple passes of a power grinder as required to ensure satisfactory coating adhesion.
- B. Design and fabrication of structural steel members shall be in accordance with AISC and AWS Standards. The Supplier shall comply with the American Welding Society (AWS) and the American Institute of Steel Construction (AISC) most current listed standards and qualifications in 2004 D1.1, the criteria per the requirements of Section 6 - Inspection - Structural Welding Code. Evidence of such AWS and AISC compliance shall be submitted with shop drawing submittals as follows:
- C. AWS Certified Welding Inspectors (minimum 2 on staff) shall conform to all standards, current or previous as listed in Section 6.1.4 of AWS QC1.
- D. AWS Non Destructive Testing Inspectors (Level I, II, III) for Magnetic Particle and Ultra-Sonic testing (minimum 2 on staff) shall conform to all standards, current or previous as listed in and in conformance with The American Society for Non-Destructive Testing (ASNT-TC-1A).

2.08 PASSIVATION

- A. The equipment, after its fabrication, shall undergo a passivation (pickling) process to ensure maximum resistance to corrosion. All stainless steel parts of the unit shall be fully submerged into a pickling bath. The Supplier shall clean all stainless steel surfaces and chemically treat all external non wetted stainless steel to a uniform finish. After removal from the pickling bath, the equipment shall be washed with a high-pressure wash of cold water to remove any remaining surface debris and promote the formation of an oxidized passive layer which is critical to the long life of the stainless steel. No stainless steel components shall be fabricated or assembled in a factory where carbon steel products are also fabricated, in order to prevent contamination by rust.
- B. Chemical passivized stainless steel products shall not produce any hazardous wastes during the passivation process. The Supplier shall clearly identify the passivation procedure methodology and shall certify that no hazardous wastes were produced.

2.09 NAMEPLATES

- A. Each major item of equipment shall have the Supplier's name, address, type or style, model or serial number, catalog number, rated capacity, speed, and all other pertinent data on a plate secured to the item of equipment. The nameplate for each electric motor shall show at least the minimum information required by NEMA MG 1 standards.

2.10 EQUIPMENT GUARDS

- A. All rotating parts so located that any person may come in close proximity thereto shall be enclosed and/or guarded in compliance with OSHA regulations.

2.11 SPARE PARTS

- A. The Supplier shall furnish one (1) set of the following spare parts. At a minimum, a set of spare parts shall include the following:
 - 1. One solenoid valve
 - 2. One set of guide bars (if required)
 - 3. One set of screen spray nozzles
 - 4. One set of wash press spray nozzles
 - 5. One cleaning brush
 - 6. Ten (10) hook links and elements spacers (if required)
 - 7. Two (2) grid axles (if required)

- B. The spare parts shall be individually boxed with the project name and part number clearly identified on each individual box. All spare parts shall be shipped in a separate crate and clearly labeled. Spare parts shall be stored indoors in a temperature-controlled environment.

2.12 OILS AND LUBRICANTS

- A. The Supplier shall state in the operating and maintenance manual the amount of and specification for any lubricants required. All lubricants for the equipment shall be non-proprietary and easily obtainable from a local source for operations staff convenience. Designs which utilize proprietary and/or special lubricants shall not be acceptable.
- B. All lubrication fittings shall be brought to the outside of all equipment so that they are readily accessible from the outside without the necessity of removing covers, plates, housings, guards or other appurtenances. All lubrication fittings shall be readily accessible from operator level. Lubrication fittings which are located in areas requiring the Owner to enter tankage/vessels for access shall not be acceptable. Provide zerk-type fittings for all lubrication points.
- C. Provide the required oil and grease for initial operation. The grades of oil and grease shall be in accordance with the Supplier's recommendations.

2.13 CONTROLS

- A. Provide all controls necessary for the fully automatic operation of the septage receiving equipment, including a painted steel NEMA 7 control panel for installation in a Class 1 Div 2 environment and an aluminum NEMA 7 local E-stop station.
- B. The main control panel shall be UL listed and labeled. The enclosure shall have a continuous hinge and lockable door latch, and shall include the following:
 - 1. 600-Volt rated main circuit breaker disconnect with lockable handle, fuses, relays and appurtenances for a complete and functional system.
 - 2. Power Supply: 480 VAC 3-phase 60 Hz power.
 - 3. All 480 VAC and 120 VAC/24 VDC wiring shall be physically separated within the control panel.
 - 4. Reversible Screen VFD (if required): Square D Altivar 312 or approved equal.
 - 5. Reversing Motor Starters: Type IEC with Circuit Breaker Protection.
 - 6. Control power transformer with 120 VAC transient voltage surge compressor (TVSC) and fused primary and secondary.

7. Control panel wiring shall be color coded, neatly cabled and supported in non-flammable wiring tracks. Wiring shall be minimum 14 gauge MTW stranded wire.
8. Alarm silence and reset push buttons.
9. Control relays, wiring and circuitry required to implement the control logic.
10. Interposing relays for critical status, alarms shall be provided to interface with owner SCADA PLC. Signal splitter shall be provided for analog inputs (Flow Meter) for signal to owner SCADA PLC.
11. Programmable logic controller (PLC): Allen Bradley Micrologix 1400, or approved equal. Modules used shall be the following:
 - a. Discrete input modules: Allen-Bradley 1762-IQ8 and 1762-IQ16, or approved equivalent.
 - b. Discrete output modules: Allen-Bradley 1762-OW8 and 1762-OW16, or approved equivalent.
 - c. Analog input modules: Allen-Bradley 1762-IF4, Spectrum Controls 1762sc-IF8, or approved equivalent.
 - d. Analog output modules: Allen-Bradley 1762-OF4, Spectrum Controls 1762sc-OF8, or approved equivalent.
12. The PLC shall be capable of Ethernet/IP communications, either through an onboard Ethernet port or through an Ethernet/IP communications module. Provide Ethernet communication of all monitoring, control and status to the plant SCADA system.
13. The PLC shall be capable of stand-alone operation in the event of a SCADA network failure.
14. Provide the ability to change setpoints, control equipment and enable/disable alarms at the OIT.
15. Operator Interface Terminal (OIT): acceptable level of quality equal to Allen Bradley PanelView Plus 7 Standard Series.
 - a. The OIT shall be color graphic display that connects directly to the PLC's communication port or a communication module and allow viewing and changing of the PLC's parameters.
 - b. Rating: NEMA 4/4X
 - c. Power: 24VDC
 - d. The OIT shall be provided with an integrated real time clock with battery backup.

- e. Minimum Resolution: 640 x 480 VGA graphics with 18 bit color graphics.
 - f. The OIT shall be provided with touch screen operation.
 - g. Minimum display size shall be 10 inch.
16. Hand/Off/Automatic (HOA) Selector Switches for the following:
- a. Each wash water solenoid valve
17. Forward/Reverse/Off/Remote (FROR) Selector Switch for the following:
- a. Screen
 - b. Wash press drive
18. Pilot lights for:
- a. Wash Press Current Monitoring Relay
 - b. Control power on (white)
 - c. Running (RED) for each motor
 - d. Fault (GREEN) for each motor
19. Plastic Nameplates
- C. The Supplier shall provide a local mounted Push-to-Stop/Pull-to-Run emergency stop-maintained push button with lockout (E-Stop station) for the septage receiving unit. The local E-Stop assembly shall be shipped loose. The Buyer's construction contractor shall install the local E-Stop assembly in accordance with the Supplier's recommendations and as directed by the Engineer and Buyer. The local E-Stop station shall be rated for the Electrical Hazard Area Classification as previously specified. At a minimum, the local E-Stop station shall include but is not limited to the following:
- 1. E-stop push button (GREEN)
 - 2. Black phenolic nameplates with white lettering

2.14 ACCEPTABLE SUPPLIERS

- A. All septage receiving equipment of the same type, style, and duty shall be supplied by a single Supplier. All septage receiving equipment shall be a product of the following Supplier:
- 1. Huber Technology, Inc.
 - 2. Saveco North America, Inc.
 - 3. Hydro-Dyne Engineering

4. Or approved equal

PART 3 – EXECUTION

3.01 INSTALLATION

- A. Contractor to install the equipment in accordance with the Supplier's written instructions as directed on site by the Supplier's representative and/or Engineer. Correct installation and assembly of the equipment shall be the Contractor's responsibility. Install all equipment and appurtenances in accordance with the Drawings and the Supplier's installation instruction manual.
- B. All appurtenances required for a complete and operating septage receiving system shall be provided, including but not limited to such items as piping, conduit, valves, wall sleeves, wall pipes, concrete foundations, anchors, grouting, power supply, and controls.

3.02 FACTORY TESTING

- A. The drive assembly of each piece of equipment to be supplied shall be assembled prior to shipment and test run to assure proper operation and function. The equipment shall be operated with the specific drive motor that will be furnished with the equipment. At a minimum, during shop testing the Supplier shall record the following information for each motor:
 1. Motor serial number
 2. Motor amperage draw at start-up
 3. Motor amperage draw after 15 minutes running forward
 4. Motor amperage draw after 30 minutes running forward
 5. Motor amperage draw during reverse operation
- B. A quality control check form showing the factory test results and that each unit successfully passed factory tests shall be provided by the Supplier.
- C. Each control panel to be supplied shall be assembled prior to shipment. All input and output points shall be tested to assure proper operation and function.
- D. If desired by Owner and/or Engineer, allow witnessing of all factory inspections and tests at manufacturer's testing facility. Notify Owner and Engineer at least thirty days before inspections and tests are scheduled.

3.03 FIELD TESTING

- A. Field testing will be coordinated and executed by the Contractor, with support from the Supplier.
- B. Prior to acceptance, perform an operational test of all equipment, drivers, and control systems to determine if the installed equipment meets the purpose and intent of the specifications. Tests shall demonstrate that the equipment is not electrically, mechanically, structurally, or otherwise defective; is in safe and satisfactory operating condition; and conforms to the specified operating characteristics. Prior to applying electrical power to any motor driven equipment, the drive train shall be rotated by hand to demonstrate free operation of all mechanical parts. Tests shall include checks for excessive vibration, leaks in all piping and seals, correct operation of control systems and equipment, proper alignment, and power consumption.
- C. Provide all requirements to conduct a proper field test which include but are not limited to power, water, facilities, labor, materials, supplies and test instruments.
- D. In the presence of the Supplier's representative, the Contractor shall test and inspect all necessary controls which include but are not limited to all VFD set points and interlocks required for the equipment to function properly without causing damage to the equipment. The Supplier's representative shall provide the Contractor and Engineer with the necessary set points in writing prior to the site acceptance test visit as outlined in the submittals. Initial testing of the system shall be with water. Wastewater shall not be used for initial testing.
- E. Visually inspect goods upon delivery. Prior to the Buyer accepting delivery, provide a written report to the Buyer and the Engineer itemizing any damage incurred.
- F. Provide Field Test Booklets for each system showing all field tests performed to adjust each component and all field tests performed to prove compliance with the specified performance criteria, upon completion and testing of the installed system. Each test report shall indicate the final position of controls paint filter test results and approximate volume of screenings collected during the test.
- G. Field testing shall demonstrate that all controls and systems function properly. A successful field test shall include successful offloading of at least one septage truck through each receiving station inlet without alarms or shut downs, except as intended for testing. Testing fluid shall be wastewater.
- H. Perform a paint filter test in accordance with method 9095 of EPASW-846.3-3 using screenings produced by the specified equipment.

3.04 RETESTING

- A. If the equipment does not successfully pass the tests listed above, the Supplier shall repair the equipment and perform the tests again until passing the tests successfully.

If any deficiencies are revealed during any test, such deficiencies shall be corrected, and the tests shall be reconducted at no additional cost to the Owner.

3.05 SUPPLIER'S SERVICES

- A. Services of a Supplier's representative who is experienced in the installation, adjustment, and operation of the equipment specified shall be provided. The on-site man days listed below are exclusive of travel time and do not relieve the Contractor of the obligation to provide sufficient service to place the equipment into satisfactory operation.
- B. The Supplier's representative shall supervise the installation, adjustment, and testing of the equipment. The Supplier's representative shall be present for a period of not less than two (2) on-site days to inspect the delivered and installed equipment, supervise the initial test run, and to provide instruction to the plant personnel. A representative from the septage offload station Supplier shall also be present for a period of two (2) on-site days for initial programming and instruction to plant personnel.
- C. The Supplier's representative shall provide a certification of proper installation and satisfactory operation to the Owner and Engineer. Certification shall be signed and dated by Supplier's representative.
- D. The Supplier's representative shall make all necessary adjustments and settings to the controls. In particular, Service Engineer shall verify the control set points for each piece of equipment as well as proper rotational direction.

3.06 FIELD TRAINING

- A. 2 field training courses shall be provided for designated personnel. Each course will be held on separate days for a period of not less than 4 hours each. Training shall be provided in conjunction with the visit from the Supplier's representative. The training shall start after the system is functionally complete but prior to final acceptance tests. Field training shall cover all the items contained in the operating and maintenance manuals, including normal operations, troubleshooting, maintenance, lubrication, and other related work.

END OF SECTION

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