

SECTION CA
AGREEMENT

THIS AGREEMENT, executed this 10th day of August

in the year Two Thousand and Seventeen.

(herein referred to as the "AGREEMENT") by and between the Rockaway Valley Regional Sewerage Authority, located at 99 Greenbank Road, Boonton, New Jersey 07005, party of the first part, acting by and through its Chairman, duly authorized therefor, acting herein solely for said Authority and without personal liability to themselves, party of the first part (hereinafter referred to as the "Owner"), and

Tomar Construction Services, Inc., with principal offices located at
18 Connerty Court, Suite B, East Brunswick, NJ 08816,

party of the second part (hereinafter referred to as the "Contractor")

WITNESSETH, that the Owner and Contactor (collectively, the "Parties") to these presents, 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, its successors and assigns, and the Contractor for himself and his heirs, executors, administrators, successors and assigns, as follows:

INDEX

CA.1	Definitions
CA.2	The Contract Documents
CA.3	Obligations and Liability of Contractor
CA.4	Authority of the Owner/Engineer
CA.5	Supervision of Work
CA.6	Insurance
CA.7	Patents
CA.8	New Jersey Environmental Infrastructure Trust Program Requirements
CA.9	Utilization of Socially and Economically Disadvantaged (SED) Owned Business Enterprises
CA.10	Compliance with Laws
CA.11	Provisions Required by Law Deemed Inserted
CA.12	Construction Contract Dispute Procedures
CA.13	State Non-Discrimination Provision
CA.14	Permits
CA.15	Not to Sublet or Assign
CA.16	Worksite
CA.17	Before Starting Construction and Time for Completion
CA.18	Liquidated Damages
CA.19	Work Hours
CA.20	Employ Competent Persons
CA.21	Employ Sufficient Labor and Equipment
CA.22	Intoxicating Liquors and Controlled Chemical Substances
CA.23	Access to Work
CA.24	Examination of Work
CA.25	Defective Work, Etc.
CA.26	Protection Against Water and Storm
CA.27	Right to Materials
CA.28	Change Orders
CA.29	Extra Work
CA.30	Extension of Time on Account of Extra Work
CA.31	Changes Not to Affect Bonds
CA.32	Claims for Damages and Limitation on Damages
CA.33	Abandonment of Work or Other Default
CA.34	Prices for Work
CA.35	Moneys May be Retained
CA.36	Formal Acceptance
CA.37	Progress Estimates
CA.38	Partial Acceptance
CA.39	Final Estimate and Payment
CA.40	Payment Cycle
CA.41	Liens
CA.42	Claims

CA.43	Application of Moneys Retained
CA.44	No Waiver
CA.45	Liability of Owner
CA.46	Guarantee
CA.47	Warranty; Maintenance Bond and Environmental Maintenance Bond Requirements
CA.48	Return of Drawings
CA.49	Cleaning Up
CA.50	Legal Address of Contractor
CA.51	Headings
CA.52	Modification or Termination
CA.53	Waiver of Breach
CA.54	Applicable Law
CA.55	Contract Remaining Valid
CA.56	Federal Labor Standards Provisions
CA.57	New Jersey Prevailing Wage Act
CA.58	American Goods and Products
CA.59	As-Built Drawings
CA.60	Penalties for Falsification
CA.61	Equivalent Equipment and Material
CA.62	Implementation of American Iron and Steel Provisions of P.L. 113-76, Consolidated Appropriations Act, 2014
CA.63	Recordkeeping
CA.64	Entire Contract

CA.1 DEFINITIONS

Wherever the words hereinafter defined or pronouns used in their stead occur in the Contract Documents, they shall have the following meanings:

"Applicable Laws" means any permit, laws, rules, regulations, ordinances, resolutions, judgments, orders, guidelines or guidance documents, directives, standards now existing or hereinafter enacted, adopted, promulgated, issued or enforced by any Governmental Body or court of competent jurisdiction relating to the Owner, Contractor, any subcontractor, or any of the Work to be performed under the Contract Documents, including Environmental Laws, as that term is defined herein.

"Agreement" means the Contract as defined herein.

"Bid" or "Proposal" means the offer or proposal of the Successful Bidder submitted on the prescribed forms setting forth the prices for all components of the Work to be performed and implemented and any and all information required by the Contract Documents.

"Bidder" means the person, firm, corporation or other entity that submits a Bid on the

prescribed forms included in the Contract Documents.

“Bond” in any context, including, but not limited to, “Bid Bond”, “Performance Labor and Material Payment Bond”, “ Maintenance Bond”, “Environmental Maintenance Bond”, and any instrument of financial security required by the Contract Documents.

“Change Order” means a document that authorizes an addition, deletion, or revision in the Work or an adjustment in the price to be paid or the time of performance, issued after the effective date of this Agreement. Any and all Change Orders shall be approved by the Owner in writing in accordance with the provisions of N.J.A.C. 5:30-11.1, et seq. The Owner shall not be responsible for any payment for which a Change Order was not formally approved by the Owner.

“Contract” means all of the covenants, terms, conditions and stipulations contained in this Contract, which incorporates by reference all of the terms and conditions contained in all of the Contract Documents, including all Schedules or Exhibits attached hereto as if fully set forth herein and any amendments to this Contract which have been executed by both the Owner and the Contractor.

“Contract Date” means the date of execution of the Contract by both Parties hereto.

“Contract Documents” or “Bid Documents” means, collectively, all of the covenants, terms, conditions and stipulations contained in this Contract, and in the supplementary documents which constitute essential parts of this Contract, and are hereby incorporated as if fully set forth herein, as follows:

- a. Notice to Bidders;
- b. Bidders’ Information;
- c. Contract;
- d. General Conditions and Supplementary Conditions;
- e. Technical Specifications, Drawings, and attachments thereto;
- f. Bid and Bid Proposal Form;
- g. Change Orders, Work Change Directives, Field Orders
- h. Notice of Award;
- i. Bid Guarantee (Check or Bid Bond);
- j. Certificate from a Surety Company;
- k. Statement of Corporate Ownership and Ownership Disclosure;
- l. Addenda to Contract Documents (if any Addenda are issued);

- m. Listing of Subcontractors;
- n. Disclosure of Investment Activities in Iran;
- o. Statement of Compliance with Equal Employment Opportunity Requirements;
- p. Statement of Compliance with Affirmative Action Requirements;
- q. Non-Collusion Affidavit;
- r. Consent of Surety as to a Labor and Material Payment Bond;
- s. Affirmative Action Compliance Notice;
- t. Insurance Policies and Certificate(s) of Insurance;
- u. State of New Jersey Business Registration Certificates of Contractor and Subcontractors;
- v. State of New Jersey Public Works Contractor Registration;
- w. Initial Project Workforce Report (Form AA201), as may be applicable;
- x. W-9 Form;
- y. Change Orders (if any), issued at any time during the Contract Term or any term within which the Contract is extended by both Parties hereto; and
- z. Any and all other documentation not otherwise specifically mentioned herein but which is submitted by the Successful Bidder/Contractor with its Bid or subsequent thereto, pursuant to the terms of the Contract Documents.

“Contract Price” means the moneys payable by the Owner to the Contractor for completion of the Work in accordance with the Contract Documents.

“Contract Term” means the term for performance of the contract, and the period during which this Contract shall be in force and effect which shall not be amended or modified except as provided in writing by express agreement of the Parties hereto, as applicable.

“Contract Times” means the number of days stated in the Contract to complete the Work so that it is ready for final payment as evidenced by the Engineers written recommendation for final payment.

“Contractor” means the entity with which the Owner enters into a Contract for the Work. The term shall include such Party's legal representatives and/or agents appointed to act on its behalf in the performance and implementation of the Work.

“Construction Liaison” or “Resident Project Representative” or “Resident Engineer” means the person or firm which has a contract with the Owner for the engineering and construction observation during the construction of the Project.

“Cost of the Work” means the sum of all costs, except those excluded by the Contract Documents, incurred and paid by the Contractor in the proper performance of the Work, but only provided that said costs are only those additional or incremental costs required because of the change in the Work and the same are agreed in writing by the Owner pursuant to a Change Order.

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

“Engineer” means that person or firm duly appointed by the Owner to undertake the duties and powers herein assigned to the Engineer, acting either directly or through duly authorized representatives.

“Environmental Laws” means any present or future applicable federal, state or local law, rule, regulation, order, ordinance or other legal requirement related to the protection of human health and the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601, et seq. (“CERCLA”); Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq. (“RCRA”); Site Remediation Reform Act, N.J.S.A. 58:10C-1, et seq. (“SRRA”); Industrial Site Recovery Act, N.J.S.A. 13:1K-6, et seq. (“ISRA”); New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11, et seq. (the “Spill Act”); Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21, et seq.; Water Pollution Control Act, N.J.S.A. 38:10A-1, et seq.; Solid Waste Management Act, N.J.S.A. 13:1E-1, et seq.; and any other such laws, ordinances, rules, regulations, court orders, judgments and common law which govern any aspect of the Work, including the collection and containerization of any Hazardous Substance(s), the disposal of solid waste, and the Recycling or beneficial re-use of any substance, waste, or material, including scrap steel and/or any other metal(s) or materials, located at the Facility or originating from property that is owned or operated by the Owner.

“Facility” means the location of the Work.

“Field Order” means a written order issued by the Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

“Final Completion” means the proper completion of all Work, for the entire project as contemplated and provided for under the Contract Documents, sufficient for the acceptance by the Owner. If any items of work shall not have been properly completed,

e.g., should any punch list items remain uncompleted, Final Completion shall not have been achieved. The Owner, with the advice of the Engineer, shall fix the date of Final Completion of all the work and shall annotate the date of Final Completion upon the Contractor's final Application for Payment.

“Governmental Body” means any federal, state, county, legislative or executive office or local agency, department, commission, Owner, court, or tribunal and any successor thereto, exercising executive, legislative, judicial, advisory or administrative functions of or pertaining to government, the Owner, the Contractor, any subcontractor, any Bid, the bidding process or any aspect of the Work including, without limitation, the United States Environmental Protection Agency and the New Jersey Department of Environmental Protection.

“Hazardous Substance” or “Hazardous Waste” means any substance, chemical or waste that is listed as hazardous or toxic or a pollutant or contaminant by any Environmental Law, as that term is defined herein.

“Notice of Award” means the written notice by the Owner to the Successful Bidder stating that the Owner intends to award the Contract to the Successful Bidder subject to compliance with all terms and conditions of the Contract Documents.

“Notice to Proceed” means the written notice on behalf of the Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.

“Owner” means the Rockaway Valley Regional Sewerage Authority.

“Partial Utilization” means use by the Owner of a substantially completed part of the Work for the purpose for which it was intended (or a related purpose) prior to Substantial Completion of all the Work.

“Project” means the total construction of which the Work to be performed under the Contract Documents may be the whole, or a part as may be indicated elsewhere in the Contract Documents.

“Samples” means 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.

“Shop Drawings” means all drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.

“Specifications” means the Technical Specifications.

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

“Successful Bidder” means the Bidder to which the Owner is authorized to issue a Notice of Award.

“Substantial Completion” means the time which the Work required by the Contract has been completed such that, in the opinion of the Engineer and the Owner, the Work is sufficiently complete and in accordance with the Contract Documents, so that the Work can be utilized for the purposes for which it was intended. The terms “substantially complete” and “substantially completed” have the same meaning as Substantial Completion.

“Supplier” means a manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated into the Work by Contractor or any Subcontractor.

“Technical Specifications” means the plans, drawings, general and supplementary conditions and specifications prepared by Engineer or on behalf of the Owner, attached hereto and hereby incorporated as if fully set forth herein, describing the scope of Work and the method(s) for the completion of same, including any attachments thereto.

“Total Bid Price” means the total Project amount which shall be an all-inclusive price for the Work, including labor, materials, any disposal fees or costs incurred by Contractor or any subcontractor, fuel, equipment, and any other cost or fee incurred in connection with the Work.

“Uncontrollable Circumstance” means any of the following acts, events or conditions or any combination thereof (other than a labor strike by Contractor, its employees, affiliates, subcontractors or any entity/person providing services to Contractor for all or a portion of the Work under the Contract Documents) that has had or may be reasonably expected to have a direct, material, adverse effect on the rights or the obligations of either party to this Contract or a direct, material, adverse effect on the Work to be performed under the Contract Documents; provided, however, that such act, event or condition shall be beyond the reasonable control of the party relying thereon as justification for not performing an obligation or complying with any condition required of such party under the terms of the Contract Documents taking into account and considering the foreseeability of such act, event or condition:

- a. an Act of God, lightning, blizzards, earthquake, epidemic, acts of a public enemy, war, blockage, insurrection, riot or civil disturbance, sabotage or similar occurrence or any exercise of the power of eminent domain, police power, condemnation or other taking by or on behalf of any public, quasi-public or private entity; but not including reasonably anticipated weather conditions for the

geographic area of the Facility and/or the locations which are a subject of this Contract, other than those set forth above;

- b. a landslide, fire, explosion, flood or nuclear radiation not created by an act or omission of either party hereto;
- and
- c. a change in law which imposes a materially changed obligation on a party. Notwithstanding anything contained in this Contract to the contrary, the occurrence of an Uncontrollable Circumstance shall not suspend the obligations of the parties hereto to perform their respective obligations hereunder, except to the extent that such performance is limited or prevented as a direct result of such occurrences.

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

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

“Work Change Directive” means a written statement to the Contractor and signed on behalf of the Owner and recommended by the Engineer ordering an addition, deletion or revision in the Work. A Work Change Directive will not change the Contract Price or the Contract Time but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations of the parties as to its effect, if any, on the Contract Price or the Contract Times.

“Written Amendment” means a written statement modifying the Contract Documents, signed by Owner and Contractor on or after the Effective Date of the Agreement and normally dealing with the non-engineering or non-technical rather than strictly construction-related aspects of the Contract Documents.

The words "herein", "hereinafter", "hereunder" and words of like import shall be deemed to refer to the Contract Documents.

CA.2 THE CONTRACT DOCUMENTS

The Contract Documents are complementary, and what is called for by any one shall be as binding as if called for by all. In the event of any conflict or inconsistency between the provisions of the AGREEMENT and the provisions of any of the other Contract Documents, the provisions of the AGREEMENT shall prevail. Reference 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 the AGREEMENT.

CA.3 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 Drawings, Specifications and other Contract Documents, in conformity with the directions and to the satisfaction of the Engineer, and at the prices herein agreed upon therefor.

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 coordinate his operations with those of any other contractors who may be employed on other work of the Owner, shall avoid interference therewith, and shall cooperate in the arrangements for storage of materials and equipment.

The Contractor shall conduct his work so as to interfere as little as possible with private business and public travel. Wherever and whenever necessary or required, he

shall maintain fences, furnish watchmen, maintain lights, and take such other precaution as may be necessary to protect life and property.

The Contractor shall indemnify and save harmless the Owner and the Engineer and their officers, agents, servants and employees, from and against any and all claims, demands, suits, proceedings, liabilities, judgments, awards, losses, damages, costs and expenses, including attorneys' fees, on account of bodily injury, sickness, disease or death sustained by any person or persons or injury or damage to or destruction of any property, directly or indirectly arising out of, relating to or in connection with the Work, whether or not due to or claimed to be due in whole or in part to the active, passive or concurrent negligence or fault of the Contractor, his officers, agents, servants or employees, any of his subcontractors, suppliers, materialmen, the Owner, the Engineer or any of their respective officers, agents, servants or employees and/or any other person or persons, and whether or not such claims, demands, suits or proceedings are just, unjust, groundless, false or fraudulent; and the Contractor shall and does hereby assume and agrees to pay for the defense of all such claims, demands, suits and proceedings, provided, however, that the Contractor shall not be required to indemnify the Engineer, his officers, agents, servants or employees, against any such damages occasioned solely by defects in maps, plans, drawings, designs or specifications prepared, acquired or used by the Engineer and/or solely by the negligence or fault of the Engineer; and provided further, that the Contractor shall not be required to indemnify the Owner, his officers, agents, servants, or employees, against any such damages occasioned solely by acts or omissions of the Owner other than supervisory acts or omissions of the Owner in the Work.

The Contractor shall have complete responsibility for the Work and the protection thereof, and for preventing injuries to persons and damage to the Work and property and utilities on or about the Work, until final completion and final acceptance thereof. He shall in no way be relieved of his 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. 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 his operations so as not to damage existing structures or work installed either by him or by other contractors. In case of any such damage resulting from his operations, he shall repair and make good as new the damaged portions at his own expense with the consent of the damaged party. In the event that consent is not given, the Contractor shall continue liable for the damage caused.

The Contractor shall be as fully responsible to the Owner for the acts and omissions of his subcontractors, their officers, agents, servants and employees as he is for his own acts and omissions and those of his own officers, agents, servants and employees.

Should the Contractor sustain any loss, damage or delay through any act or omission of any other contractor or any subcontractor of any such other contractor, the Contractor shall have no claim against the Owner therefor, other than for an extension of time, but shall have recourse solely to such other contractor or subcontractor.

If any other contractor or any subcontractor of any such other contractor shall suffer or claim to have suffered loss, damage or delay by reason of the acts or omissions of the Contractor or of any of his subcontractors, the Contractor agrees to assume the defense against any such claim and to reimburse such other contractor or subcontractor for such loss or damage.

The Contractor agrees to and does hereby indemnify and save harmless the Owner from and against any and all claims by such other contractors, subcontractors, suppliers or materialmen alleging such loss, damage or delay and from and against any and all claims, demands, suits, proceedings, liabilities, judgments, awards, losses, damages, costs and expenses, including attorneys' fees, arising out of, relating to or resulting from such claims.

The Contractor shall promptly pay all federal, state and local taxes which may be assessed against him in connection with the Work or his operations under the AGREEMENT and/or 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.

CA.4 AUTHORITY OF THE OWNER/ENGINEER

The Owner/Engineer shall be the sole judge of the intent and meaning of the Drawings and Specifications and his decisions thereon and his interpretation thereof shall be final, conclusive and binding on all parties.

The Owner/Engineer shall be the Owner's representative during the life of the Contract and he shall observe the Work in progress. He shall have authority (1) to act on behalf of the Owner to the extent expressly provided in the Contract or otherwise in writing; (2) to determine the amount, quality, acceptability and fitness of all work, materials and equipment required by the Contract; and (3) to decide all questions which arise in relation to the Work, the execution thereof, and the fulfillment of the Contract.

The Contractor shall proceed without delay to perform the work as directed, instructed, determined or decided by the Owner/Engineer and shall comply promptly with such directions, instructions, determinations or decisions. If the Contractor has any objection thereto he may, within ten (10) 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 ten (10) days after receipt of any such writing he may file a written protest with the Owner stating clearly and in detail his objections, the reasons therefor, and the nature and amount of additional compensation, if any, to which he claims he will be entitled thereby. Unless the Contractor requires that any such direction, instruction, determination or decision be put in writing within ten (10) days of having received such direction, instruction, determination or decision and unless the Contractor files such written protest with the Owner within such ten (10) day period, he 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 his obligations and rights under the Contract.

CA.5 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 Owner/Engineer in every possible way.

At all times, the Contractor shall have as his agent on the Work a competent superintendent capable of reading and thoroughly understanding the Drawings and Specifications, with full authority to execute the directions of the Owner/Engineer without delay and to supply promptly such labor, services, materials, equipment, plant, apparatus, appliances, tools, supplies and other items as may be required. Such superintendent shall not be removed from the Work without the prior written consent of the Owner/Engineer. If, in the opinion of the Owner/Engineer, the superintendent or any successor proves incompetent, the Contractor shall replace him with another person approved by the Owner/Engineer; such approval, however, shall in no way relieve or diminish the Contractor's responsibility for supervision of the Work.

Whenever the Contractor or his agent or superintendent is not present on any part of the Work where it may be necessary to give directions or instructions with respect to such work, such directions or instructions may be given by the Owner/Engineer to and shall be received and obeyed by the foreman or any other person in charge of the particular work involved.

CA.6 INSURANCE

The Contractor shall procure and maintain insurance of the types specified below, and to the limits for this insurance specified in Table A at the end of this section. 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 for

property damage, which may arise from operations under the Contract, whether such operations be by himself, his subcontractors, or by anyone directly or indirectly employed or engaged by him.

The following types of insurance shall be provided before starting and until final completion and acceptance of the Work and expiration of the guarantee period provided for in the AGREEMENT.

- a. Workmen's Compensation and Employer's Liability Insurance.
- b. Commercial General Liability Insurance for bodily injury, property damage, Explosion/Collapse/Underground (XCU), and personal injury, including Completed Operations, Independent Contractors' Broad Form Property Damage, Contractual Liability (as described under the fifth paragraph of the subsection "Obligations and Liability of the Contractor" of this AGREEMENT.
- c. Automobile Liability Insurance for bodily injury and property damage caused by motor vehicles owned, non-owned, hired or operated by the Contractor.
- d. Umbrella Excess Liability Insurance on a "following form of underlying policies" basis "Employee's Liability, Commercial General Liability and Automobile Liability policies). Coverage should be at least as broad as the underlying policies.
- e. Contractor's Installation Floater with an "All Risk" completed values form for the total insurable value of all structures, materials and equipment to be built and installed.

All insurance coverage shall be placed with insurance carriers possessing an AM Best Financial Strength rating no less than A-V.

All policies shall be endorsed to include the "Rockaway Valley Regional Sewerage Authority" and the "State and its agencies, employees and officers" as "additional insured." All policies will also provide Owner/Authority with 30 days prior written notice of cancellation, non-renewal or material change. All liability policies will be written on a primary and non-contributory basis with a waiver of subrogation in favor of the Rockaway Valley Regional Sewerage Authority.

All subcontractors shall be required to carry insurance coverage equivalent in scope and limit to those required of the Contractor. Such insurance coverage shall name both the Contractor and Rockaway Valley Regional Sewerage Authority as additional insureds.

Policies of insurance will be obtained before the work is started and shall be maintained until the date of completion of the work as stated in the final estimate or

until the Owner/Authority occupies or otherwise takes possession of the structure, whichever occurs first.

Copies of all policies will be furnished to the Owner/Authority, and certificates of insurance evidencing such coverage will be furnished to the Owner/Authority. Renewal certificates must be furnished by the Contractor prior to the expiration date of any of the initial policies.

No insurance required or furnished hereunder shall in any way relieve the Contractor of or diminish any of his responsibilities, obligations and liabilities under the Contract.

CA.7 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.

CA.8 NEW JERSEY ENVIRONMENTAL INFRASTRUCTURE TRUST PROGRAM REQUIREMENTS

This project is being funded in part by the New Jersey Department of Environmental Protection and the Infrastructure Trust Programs. As such, the Owner and the Contractor shall comply with the rules and regulation specified in N.J.A.C. 7:22-3, 4, 5, 9, 10 et seq.

CA.9 UTILIZATION OF SOCIALLY AND ECONOMICALLY DISADVANTAGED (SED) OWNED BUSINESS ENTERPRISES

The Contractor shall submit a plan to the Owner, regardless of whether they themselves are a SED owned business enterprise, on their procedures to meet the required ten (10) percent minimum SED utilization goal imposed on the Contractor by the Owner. The plan must also meet all of the requirements pursuant to N.J.A.C: 7:22-9-1 et seq. and the requirements of the Owners SED Business Utilization Plan included at the end of this section as Attachment A. The New Jersey Department of Environmental Protection Office of Equal Opportunity and Public Assistance Small, Minority and Women's Business Vendor Listing is included as Attachment B at the end of this section.

CA.10 COMPLIANCE WITH LAWS

The Contractor shall keep himself 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 forthwith report the same to the Engineer in writing. The Contractor shall at all times observe and comply with, and cause all his 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 he 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, whether committed by the Contractor or any of his agents, servants, employees or subcontractors.

CA.11 PROVISIONS REQUIRED BY LAW DEEMED INSERTED

Each and every provision of law and clause required by law to be inserted in the Contract shall be deemed to be inserted herein, and the Contract shall be read and enforced as though they were included herein. If through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Contract shall forthwith be physically amended to make such insertion.

CA.12 CONSTRUCTION CONTRACT DISPUTE PROCEDURES

Pursuant to P.L. 1997, c.371 (N.J.S.A. 40A:11-50), with regard to any dispute arising under this contract and prior to being submitted to a court for adjudication, the parties agree to try in good faith to settle the dispute by the alternative dispute resolution practice known as non-binding mediation. The Parties agree that the Owner shall select the mediator. The mediator may be a retired judge of the Superior Court of New Jersey. The expense of the mediation shall be shared equally by the parties. The mediation shall be conducted at the Owner's offices or at any other mutually agreeable location in Morris County, New Jersey. If necessary to fully resolve the issues in dispute, either party may demand the joinder of other interested parties to the dispute unless the mediator determines that such a joinder is inappropriate. Nothing in this section shall prevent the Owner from seeking injunction or declaratory relief in court at any time.

During any and all mediation, the Contractor shall continue to work on the Project and the Work and the time to complete the Project and the Work shall not be extended as a result of the processing of mediation hereunder.

CA.13 STATE NON-DISCRIMINATION PROVISION

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

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, up-grading, 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 Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer, pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

When hiring or scheduling workers in each construction trade, the contractor or subcontractor agrees to make good faith efforts to employ minority and women

workers in each construction trade consistent with the targeted employment goal prescribed by N.J.A.C. 17:27-7.2; provided, however, that the Division may, in its discretion, exempt a contractor or subcontractor from compliance with the good faith procedures prescribed by the following provisions, A, B and C, as long as the Division is satisfied that the contractor or subcontractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the Division, that its percentage of active "card carrying" members who are minority and women workers is equal to or greater than the targeted employment goal established in accordance with N.J.A.C. 17:27-7.2. The contractor or subcontractor agrees that a good faith effort shall include compliance with the following procedures:

(A) If the contractor or subcontractor has a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor shall, within three business days of the contract award, seek assurances from the union that it will cooperate with the contractor or subcontractor as it fulfills its affirmative action obligations under this contract and in accordance with the rules promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et. seq., as supplemented and amended from time to time and the Americans with Disabilities Act. If the contractor or subcontractor is unable to obtain said assurances from the construction trade union at least five business days prior to the commencement of construction work, the contractor or subcontractor agrees to afford equal employment opportunities minority and women workers directly, consistent with this chapter. If the contractor's or subcontractor's prior experience with a construction trade union, regardless of whether the union has provided said assurances, indicates a significant possibility that the trade union will not refer sufficient minority and women workers consistent with affording equal employment opportunities as specified in this chapter, the contractor or subcontractor agrees to be prepared to provide such opportunities to minority and women workers directly, consistent with this chapter, by complying with the hiring or scheduling procedures prescribed under (B) below; and the contractor or subcontractor further agrees to take said action immediately if it determines that the union is not referring minority and women workers consistent with the equal employment opportunity goals set forth in this chapter.

(B) If good faith efforts to meet targeted employment goals have not or cannot be met for each construction trade by adhering to the procedures of (A) above, or if the contractor does not have a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor agrees to take the following actions:

- (1) To notify the public agency compliance officer, the Division, and minority and women referral organizations listed by the Division pursuant to N.J.A.C. 17:27-5.3, of its workforce needs, and request referral of minority and women workers;
- (2) To notify any minority and women workers who have been listed with it as awaiting available vacancies;

(3) Prior to commencement of work, to request that the local construction trade union refer minority and women workers to fill job openings, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade;

(4) To leave standing requests for additional referral to minority and women workers with the local construction trade union, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade, the State Training and Employment Service and other approved referral sources in the area;

(5) If it is necessary to lay off some of the workers in a given trade on the construction site, layoffs shall be conducted in compliance with the equal employment opportunity and non-discrimination standards set forth in this regulation, as well as with applicable Federal and State court decisions;

(6) To adhere to the following procedure when minority and women workers apply or are referred to the contractor or subcontractor:

(i) The contractor or subcontractor shall interview the referred minority or women worker.

(ii) If said individuals have never previously received any document or certification signifying a level of qualification lower than that required in order to perform the work of the construction trade, the contractor or subcontractor shall in good faith determine the qualifications of such individuals. The contractor or subcontractor shall hire or schedule those individuals who satisfy appropriate qualification standards in conformity with the equal employment opportunity and non-discrimination principles set forth in this chapter. However, a contractor or subcontractor shall determine that the individual at least possesses the requisite skills, and experience recognized by a union, apprentice program or a referral agency, provided the referral agency is acceptable to the Division. If necessary, the contractor or subcontractor shall hire or schedule minority and women workers who qualify as trainees pursuant to these rules. All of the requirements, however, are limited by the provisions of (C) below.

(iii) The name of any interested women or minority individual shall be maintained on a waiting list, and shall be considered for employment as described in (i) above, whenever vacancies occur. At the request of the Division, the contractor or subcontractor shall provide evidence of its good faith efforts to employ women and minorities from the list to fill vacancies.

(iv) If, for any reason, said contractor or subcontractor determines that a minority individual or a woman is not qualified or if the individual qualifies as an advanced trainee or apprentice, the contractor or subcontractor shall inform the individual in writing of the reasons for the determination, maintain a copy of the determination in its files, and send a copy to the public agency compliance officer and to the Division.

(7) To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract, on forms made available by the Division and submitted promptly to the Division upon request.

(C) The contractor or subcontractor agrees that nothing contained in (B) above shall preclude the contractor or subcontractor from complying with the union hiring hall or apprenticeship policies in any applicable collective bargaining agreement or union hiring hall arrangement, and, where required by custom or agreement, it shall send journeymen and trainees to the union for referral, or to the apprenticeship program for admission, pursuant to such agreement or arrangement. However, where the practices of a union or apprenticeship program will result in the exclusion of minorities and women or the failure to refer minorities and women consistent with the targeted county employment goal, the contractor or subcontractor shall consider for employment persons referred pursuant to (B) above without regard to such agreement or arrangement; provided further, however, that the contractor or subcontractor shall not be required to employ women and minority advanced trainees and trainees in numbers which result in the employment of advanced trainees and trainees as a percentage of the total workforce for the construction trade, which percentage significantly exceeds the apprentice to journey worker ratio specified in the applicable collective bargaining agreement, or in the absence of a collective bargaining agreement, exceeds the ratio established by practice in the area for said construction trade. Also, the contractor or subcontractor agrees that, in implementing the procedures of (B) above, it shall, where applicable, employ minority and women workers residing within the geographical jurisdiction of the union.

After notification of award, but prior to signing a construction contract, the contractor shall submit to the public agency compliance officer and the Division an initial project workforce report (Form AA 201) electronically provided to the public agency by the Division, through its website, for distribution to and completion by the contractor, in accordance with N.J.A.C. 17:27-7. The contractor also agrees to submit a copy of the Monthly Project Workforce Report once a month thereafter for the duration of this contract to the Division and to the public agency compliance officer.

The contractor agrees to cooperate with the public agency in the payment of budgeted funds, as is necessary, for on-the-job and/or off-the-job programs for outreach and training of minorities and women.

(D) The contractor and its subcontractors shall furnish such reports or other documents to the Division of Public Contracts Equal Employment Opportunity Compliance as may be requested by the Division from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Public Contracts Equal Employment Opportunity Compliance for conducting a compliance investigation pursuant to **Subchapter 10 of the Administrative Code (NJAC 17:27).**”

CA.14 PERMITS

The Owner shall, at his own expense, obtain all necessary Federal, State, County, and municipal permits required for the project, except for those permits which by law are required to be obtained by the Contractor (N.J.A.C. 7:14-2.3). The Owner shall give all notices required by law; and shall post all bonds and pay all fees and charges incident to the due and lawful prosecution of the Work. The Contractor shall, at his own expense, take out and maintain all necessary building permits as required by the Township of Boonton/Parsippany Troy Hills.

CA.15 NOT TO SUBLET OR ASSIGN

The Contractor shall constantly give his personal attention to the faithful prosecution of the Work, shall keep the same under his personal control, shall not assign the Contract 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 Contract, or his claim thereto, unless by and with the like written consent of the Owner and the Surety on the Contract Bonds. The Contractor shall not assign, transfer, convey or otherwise dispose of this Contract or the Contract Documents, or his right, title or interest in or to the same or any part thereof, without the prior express written consent of the Owner. Any assignment or subletting in violation hereof shall be void and unenforceable.

CA.16 WORKSITE

The Owner owns the land upon which the project will be constructed.

CA.17 BEFORE STARTING CONSTRUCTION AND TIME FOR COMPLETION

Delivery of Bonds. Contractor shall deliver the executed Agreements to Owner and the Bonds as Contractor is required to furnish within 10 days after the Notice of Award.

Preliminary Schedules. Within 10 days after the Notice of Award, Contractor shall submit to Engineer for timely review: (1) a preliminary progress schedule indicating that times (numbers of days or dates) for starting and completing the various stages of the Work; (2) a preliminary schedule of submittals that shall include a preliminary schedule of shop drawings; and (3) a preliminary schedule of values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during the performance of the Work. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.

The progress schedule will be acceptable to the Engineer if it provides an orderly progression of the Work to completion within the Contract Times. The Contractor's

schedule of submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals. The Contractor's schedule of values will be acceptable to the Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work. Contractor shall adhere to the progress schedule which may be adjusted from time to time if such adjustment in the progress schedule does not result in changing the Contract Times and provided such adjustment is approved by the Engineer.

Preconstruction Conference. Before any Work is started, a conference attended by the Owner, the Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss a preliminary progress schedule.

Commencement of Contract Times; Notice to Proceed. The Contract Times will commence on the date indicated in the Notice to Proceed.

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

It is agreed that the rate of progress herein required has been purposely made 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 stipulated time limit. Contractor agrees that the Work shall be prosecuted regularly, diligently and uninterruptedly and at such rate of progress as will insure full completion thereof within the Contract Time. It is expressly understood and agreed, by and between the Contractor and the Owner, that the Contract Time is reasonable for completion of the Work.

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 time for completion of the Work. (This paragraph will be interpreted to include delays in receipt of equipment provided that the Contractor placed his order and submitted shop drawings for such equipment promptly after execution of the Contract, that he 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 he shall not have or assert any claim for nor shall he be entitled to any additional compensation or damages on account of such delays.

The time in which the Work is to be performed and completed is of the essence of this AGREEMENT.

CA.18 LIQUIDATED DAMAGES

In case the Contractor fails to complete the Work satisfactorily on or before the date of completion fixed herein or as duly extended as hereinbefore provided, the Contractor agrees that the Owner shall deduct from the payments due the Contractor each month the sum set forth in Table A at the end of this section for each calendar day of delay, which sum is agreed upon not as a penalty, but as fixed and liquidated damages for each day of such delay. If the payments due the Contractor are less than the amount of such liquidated damages, said damages shall be deducted from any other moneys due or to become due the Contractor, and, in case such damages shall exceed the amount of all moneys due or to become due the Contractor, the Contractor or his Surety shall pay the balance to the Owner.

CA.19 WORK HOURS

Normal working hours shall be from 7:00 a.m. to 3:30 p.m. excluding non-business days. No work shall be done at night or on Sunday except (1) usual protective work, such as pumping and the tending of lights and fires, (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 except when (a) in the sole judgment of the Owner/Engineer, the work will be of advantage to the Owner and can be performed satisfactorily at night, (b) the work will be done by a crew organized for regular and continuous night work, and (c) the Engineer has given written permission for such night work.

CA.20 EMPLOY COMPETENT PERSONS

The Contractor shall employ only competent persons on the Work and shall not employ persons or means 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 Owner/Engineer notifies the Contractor in writing that in his opinion any person on the Work is incompetent, unfaithful, disorderly, or otherwise unsatisfactory, or not employed in accordance with the provisions of the Contract, such person shall be discharged from the Work and shall not again be employed on it, except with the written consent of the Engineer.

CA.21 EMPLOY SUFFICIENT LABOR AND EQUIPMENT

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

CA.22 INTOXICATING LIQUORS AND CONTROLLED CHEMICAL SUBSTANCES

The Contractor shall not sell and shall neither permit nor suffer the introduction or use of intoxicating liquors or controlled chemical substances upon or about the Work.

CA.23 ACCESS TO WORK

The Owner, the NJDEP, the Owner/Engineer, 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, and the Contractor shall at all times provide safe and proper facilities therefor. In addition, the Contractor and any Subcontractors shall provide to NJDEP personnel access to the facilities, premises, and records related to the project (N.J.A.C. 7:22-3.23).

CA.24 EXAMINATION OF WORK

The Owner/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 Contract, even to the extent of requiring the uncovering or taking down portions of finished work by the Contractor.

Should the work thus uncovered or taken down prove 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 in point of time or in the absence of the Engineer or his inspector and without his written authorization, in which case said cost shall be borne by the Contractor. Should the work uncovered or taken down prove unsatisfactory, said cost shall likewise be borne by the Contractor.

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

CA.25 DEFECTIVE WORK, ETC.

Until acceptance and during the applicable guarantee period thereafter, 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 or applicable guarantee and shall pay to the Owner all resulting costs, expenses, losses or damages suffered by the Owner.

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 Owner/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 his 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, his agents, servants, employees or subcontractors.

CA.26 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 his 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.

CA.27 RIGHT TO MATERIALS

Nothing in the Contract 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, 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 his duty to protect and maintain and insure all such materials, equipment, apparatus and other items.

CA.28 CHANGE ORDERS

The Owner, through the Owner/Engineer, may make changes in the Work and in the Drawings and Specifications 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. 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 therefor at the unit prices stipulated in the Contract for such work, except that if unit prices are not stipulated for such work, compensation for additional or increased work shall be made as provided hereinafter under the subsection titled "Extra Work"; and for eliminated or decreased work the Contractor shall allow the Owner a reasonable credit as determined by the Engineer.

Except in an emergency endangering life or property, no change shall be made unless in pursuance of a written order from the Owner/Engineer authorizing the change, and no claim for additional compensation shall be valid unless the change is so ordered.

The Contractor agrees that he 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.

The procedure for executing a change order is detailed in Attachment "C" of this Agreement. The Owner (the loanee) shall initiate the "Contract Modification Proposal and Acceptance" form (page 1 & 2) in accordance with the instructions. The Contractor shall then execute the form, indicating the proposed net effect of the proposed change in money and time. The Owner and Contractor shall negotiate a final agreed price and time settlement as required by the regulations. Following signing of the form by the Owner, the Engineer, and the Contractor, the Owner shall complete page 1 of the form. The Owner (the loanee) shall then complete and attach page 3 of the form to document the change and provide details for review by the regulatory agencies. The Owner must submit a minimum of one original and one copy for review.

The unit price of an item of Unit Price Work shall be subject to re-evaluation and adjustment under the following conditions:

1. If the total cost of a particular item of Unit Price Work amounts to 5 percent or more of the Contract Price and the variation in the quantity of that particular item of Unit Price Work performed by Contractor differs by more than 15 percent from the estimated quantity of such item indicated in the Contract; and
2. If there is no corresponding adjustment with respect to any other item of Work; and
3. If Contractor believes that Contractor has incurred additional expense as a result thereof; or if Owner believes that the quantity variation entitles Owner to an adjustment in the unit price, either Owner or Contractor may make a claim for an adjustment of the Unit Price for that quantity by which the actual quantity exceeds 115% of the estimated quantity if the Parties are unable to agree as to the effect of any such variations in the quantity of Unit Price Work performed.

CA.29 EXTRA WORK

The Contractor shall perform any extra work (work in connection with the Contract but not provided for herein) when and as ordered in writing by the Owner/Engineer, at

the unit prices stipulated in the Contract for such work or, if none are so stipulated, either (a) at the price agreed upon before such work is commenced and named in the written order for such work, or (b) if the Owner/Engineer so elects, for the reasonable cost of such work, as determined by the Contractor and approved by the Owner/Engineer, plus a percentage of such cost, as set forth below. No extra work shall be paid for unless specifically ordered as such in writing by the Owner/Engineer. The cost of extra work done under (a) and (b) above shall include the reasonable cost to the Contractor of materials used and equipment installed, common and skilled labor, and foremen, and the fair rental of all machinery and equipment used on the extra work for the period of such use.

The Contractor shall furnish itemized statements of the cost of the extra work ordered as above and give the Owner/Engineer access to all records, accounts, bills and vouchers and correspondence relating thereto.

The Contractor may include in the cost of extra work the amounts of additional premiums, if any, (other than premiums on bonds) paid on the required insurance on account of such extra work, of Social Security or other direct assessments upon the Contractor's payroll by Federal or other properly authorized public agencies, and of other approved assessments when such assessments are not normally included in payments made by the Contractor directly to his employees, but in fact are, and are customarily recognized as, part of the cost of doing work.

The fair rental for all machinery and equipment 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 Owner/Engineer. Rental for machinery and equipment shall be based upon an appropriate fraction of the approved monthly rate schedule. If said 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.

The Contractor shall not include in the cost of extra work any cost or rental of small tools, building, or any portion of the time of the Contractor, his superintendent, or his office and engineering staff.

To the cost of extra work done by the Contractor's own forces under (a) and (b) above (determined as stated above), the Contractor shall add 10 percent to cover his overhead, use of capital, the premium on the Bonds as assessed upon the amount of this extra work, and an additional 10 percent profit.

In the case of extra work done under (a) and (b) by a subcontractor that is not related in any way to the Contractor, its entities, divisions, affiliates, subsidiaries and/or

shareholders, said subcontractor shall compute, as above, his cost for the extra work, to which he shall add 20 percent as in the case of the Contractor, and the Contractor shall be allowed an additional 10 percent of the subcontractor's cost for the extra work to cover the costs of the Contractor's overhead, use of capital, the premium on the Bonds as assessed upon the amount of this extra work, and profit. Said subcontractor's cost must be reasonable and approved by the Owner/Engineer. Notwithstanding the foregoing, or any language to the contrary, in the event that the subcontractor is related in any way to the Contractor, its entities, divisions, affiliates, subsidiaries and/or shareholders, the subcontractor shall not be permitted to add any percentage for overhead and profit and the Contractor shall be construed as providing the extra work done under (a) and (b) above as if utilizing Contractor's own forces for purposes of overhead and profit.

All construction overhead and profit factors for extra work compensation shall be in accordance with the provisions of N.J.A.C. 7:14-2.7 Construction, Overhead and Profit Factors for Extra Work Compensation.

If extra work is done under (b) above, the Contractor and/or subcontractor shall keep daily records of such extra work. The daily record shall include the names of persons employed, the nature of the work performed, and hours worked, materials and equipment incorporated, and machinery or equipment used, if any, in the prosecution of such extra work. This daily record, to constitute verification that the work was done, must be signed both by the Contractor's authorized representative and by the Engineer. A separate daily record shall be submitted for each Extra Work Order.

CA.30 EXTENSION OF TIME ON ACCOUNT OF EXTRA WORK

When extra work is ordered near the completion of the Contract or at any time during the progress of the Work which unavoidably increases the time for the completion of the Work, an extension of time shall be granted as hereinbefore provided.

CA.31 CHANGES NOT TO AFFECT BONDS

It is distinctly agreed and understood that any changes made in the Work or the Drawings or Specifications therefor (whether such changes increase or decrease the amount thereof or the time required for its performance) or any changes in the manner of time of payments made by the Owner to the Contractor, or any other modifications of the Contract, shall in no way annul, release, diminish or affect the liability of the Surety on the CONTRACT 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.

CA.32 CLAIMS FOR DAMAGES AND LIMITATION ON DAMAGES

If the Contractor makes claim for any damages alleged to have been sustained by breach of contract or otherwise, he shall, within ten (10) days after occurrence of the alleged breach or within ten (10) days after such damages are alleged to have been sustained, whichever date is the earlier, file with the Owner a written, itemized statement in triplicate of the details of the alleged breach and the details and amount of the alleged damages. The Contractor agrees that unless such statement is made and filed as so required, his claim for damages shall be deemed waived, invalid and unenforceable, and that he 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 Owner/Engineer, nor shall any such claims be considered, unless the Contractor shall have complied in all respects with the third paragraph of that subsection above of this AGREEMENT titled "Authority of the Owner/Engineer ", including, but not limited to the filing of a written protest in the manner and within the time therein provided.

The Owner and/or their board members, officers, directors, members, partners, employees, agents, consultants, whether past or present, shall not be liable to Contractor for any claims, costs, losses, delays, disruption, acceleration, loss of productivity, escalation, home office overhead, extended or disrupted performance, costs of additional mobilizations or demobilizations, indirect or impact costs, extra work claims, loss of profit or any other damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

Contractor agrees that in no event shall the Owner and/or their board members, officers, directors, members, partners, employees, agents, consultants, whether past or present, be liable to Contractor, any subcontractor, any supplier, or any other person or entity, or agent of any of them for claims, losses, delays, disruption, acceleration, loss of productivity, escalation, home office overhead, extended or disrupted performance, costs of additional mobilizations or demobilizations, indirect or impact costs, extra work claims, loss of profit, or any other damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) that are:

1. Caused by or within the control of the Contractor; or
2. Caused by events beyond the control of the Owner or the Engineer.

Notwithstanding the foregoing or any language to the contrary in the Contract Documents, the Contractor agrees that the Owner, its board members, officers,

directors, members, partners, employees, agents, consultants, whether past or present and Engineer are not liable to Contractor for any fees and charges incurred by Contractor for attorneys, engineers, architects, and other professionals. Contractor waives as to the Owner, its board members, officers, directors, members, partners, employees, agents, consultants, whether past or present and as to Engineer, the recovery of all attorney's fees, engineering fees, architectural fees, or any other professional fees no matter when and how incurred and shall not seek the same in any litigation or alternative dispute resolution.

Notwithstanding the foregoing and an language to the contrary in the Contract Documents, should the final completion and acceptance of the Work herein embraced together with any modifications or additions be delayed beyond the time herein set because of lack of performance by the Contractor, it is understood and agreed that aside from any other liquidated or other damages per day for such delay from such time until the same is completed and accepted as herein provided, all costs of engineering, architectural, inspection and all other costs incurred by the Owner as a result of such delay will be charged to the Contractor and may also be deducted from any payment otherwise due.

CA.33 ABANDONMENT OF WORK OR OTHER DEFAULT

If the Work shall be abandoned, or any part thereof shall be sublet without previous written consent of the Owner, or the Contract or any moneys payable hereunder shall be assigned otherwise than as herein specified, or if at any time the conditions herein specified as to rate of progress are not being complied with, or if the Work or any part thereof is being unnecessarily or unreasonably delayed, or if the Contractor has violated or is in default under any of the provisions of the Contract, or if the Contractor becomes bankrupt or insolvent or goes or is put into liquidation or dissolution, either voluntarily or involuntarily, or petitions for an arrangement or reorganization under the Bankruptcy Act, or makes a general assignment for the benefit of creditors or otherwise acknowledges insolvency, the happening of any of which shall be and constitute a default under the Contract.

In addition to the foregoing, the following shall constitute an Event of Default on the part of Contractor unless such event results from the occurrence of an Uncontrollable Circumstance:

- a) Contractor's breach of, any material obligation, or any covenant or warranty made by it, under the terms of this Contract;
- b) Any representation made by Contractor herein shall be (or prove to be) false in any material respect;
- c) Any act of bankruptcy by Contractor or the levy of any distress, execution or attachment upon the property of Contractor, which shall substantially interfere

with its performance hereunder;

- d) Contractor is found, after notice and hearing, to have offered or given gratuities to any official, employee, consultant or agent of the Owner or other governmental agency, with a view toward securing a contract or any portion or extension thereof;
- e) Contractor deliberately misrepresented facts or provided false information in its Bid;
- f) In the reasonable judgment of the Owner, Contractor is or has been unnecessarily, unreasonably or willfully delaying performance pursuant to this Contract and/or not executing this Contract in good faith in accordance with its terms;
- g) Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule);
- h) Contractor's disregard of laws or regulations of any public body having jurisdiction;
- i) Contractor's disregard of the authority of the Engineer;
- j) Contractor's violation in any substantial way of any provisions of the Contract; or
- k) If Contractor abandons the Work, or sublets this Contract or any part thereof, without the previous written consent of the Owner, or if the Contract or any claim thereunder shall be assigned by Contractor otherwise than as herein specified.

However, the above shall not constitute an Event of Default on the part of the Contractor unless and until:

- i. the Owner has given notice to Contractor specifying the default;
- and
- ii. Contractor either has not corrected such default within seven (7) business days after its receipt of such notice from the Owner or, if the default cannot reasonably be cured within said time, Contractor has not within such time initiated all steps required to correct the same and thereafter does not continue to take all steps

necessary to expeditiously correct such default. Contractor shall immediately and on a continuing basis, advise the Owner as to the steps it has initiated to correct such default.

Notwithstanding the foregoing, prior to the expiration of the time provided in (ii) above, the Owner shall have the right to engage the services of others to perform the Work that would otherwise be or have been undertaken by Contractor, in which event the Owner shall owe no obligation to Contractor for any payment relating to said Work undertaken by alternate means.

If there is an Event of Default, the Owner may notify the Contractor in writing, with a copy of such notice mailed to the Surety, to discontinue all Work or any part thereof; thereupon the Contractor shall discontinue such Work or such part thereof as the Owner may designate; and the Owner may, upon giving such notice, by contract or otherwise as it may determine, complete the Work or such part thereof and charge the entire cost and expense of so completing the Work or such part thereof to the Contractor. In addition to the said entire cost and expense of completing the Work, the Owner shall be entitled to reimbursement from the Contractor and the Contractor agrees to pay to the Owner any losses, damages, costs and expenses, including attorney's fees, sustained or incurred by the Owner by reason of any of the foregoing causes. For the purposes of such completion the Owner may for itself or for any contractors employed by the Owner take possession of and use or cause to be used any and all materials, equipment, plant, machinery, appliances, tools, supplies and such other items of every description that may be found or located at the site of the Work.

Termination. This Contract may be terminated as follows:

Termination by the Owner for Cause. The Owner may terminate this Contract for one or more of the following causes:

- a) Contractor's persistent failure to perform the Work in accordance with the Contract Documents;
- b) Contractor's failure to observe and comply with all Applicable Laws;
- c) Contractor's material violation or breach of any provision of the Contract Documents;
- d) Contractor's abandonment of the Work;
- e) an Event of Default;
- f) Uncontrollable Circumstance.

Mutual Consent. This Contract may be terminated by the Owner and the Contractor by mutual consent.

All costs, expenses, losses, damages, engineering fees, attorney's fees and any and all other charges incurred by the Owner under this subsection shall be first charged against the Contractor out of any moneys due or payable or to become due or payable

under the Contract to the Contractor; in computing the amounts chargeable to the Contractor, the Owner shall not be held to a basis of the lowest prices for which the completion of the Work or any part thereof might have been accomplished, but all sums actually paid or obligated therefor to effect its prompt completion shall be charged to and against the account of the Contractor. In case the costs, expenses, losses, damages, engineering fees, attorneys' fees and other charges together with all payments theretofore made to or for the account of the Contractor exceed the sum which would have been payable under the Contract if the Work had been properly performed and completed by the Contractor, the Contractor shall pay the amount of the excess to the Owner.

CA.34 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.

CA.35 MONEYS MAY BE RETAINED

The Owner may at any time retain from any moneys which would otherwise be payable hereunder so much thereof as the Owner may deem necessary to complete the Work hereunder and to reimburse it for all costs, expenses, losses, damage and damages chargeable to the Contractor hereunder.

CA.36 FORMAL ACCEPTANCE

The Contract Documents 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.

CA.37 PROGRESS ESTIMATES

At least 20 days before each monthly progress payment falls due for approval in accordance with the Payment Cycle described in CA.37 (but not more often than once per month), the Contractor will submit to the engineer a partial payment estimate filled out and signed by the contractor covering the work performed during the period covered by the partial payment application and supported by such data as the engineer may reasonably require. 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 Contract 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. Where any specific item(s) in the partial

payment estimate is in dispute, the Engineer may delete those costs from the estimate and approve the acceptable portion of the payment request. No progress estimate or payment need be made when, in the judgement of the Owner/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 Owner/Engineer before the first estimate becomes due.

Engineer may refuse to recommend the whole or part of any payment if, in Engineer's opinion, the Work has not progressed to the point indicated or the quality of the Work is not in accordance with the Contract Documents or as may be necessary to protect the Owner from loss because:

- a. the Work is defective;
- b. completed Work has been damaged, requiring correction or replacement;
- c. unacceptable work not remedied;
- d. failure to prosecute the Work in accordance with the Contract Documents;
- e. damages to the Owner, another contractor, a property owner, or any third party;
- f. the Contract Price has been reduced by Change Order;
- g. a reasonable doubt that the Work can be completed for the balance then unpaid;
- h. liens have been filed in connection with the Work;
- i. failure of the Contractor to make payments to subcontractors or suppliers or for material or labor;
- j. liquidated damages owed to the Owner;
- k. extended engineering fees owed to the Owner; or
- l. failure to submit certified payrolls corresponding to the time period covered by the payment request.

Any payment or such portion thereof that is disputed by the Engineer or Owner shall not be paid until such dispute is resolved. No interest or fees shall accrue on any amount disputed by the Owner.

Payment for stored materials and/or equipment shall be subject to the following conditions being met or satisfied:

1. The materials and/or equipment shall be received in a condition satisfactory for incorporation into the work.

2. The materials and/or equipment shall be stored in such a manner that they will not be damaged due to weather, construction operations or any other cause, and in the case of equipment, the receipt of long/short term storage and maintenance requirement from the manufacturer to enable verification that the equipment is stored in accordance with these requirements
3. An invoice from, the supplier shall be furnished for each item on which payment is requested.
4. The contractor shall furnish written proof from the supplier of 90 percent payment for the material and/or equipment no later than 30 days after receipt of payment for the same from the owner. The owner shall have the right to deduct from the next payment estimate an amount equal to the payment for said material and/or equipment if reasonable and adequate proof is not submitted.

For equipment items, additional percentage payments will be made upon completion/receipt of the following items:

- 2% Approved O&M Manual
- 1% Manufacturer's representative preliminary checkout and equipment certification
- 2% Manufacturer's Start-up
- 2% Final Acceptance Testing
- 2% Manufacturer's submittal of an approvable training outline and trainee manual and manufacturer's training of plant personnel
- 1% Spare parts/tools

The contractor warrants and guarantees that title to all work, materials, and equipment covered by an Application for Payment, whether incorporated into the project or not, will pass to the owner upon receipt of such payment by the contractor free and clear of all liens, claims, security interests, or encumbrances (except 10 percent retention may be withheld from suppliers and subcontractors to guarantee completion and performance). The engineer will after receipt of progress estimate either indicate in writing his approval of payment and present the partial payment estimate to the owner, or return the partial payment estimate to the contractor for correction. In the latter case, the contractor may make the necessary corrections and resubmit the partial payment application.

CA.38 PARTIAL ACCEPTANCE

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 his 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 acceptance of that specified part of the Work.

Within 45 days after acceptance under this subsection, the Owner/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 Contract, said payment to be made at the time of the next monthly progress estimate.

Acceptance 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 will allow the Contractor reasonable access thereto to complete or correct items on the tentative list.

CA.39 FINAL ESTIMATE AND PAYMENT

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

The Owner shall pay to the Contractor the entire amount found by the Owner/Engineer to be earned and due hereunder 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 Contract. Except as in this subsection otherwise provided, such payment shall be made in accordance with Section CA.38 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, or, if such time is not specified by law, the expiration of thirty (30) days after the completion of the Owner/Engineer's final estimate.

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

CA.40 PAYMENT CYCLE

For the purposes of billing the Owner has established the following payment procedure in accordance with N.J.S.A. 2A:30A-1 et. seq.

1. The Work has been approved and certified by the Owner or by the Owner's 'authorized approving agent' a minimum of fourteen (14) calendar days prior to the billing date.

2. The 'billing date' is defined as the 1st Authority public meeting after the date that the Owner has received the bill, invoice, or progress payment application and at which time the bill, invoice, or progress payment application shall be approved for payment or notice provided as to why the bill, invoice, or progress payment application or any portion of it will not be approved.
3. If the billing is approved, the bill, invoice, or progress payment application shall be made within fourteen (14) calendar days of the public meeting at which the billing was approved for payment.
4. The billing date for final payment and retainage payment is defined as the date the bill is received by the Owner and is submitted in accordance with sections CA.37, CA.46, and Table A of this Agreement.

CA.41 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 shall have the right to retain from any moneys payable hereunder an amount which, in its sole judgement, it deems necessary to satisfy such liens and pay the costs and expenses, including attorneys' fees, of defending any actions brought to enforce the same, or incurred in connection therewith or by reason thereof.

CA.42 CLAIMS

If at any time there be any evidence of any claims for which the Contractor is or may be 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 retain from any moneys which would otherwise be payable hereunder so much thereof as, in its sole judgement, it may deem necessary to settle or otherwise dispose of such claims and to pay the costs and expenses, including attorneys' fees, of defending any actions brought to enforce such claims, or incurred in connection therewith or by reason thereof.

CA.43 APPLICATION OF MONEYS RETAINED

The Owner may apply any moneys retained hereunder to reimburse itself for any and all costs, expenses, losses, damage and damages, liabilities, suits, judgments and awards incurred, suffered or sustained by the Owner and chargeable to the Contractor hereunder or as determined hereunder.

CA.44 NO WAIVER

Neither the inspection by the Owner or the Owner/Engineer, nor any order, measurement, approval, determination, decision or certificate by the Owner/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 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 or improper work, materials, or equipment nor operate as a waiver of any requirement or provision of the Contract, 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 Contract 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 Contract by the Contractor, by his subcontractors or by any other person or persons.

CA.45 LIABILITY OF OWNER

No person, firm or corporation, other than the Contractor, who signed this Contract 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, its board members, executive director, its officers, employees and consultants including Engineer and of every agent of the Owner (collectively the "Owner Parties") of and from any and all claims, demands, accounts, damages, liabilities and obligations of any nature whatsoever, whether at law or in equity that the Contractor, including its board members, owners, shareholders, its officers, employees, consultants, together with its divisions, affiliates, subsidiaries and all entities related to Contractor in any way (collectively the "Contractor Parties") may have against the Owner Parties, whether known or unknown to the Contractor Parties, for anything done or furnished for or arising out of or relating to or by reason of the Contract Documents, the Work and/or the Project 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 Contract Documents, the Work and/or the Project.

CA.46 GUARANTEE

The Contractor guarantees that the Work and services to be performed under the Contract, 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 shall be fulfilled. This guarantee shall be for a period of one year from and after the date of completion and acceptance of the Work as stated in the final estimate.

If part of the Work is accepted in accordance with that subsection of this AGREEMENT titled "Partial Acceptance", the guarantee for that part of the Work shall be for a period of one year from the date fixed for such acceptance.

CA.47 WARRANTY, MAINTENANCE BOND AND ENVIRONMENTAL MAINTENANCE BOND REQUIREMENTS

- A. **Warranty.** The Contractor warrants to the Owner and Engineer that the materials and equipment furnished by the Contractor or any Subcontractor (of any tier) under the Contract Documents will be fit for the intended purpose, of good quality and new unless otherwise required or permitted by the Contract Documents, that the work will be free from defects not inherent in the quality required or permitted, and that the work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective. This warranty excludes remedy for damage or defect caused by others for whom the Contractor is not responsible, modifications not executed by the Contractor or its Subcontractors (of any tier), improper operation, or normal wear and tear under normal usage. In case of inquiry by the Engineer, the Contractor shall furnish evidence, satisfactory to the Engineer, as to the nature and quality of any work, materials or equipment furnished under the Contract. The foregoing warranty shall remain in effect until the end of the Maintenance Period described in the Article of this Contract entitled, "Maintenance Period" and the Owner shall have the remedies provided therein.

The Contractor will provide the Owner with all available manufacturer's warranties and the documentation therefore, covering the materials, equipment and goods supplied under the Contract. Such manufacturer's warranties shall survive the completion and acceptance of the Contract, and shall remain in effect according to their terms.

- B. **Two Year Maintenance Period.** In addition to, and not in lieu of the Contractor's warranty, above, if, within two years from the date of Owner's final acceptance of the Contractor's work or such longer period of time as may be prescribed by law or regulation or by the terms of any special warranty required by the Contract Documents, any such work is found to be defective or requires repair, amendment, reconstruction, or rectification to keep the facility and its appurtenances in good and serviceable condition, the Contractor shall promptly, without cost to the Owner and in accordance with Owner's written instructions, either correct such condition or, if the work has been rejected by the Owner, remove it from the site and replace it with proper work. Such two-year period is referred to here as the "Maintenance Period."

The Contractor's maintenance obligation excludes remedy for damage or defect caused by others for whom the Contractor is not responsible.

Throughout the Maintenance Period, the Contractor shall also correct any settlement or erosion in fills or cuts and restore all ground areas to elevations indicated on the Contract Drawings when so instructed by the Owner or the Engineer.

The Contractor's Maintenance Bond shall remain in effect until the end of the Maintenance Period. The Maintenance Bond shall be in a sum equal to 10% of the Contract Price.

If the Contractor does not comply with the requirements of the above stated warranty obligations or maintenance obligations, promptly correct the work, promptly comply with the terms of instructions of the Owner or Engineer, or, in an emergency where delay would cause material risk of loss or damage, the Owner may have the work corrected or the rejected work removed and replaced and all direct, indirect and consequential costs of such removal and replacement (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) will be borne by Contractor and may be deducted from amounts payable to the Contractor under the Contract. If instead of requiring correction or removal and replacement of the work, the Owner prefers to accept it, the Owner may do so and the Owner shall be entitled to an appropriate decrease in Contract Price. The remedies provided herein are not the exclusive remedies of the Owner and the Owner reserves all rights available to it under the Contracts Documents and the law.

- C. One Year Environmental Maintenance Bond. The Contractor is required to furnish an Environmental Maintenance Bond in the amount of \$25,000, or 50 percent of the bid price, whichever is greater, at the time of final acceptance of the environmental restoration work and prior to final payment under the Contract. The Environmental Maintenance Bond is required to assure that the required environmental restoration is completed in a satisfactory manner, including material needed to fulfill the environmental specifications, and to assure the success and maintenance of the environmental restoration work. The Environmental Maintenance Bond shall remain in full force and effect for one (1) year beyond the expiration of the Performance Bond which is equivalent to one (1) year from the start of the Maintenance Period specified above. The Environmental Maintenance Bond shall provide for the remedy of any defects which are proved to result from faulty workmanship or from failure to comply with the specifications and which develop from the period of one year from the expiration of the Performance Bond, required pursuant to N.J.S.A. 40A:11-22.

CA.48 RETURN OF DRAWINGS

All Drawings furnished by the Owner to the Contractor may be used only in connection with the prosecution of the Work and shall be returned by the Contractor upon completion of the Work.

CA.49 CLEANING UP

The Contractor at all times shall keep the site of the Work free from rubbish and debris caused by his operations under the Contract. When the Work has been completed, the Contractor shall remove from the site of the Work all of his plant, machinery, tools, construction equipment, temporary work, and surplus materials so as to leave the Work and the site clean and ready for use.

CA.50 LEGAL ADDRESS OF CONTRACTOR

The Contractor's business address and his office at or near the site of the Work are both hereby designated as places to which communications shall be delivered. The depositing of any letter, notice, or other communication in a postpaid wrapper directed to the Contractor's business address in a post office box regularly maintained by the Post Office Department or the delivery at either designated address of any letter, notice, or other communication by mail or otherwise shall be deemed sufficient service thereof upon the Contractor, and the date of such service shall be the date of receipt. The first-named address may be changed at any time by an instrument in writing, executed and acknowledged by the Contractor and delivered to the Owner/Engineer. Service of any notice, letter, or other communication upon the Contractor personally shall likewise be deemed sufficient service.

CA.51 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.

CA.52 MODIFICATION OR TERMINATION

Except as otherwise expressly provided herein, the Contract may not be modified or terminated except in writing signed by the parties hereto.

CA.53 WAIVER OF BREACH

The failure of either party, at any time, to require performance by the other party, of any provision of this contract, shall in no way affect the full right to require such performance at any time thereafter. The waiver by either party of a breach of any provision of this Contract does not constitute a waiver of any succeeding breach, of the same or any other such provision, nor shall it constitute a waiver of the provision itself.

CA.54 APPLICABLE LAW

This Contract shall be construed according to the laws of the State of New Jersey, insofar as existence of the Contract as a binding agreement and matters concerning performance or breach thereof are concerned. Any legal action will be brought in the courts within the State of New Jersey.

CA.55 CONTRACT REMAINING VALID

If any provision of this contract is determined to be ineffective or invalid under the laws of the State of New Jersey, all other provisions shall remain effective and valid, provided the purpose of the remaining valid and effective provisions is not frustrated.

CA.56 FEDERAL LABOR STANDARDS PROVISIONS

The Contractor shall comply with "Wage Rate Requirements Under the Consolidated and Further Continuing Appropriations Act, 2013 (P.1.113-6)" which is presented in Attachment E of Section CA. Federal labor standards are also presented below. If a conflict exists between the standards below and Attachment E, Attachment E shall prevail.

(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 Sec. 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 contracting officer 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 contracting officer 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 contracting officer 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 by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

(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 Rockaway Valley Regional Sewerage Authority (RVRSA) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from 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 (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 (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)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the New Jersey Department of Environmental Protection (NJDEP) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the NJDEP. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under Sec. 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from

the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(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 maintained under Sec. 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 NJDEP 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 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 NJDEP 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 contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor 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 Agency Head shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Sec.

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

(3) Withholding for unpaid wages and liquidated damages. The SBRSA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (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 Sec. 5.1, the Agency Head shall cause or require the contracting officer to insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency Head shall cause or require the contracting officer 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 NJDEP and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

The Federal Wage Rates are included in Appendix B. The higher of the federal or stage wage rates shall be applied during construction.

CA.57 NEW JERSEY PREVAILING WAGE ACT

The New Jersey Prevailing Wage Act, P.L. 1963, Chapter 150 is hereby made a part of every contract entered into on behalf of the Rockaway Valley Regional Sewerage Authority, except those contracts which are not within the contemplation of Act. The Contractor's signature on this agreement is its guarantee that neither it nor any Subcontractors it might employ to perform the work covered by this proposal are listed or are on record in the Office of the Commissioner, Department of Labor and Industry, as one who has failed to pay prevailing wages in accordance with the provisions of this Act.

CA.58 AMERICAN GOODS AND PRODUCTS

In accordance with N.J.S.A 40A:11-18, only manufactured and farm products, wherever possible, shall be used in the work.

CA.59 AS-BUILT DRAWINGS

The contractor shall be responsible to maintain a set of "Red-Lined" drawings reflecting as-built conditions. The as-built drawings shall be provided to the Engineer following substantial completion for its use in preparing the Record Drawings required by N.J.A.C. 7:14-2.2.

CA.60 PENALTIES FOR FALSIFICATION

In accordance with N.J.S.A. 40A:11-34, any person who makes or causes to be made, a false, deceptive, or fraudulent statement in the statement or answers in response to the Bidder Qualification Form, or in the course of any hearing hereunder, shall be guilty of a misdemeanor, and upon conviction shall be punishable by a fine of not less than \$100.00 nor more than \$1,000.00, and shall be permanently disqualified from bidding on all public work or contracts of the Owner; or, in the case of an individual or an officer or employee charged with the duty of responding to the questionnaire for a person, firm, copartnership, association or corporation, by such fine or by imprisonment, not exceeding 6 months, or both. Also, in accordance with N.J.S.A. 40A:11-33, a deposit made by any person who makes or causes to be made a false, deceptive, or fraudulent statement or answers in response to a questionnaire or in the

course of a hearing hereunder may be caused to be forfeited, as liquidated damages by and to the contracting unit.

CA.61 EQUIVALENT EQUIPMENT AND MATERIAL

Whenever materials or equipment are described in the Contract Documents by using a brand, manufacturer, supplier or specification, such a naming or specification is intended to denote the essential characteristics desired and to establish a standard. The only named or first named brand, manufacturer or supplier is the basis of design. Unless words are used indicating that no "or equivalent" is allowed, an "or equivalent" item may be accepted by the Engineer if, in the Engineer's judgment, the item meets the criteria set forth in the paragraphs below.

The Contractor's shall furnish the submittals required by the relevant technical specification for the "or equivalent" item which shall be sufficiently detailed to allow the Engineer to determine whether the material or equipment proposed (a) will equally perform the functions and achieve the results called for by the Contract Documents, (b) is at least of equal materials of construction, quality and necessary essential design features, (c) is suited to the same use as that named or specified, (d) conforms substantially to the desired requirements, e.g., durability, strength, appearance, aesthetics (if aesthetics are significant), safety, useful life, reliability, ease and economy of operation and maintenance, (e) evidences a proven record of experience and performance and the availability of local and responsive service.

The contractor's submittals for an "or equivalent" item shall clearly indicate if the installation or use of the "or equivalent" item will require a change in any of the Work or any of the means and methods indicated in or required by the Contract Documents, or in work performed by the Owner or others, and whether or not incorporation or use of the proposed item is subject to payment of any license fee or royalty. All variations of the proposed item from the item named or specified shall be identified (operation, materials or construction finish, thickness or gauge of material, dimensions, configuration, structural and electrical loads, tolerances, deleted and added features, etc.), and information regarding available maintenance, repair and replacement service shall be indicated. Consistent with all items of material or equipment to be furnished by the contractor, no "or equivalent" item shall be ordered, installed or utilized before the submittals required by the technical specifications are reviewed and approved by the Engineer to verify compliance with the contract requirements.

The Bidder assumes full responsibility for the cost and time required to make items of material or equipment conform to the requirements of the Contract Documents. In addition, if an item of material or equipment is submitted by the Bidder as an "or equivalent" under the provisions of the Contract Documents, and requires any changes in the Work, including, but not limited to changes in the drawings, structures, piping, mechanical systems, electrical systems, or instrumentation systems or in any testing requirements, or in any means and methods indicated in or required by the Contract

Documents, the Bidder assumes responsibility for the full cost and time required to carry out such changes in the Work, including the cost of re-design by a professional engineer licensed in New Jersey. The preceding responsibility applies to any changes required by use of a named or specified item of material or equipment other than the only named or first named item of material or equipment used as the basis of design. Submission of a Bid constitutes a binding representation by the Bidder that the Bidder acknowledges and accepts the determination that any delay and all costs resulting from the events described in this paragraph do not justify any increase(s) in Contract Price and/or Contract Time.

The Contractor shall be responsible for verifying that all items of material or equipment, including "or equivalent" items conform to the Contract Documents, and that all dimensions, arrangement, design and construction details and other features are suited to the specified purpose. If an "or equivalent" item differs materially from the item named or specified, and that difference was not expressly identified in the Contractor's submittals, or results in changes in the Work or in the general design concept, the Engineer has authority to require removal and replacement of that "or equivalent" item. The Contractor shall be responsible for any delay and all costs resulting from (a) any such removal and replacement of an "or equivalent" item, (b) making any "or equivalent" materials or equipment conform to the requirements of the Contract Documents, and (c) implementing any changes in the Work and/or in other work to accommodate the "or equivalent" item, or both.

CA.62 IMPLEMENTATION OF AMERICAN IRON AND STEEL PROVISIONS OF P.L. 113-76, CONSOLIDATED APPROPRIATIONS ACT, 2014

The Contractor acknowledges to and for the benefit of the Owner ("Purchaser") and the state of New Jersey (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 and such law contains provisions commonly known as "American Iron and Steel;" (P.L. 113-76, Consolidated Appropriations Act, 2014 (Act), section 436) 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.

Other mandatory requirements related to Implementation of American Iron and Steel Provisions of P.L. 113-76, Consolidated Appropriations Act, 2014 are presented in Attachment F.

CA.63 RECORDKEEPING

Contractor shall keep and maintain full and accurate books and records in connection with the Work provided pursuant to this Contract. Contractor agrees that the Owner and its duly authorized agents shall have the right at all times to enter upon and to examine and inspect Contractor's records relating to the Work upon reasonable notice.

Additionally, the Contractor shall maintain all documentation related to products, transactions or services under this Contract for a period of five (5) years from the date of the final payment to the Contractor by the Owner. Such records shall be made available to the New Jersey Office of State Comptroller upon request.

CA.64 ENTIRE CONTRACT

Provisions contained herein or incorporated herein by reference and the Contract Documents constitute the entire Contract and supersede all previous communications or representations, either verbal or written, between the parties hereto unless specifically stated herein with respect to the subject matter hereof.

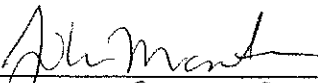
Attachments

Table A


- A. Socially and Economically Disadvantaged Business Utilization Plan
- B. New Jersey Department of Environmental Protection Office of Equal Opportunity and Public Assistance Small, Minority and Women's Business Vendor Listing
- C. New Jersey Department of Environmental Protection Change Order Form: "Contract Modification Proposal and Acceptance"

- D. Federal Labor Standards Provisions (EPA Form 5720-4)
- E. Wage Rate Requirements Under the Consolidated and Further Continuing Appropriations Act, 2013 (P.L. 113-6)
- F. Implementation of American Iron and Steel provisions of P.L. 113-76. Consolidated Appropriations Act, 2014



IN WITNESS THEREOF, the parties to this AGREEMENT have hereunto set their hands and seals as of the day and year first above written.



Chairman Executive Director
Rockaway Valley Regional Sewerage Authority
(Party of the First Part)



Mary K. Thomas, President
Tomar Construction Services, Inc.
(Party of the Second Part)

Approved as to Form:  _____
Counsel 

Certificate of Acknowledgment of Contractor
if a Corporation

For AGREEMENT

State of New Jersey)

)ss

County of Middlesex)

On this 10th day of August, 2017,

before me personally came Mary K. Thomas to me known,

who being by me duly sworn, did depose and say as follows:

That he resides at 38 Logan Lane, Piscataway, NJ 08854

and is the President

of Tomar Construction Services, Inc.

the corporation described in and which executed the foregoing instrument; that he knows the corporate seal of said corporation; that 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 like order he signed thereto his name and official designation.

Notary Public (Seal)

My commission expires

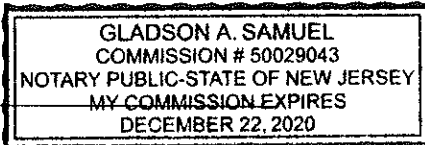


TABLE A

Agreement Subsection Reference	Item	Minimum limits
CA.6	Workmen's Compensation and, in addition, Coverage B Employer's Liability in the amount of \$1,000,000	As required by laws of the State of New Jersey.
CA.6	Commercial General Liability Insurance including: a. Completed Operations b. Independent Contractors c. Broad Form Property Damage d. Contractual Liability e. Blasting, Explosion, Collapse and Underground (XCU)	Bodily Injury and Property Damage ----- \$1,000,000 CSL
CA.6	Automobile Liability Insurance for owned, non-owned, hired or operated motor vehicles	Bodily Injury and Property Damage ----- \$1,000,000 CSL
CA.6	Umbrella Excess Liability Insurance on a "following form of underlying policies" basis	Bodily Injury and Property Damage ----- \$4,000,000 each occurrence
CA.6	Contractor's Installation Floater	Total insurable value of all structures, materials, and equipment to be built and installed.
CA.17	Time of Substantial completion Time for Final Completion	Within 600 consecutive calendar days after issuance of Notice to Proceed Within 630 consecutive calendar days following issuance of Notice to Proceed.

TABLE A (Continued)

Agreement Subsection Reference	Item	Minimum limits
CA.18	Liquidated Damages for each calendar day of delay in completion time	\$1,200
CA.37	Percentage of Progress Estimates to be Retained until completion of the work	2% in accordance with N.J.A.C. 7:14.2.8
CA.37	Amount of Minimum Progress Estimates	\$10,000
CA.47	Two Year Maintenance Bond	10% of contract price
CA.47	One Year Environmental Maintenance Bond	\$25,000, or 50 percent of the bid price for material needed to fulfill environmental specifications, whichever is greater

ATTACHMENT A

SOCIALLY AND ECONOMICALLY DISADVANTAGED BUSINESS UTILIZATION PLAN

**ROCKAWAY VALLEY REGIONAL SEWERAGE AUTHORITY
MORRIS COUNTY, NEW JERSEY**

**SOCIALLY AND ECONOMICALLY DISADVANTAGED
BUSINESS UTILIZATION PLAN**

NJEIFP Project Number S340821-07

Final Clarifiers Repair Project

May 2017

TABLE OF CONTENTS

Introduction

Scope and Purpose

Definitions

Contractor/Subcontractor Obligations

Borough Obligations

In-House Procedures

Attachments

- N.J.A.C. 7:22 Subchapter 9
- SED Participation Building Phase Quarterly Reporting Form for Contracting Agencies & Contractors (Form OEO-002)
- SED Participation Monthly Progress Report (Form OEO-003)
- Small, Minority and Women's Business Vendor Listing

INTRODUCTION

The Rockaway Valley Regional Sewerage Authority (RVRSA) promotes equal opportunities by prohibiting discrimination within the RVRSA and by requiring affirmative action in the performance of contracts awarded by the RVRSA.

Additionally, the RVRSA recognizes and accepts its obligation to provide equal business opportunities to socially and economically disadvantaged (SED) contractors and vendors. Therefore, the RVRSA will ensure that a fair proportion of the work to be performed on this Project be awarded to SED businesses.

SCOPE AND PURPOSE

The New Jersey Department of Environmental Protection (NJDEP) and the New Jersey Environmental Infrastructure Trust (Trust) require that local governmental units seeking financing from the State establish procedures to meet the regulations cited under the New Jersey Administrative Code (N.J.A.C.)

N.J.A.C. 7:22-9.3 requires that a goal of not less than the (10) percent of the total amount of all contracts for building, materials or services be awarded to SED contractors and vendors. Therefore, a 10% goal is established for the contractor/subcontracts for the project.

Under the provision of N.J.A.C. 7:22-9.4, the recipient of the loan must establish a formal procedure for providing opportunities to SED contractors and vendors to supply services and materials during construction of the facilities.

N.J.A.C. 7:22-9.11 requires that the loan recipient designate an officer or employee to serve as its Public Agency Compliance Officer (PACO). The project compliance officer shall be responsible for coordinating SED utilization efforts on the project and for monitoring and enforcing compliance with the affirmative action and SED requirements of the applicable program rules.

This SED Utilization Plan establishes the standards and procedures that will be applied by the Borough to conform to the aforementioned rules and regulations.

DEFINITIONS

For the purpose of interpreting the words and terms used in this Plan, the following definitions apply unless the content clearly indicates otherwise:

"Building" means the acquisition, erection, alteration, remodeling, improvement or extension of an environmental infrastructure facility.

"Construction" includes, but is not limited to:

1. The preliminary planning to determine the economic and engineering feasibility of environmental infrastructure facilities, the engineering, architectural, legal, fiscal, and economic investigations and studies, surveys, design, plans, working drawings, specifications, procedures, and other action necessary for the construction of environmental infrastructure facilities;
2. The building of, or purchase of land for, environmental infrastructure facilities; and
3. The inspection and supervision of the building of environmental infrastructure facilities.

"Contract" means any written agreement with a professional service or construction contractor related to the construction of an environmental infrastructure project.

"Contracting agency" means the governing body of a local government unit or any department, branch, board, commission, committee, authority, agency or officer of such local government unit possessing the authority to award and make contracts; or

"Contractor" means any party entering into a contract to provide or offering to provide building, materials and equipment, or services to a project sponsor for the construction of environmental infrastructure facilities. This includes, but is not limited to, planning and design, as well as building related services such as engineering, inspection and accounting.

"Contractor's plan" means the SED utilization plan submitted by the contractor to the project sponsor and to the Department establishing subcontracting opportunities that will fulfill the requirements of this subchapter.

"Department" means the New Jersey Department of Environmental Protection and its successors and assigns.

"Environmental infrastructure facilities" means wastewater treatment facilities, stormwater management facilities or water supply facilities.

"Financial agreement" means the legal instrument, including a grant agreement or loan agreement, executed between either the State of New Jersey or the Trust and the project sponsor for the construction of environmental infrastructure facilities.

"Local government unit" means a county, municipality, municipal or county sewerage or utility authority, municipal sewerage district, joint meeting, improvement authority or other political subdivision of the State authorized to construct, operate and maintain wastewater treatment or stormwater management facilities, or a State authority, district water supply commission, county, municipality, municipal or county utilities authority, municipal water district, joint meeting or any other political subdivision of the State authorized pursuant to law to operate or maintain a public water supply system or to construct, rehabilitate, operate or maintain water supply facilities or otherwise provide water for human consumption.

"New Jersey Environmental Infrastructure Financing Program" means the program for providing financing to project sponsors pursuant to N.J.A.C. 7:22-3, 4 and 6, and 7:22A-6 and 7.

"Office" means the Office of Equal Opportunity, Public Contract Assistance and Environmental Equity or other program of the Department of Environmental Protection with the responsibility for administration of this subchapter.

"Project" means the defined services for the construction of specified operable environmental infrastructure facilities as approved by the Department or the Trust in the project sponsor's financial agreement.

"Project agency compliance officer" means an officer or employee of the project sponsor who is designated by the project sponsor to monitor and enforce compliance with the affirmative action and SED requirements of the applicable program rules and this subchapter.

"Project plan" means the proposal submitted at the time of application by the project sponsor to the Department establishing the SED utilization plan and its requirements.

"Project sponsor" means any local government unit or private entity that seeks a loan or grant pursuant to N.J.A.C. 7:22-3, 4 and 6 and 7:22A -6 and 7.

"SED utilization plan" means a written document outlining the entire project work, the estimated length of time it will take to complete the project, each significant segment of the project on which SEDs will or may participate, and a description of how SEDs will be contacted.

"Socially and economically disadvantaged small business concern" or "SED" means any small business concern:

1. Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals; or, in the case of a publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; or, in the case of a joint venture, at least 51 percent of the beneficial ownership interests are

legitimately held by a SED; and

2. Whose management and daily business operations are controlled by one or more socially and economically disadvantaged individuals; and

3. Which is a full participation subcontractor in that the SED is responsible for the execution of a distinct element of work and carries out the work responsibility by actually performing, managing and supervising the task involved. Any deviation from this definition will automatically classify the SED as a broker, middleman or passive conduit. These three functions are contrary to the spirit of the Trust Act and will not qualify a SED enterprise for State of New Jersey certification; and

4. Which has been certified pursuant to the New Jersey Uniform Certification Act (N.J.S.A. 52:27H-1 et seq.) or pursuant to the provisions of 49 CFR Part 23 by the New Jersey Department of Commerce and Economic Development, the New Jersey Department of Transportation, the Port Authority of New York and New Jersey, the New Jersey Transit or other agencies deemed appropriate by the Office, as an eligible minority business or female business.

i. "Socially disadvantaged individuals" means those individuals who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities.

ii. "Economically disadvantaged individuals" means those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged.

iii. "Socially and economically disadvantaged individuals" shall include women, Black Americans, Hispanic Americans, Native Americans, Asian Americans, and members of other groups, or other individuals, found to be socially and economically disadvantaged by the Small Business Administration under Section 8(a) of the Small Business Act, as amended (15 USC 637(a)). Black Americans, Hispanic Americans, Native Americans and Asian Americans shall be defined as follows:

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

(2) "Hispanic American" means a person of Spanish or Portuguese culture, with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race;

(3) "Asian American" means a person having origins in any of the original peoples of the Far East, Southeast Asia, Indian Subcontinent, Hawaii, or the Pacific Islands;

(4) "Native American" means a person having origins in any of the original peoples of North America.

"Small business concern" means a business which is independently owned and operated and which is not dominant in its field of operation. A business is independently owned and operated if the management which controls the business is responsible for both its daily and long term operations.

"Subcontract" means an agreement to perform a portion of a contract.

"Subcontractor" means a third party that is engaged by the contractor to perform part of the work under a subcontract.

"Trust" means the New Jersey Environmental Infrastructure Trust established pursuant to the Trust Act.

"Trust Act" means the New Jersey Environmental Infrastructure Trust Act (N.J.S.A. 58:11B-1 et seq., as amended and/or supplemented).

CONTRACTORS/SUBCONTRACTORS OBLIGATIONS

1. This SED Utilization Plan, together with the requirements set forth by the NJDEP and the New Jersey Environmental Infrastructure Trust at N.J.A.C. 7:22-3, 4, and 6 and 7:22A-6 and 7 shall become part of the Specifications for NJDEP Project Number S340821-07 (RVRSA Final Clarifiers Repair Project).
2. Not less than ten (10) percent of the total allowable amount of all contract for building, materials and equipment, or services for the Project shall be awarded to small business concerns owned and controlled by socially and economically disadvantaged individuals.
3. The ten (10) percent Project SED utilization shall be accomplished by the following:

Bids for construction will be solicited on an unrestricted basis and not designated as a set-aside contract. The Specification, however, shall include a statement requiring the successful bidder (unless the successful bidder is an SED Contractor) to fulfill the entire ten (10) percent Project utilization requirement by subcontracting a portion(s) of the work to qualified SED subcontractors.
4. The low bid construction Contractor is required to submit their own SED Utilization Plan to the Authority's Public Agency Compliance Officer (PACO), regardless of whether they themselves are an SED, on their procedures to implement the stated ten percent goal set forth in this Plan no later than thirty (30) days after notification that they are the apparent low bidder on and are being considered for award of the construction contract.
5. Failure by the low bid construction contractor to provide a reasonable SED implementation plan within this thirty (30) day period may result in the rejection of their bid as being a non-responsive bidder by the PACO.

ROCKAWAY VALLEY REGIONAL SEWERAGE AUTHORITY OBLIGATIONS

The RVRSA's PACO shall assist both the low bid construction contractor and the SED contractor in meeting the requirement of this Plan by performing the following tasks:

- a. Provide a listing of certified SEDs in the Project Specifications to assist the construction contractors in meeting the ten percent (10%) utilization goal.
- b. Thirty (30) days prior to the public advertisement for bids, the PACO shall provide notice to the Office of Equal Opportunity and Public Contract Assistance of the availability of opportunities for SEDs to bid on this unrestricted contract or to provide services or products to contractors whom may bid on this unrestricted contract.
- c. Require that all business concerns included in the low bid construction contractor's implementation plan be certified as SEDs by the New Jersey Department of Commerce and Economic Development prior to the award of the construction contract.

IN-HOUSE PROCEDURES

The RVRSA's PACO shall perform the following functions during the execution of the construction contract:

- a. Be responsible for coordinating SED utilization efforts on the Project and for monitoring and enforcing compliance with this Plan.
- b. Be responsible for meeting the local government unit reporting requirements and enforcing the construction contractor's reporting requirements of N.J.A.C. 7:22-9.12.
- c. Ensure that the SED business being utilized by the construction contractor maintain their certification pursuant to the New Jersey Uniform Certification Act (N.J.S.A. 52:27H-1 et seq.).
- d. Attend all monthly construction progress meetings.

The rule below includes the amendments adopted to this subchapter on January 3, 2006.

Subchapter 9. Awarding Contracts for State Assisted Projects to Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals

7:22-9.1 Scope and purpose

(a) This subchapter establishes procedures for providing opportunities for socially and economically disadvantaged ("SED") contractors and vendors to supply materials and services under State financed construction contracts for environmental infrastructure facilities. To implement the policies established in N.J.S.A. 58:11B-26, 40:11A-41 et seq., and 52:32-17 et seq., this subchapter applies to environmental infrastructure projects receiving financial assistance from the Department and the Trust pursuant to N.J.A.C. 7:22-3, 4 and 6 and 7:22A-6 and 7. Under the provisions of N.J.A.C. 7:22-3, 4 and 6 and 7:22A-6 and 7, the Department and the Trust require recipients of Trust and Fund loans and other assistance to establish such programs for socially and economically disadvantaged small business concerns, to designate a project compliance officer, and to submit to the Department and Trust procurement plans for implementing the SED program. In addition, N.J.A.C. 7:22-3.17(a)24, 4.17(a)24, 6.17(a)24 and 7:22A-2.4(a) provide that a goal of not less than 10 percent be established for the award of contracts to small business concerns owned and controlled by one or more socially and economically disadvantaged individuals. The goal of 10 percent applies to the total amount of all contracts for building, materials and equipment, or services (including planning, design and building related activities) for a construction project. Where a local government unit has a SED participation goal which exceeds 10 percent of the total amount of all contracts, the local government unit must comply with both the Department's rules and the local minority and women-owned business ordinances.

(b) This subchapter also establishes the standards and procedures that will apply to the contracting agencies of grant or loan recipients in the awarding and making of contracts under their SED programs.

7:22-9.2 Definitions

The following words and terms, as used in this subchapter, will have the following meanings unless the content clearly indicates otherwise.

"Building" means the acquisition, erection, alteration, remodeling, improvement or extension of an environmental infrastructure facility.

"Construction" includes, but is not limited to:

1. The preliminary planning to determine the economic and engineering feasibility of environmental infrastructure facilities, the engineering, architectural, legal, fiscal, and economic investigations and studies, surveys, design, plans, working drawings, specifications, procedures, and other action necessary for the construction of environmental infrastructure facilities;
2. The building of, or purchase of land for, environmental infrastructure facilities; and
3. The inspection and supervision of the building of environmental infrastructure facilities.

"Contract" means any written agreement with a professional service or construction contractor related to the construction of an environmental infrastructure project.

"Contracting agency" means:

1. The governing body of a local government unit or any department, branch, board, commission, committee, authority, agency or officer of such local government unit possessing the authority to award and make contracts; or

2. The owner(s) or authorized representative(s) of a private entity.

"Contractor" means any party entering into a contract to provide or offering to provide building, materials and equipment, or services to a project sponsor for the construction of environmental infrastructure facilities. This includes, but is not limited to, planning and design, as well as building related services such as engineering, inspection and accounting.

"Contractor's plan" means the SED utilization plan submitted by the contractor to the project sponsor and to the Department establishing subcontracting opportunities that will fulfill the requirements of this subchapter.

"Department" means the New Jersey Department of Environmental Protection and its successors and assigns.

"Environmental infrastructure facilities" means wastewater treatment facilities, stormwater management facilities or water supply facilities.

"Financial agreement" means the legal instrument, including a grant agreement or loan agreement, executed between either the State of New Jersey or the Trust and the project sponsor for the construction of environmental infrastructure facilities.

"Local government unit" means a county, municipality, municipal or county sewerage or utility authority, municipal sewerage district, joint meeting, improvement authority or other political subdivision of the State authorized to construct, operate and maintain wastewater treatment or stormwater management facilities, or a State authority, district water supply commission, county, municipality, municipal or county utilities authority, municipal water district, joint meeting or any other political subdivision of the State authorized pursuant to law to operate or maintain a public water supply system or to construct, rehabilitate, operate or maintain water supply facilities or otherwise provide water for human consumption.

"New Jersey environmental infrastructure financing program" means the program for providing financing to project sponsors pursuant to N.J.A.C. 7:22-3, 4 and 6, and 7:22A-6 and 7.

"Office" means the Office of Equal Opportunity and Public Contract Assistance or other program of the Department of Environmental Protection with the responsibility for administration of this subchapter.

"Private entity" means the owner(s) of a nongovernmental community water system or a nonprofit noncommunity water system.

"Project" means the defined services for the construction of specified operable environmental infrastructure facilities as approved by the Department or the Trust in the project sponsor's financial agreement.

"Project compliance officer" means an officer or employee of the project sponsor who is designated by the project sponsor to monitor and enforce compliance with the affirmative action and SED requirements of the applicable program rules and this subchapter.

"Project plan" means the proposal submitted at the time of application by the project sponsor to the Department establishing the SED utilization plan and its requirements.

"Project sponsor" means any local government unit or private entity that seeks a loan or grant pursuant to N.J.A.C. 7:22-3, 4 and 6 and 7:22A-6 and 7.

"SED utilization plan" means a written document outlining the entire project work, the estimated length of time it will take to complete the project, each significant segment of the project on which SEDs will or may participate, and a description of how SEDs will be contacted.

"Socially and economically disadvantaged small business concern" or "SED" means any small business concern:

1. Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals; or, in the case of a publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; or, in the case of a joint venture, at least 51 percent of the beneficial ownership interests are legitimately held by a SED; and

2. Whose management and daily business operations are controlled by one or more socially and economically disadvantaged individuals; and

3. Which is a full participation subcontractor in that the SED is responsible for the execution of a distinct element of work and carries out the work responsibility by actually performing, managing and supervising the task involved. Any deviation from this definition will automatically classify the SED as a broker, middleman or passive conduit. These three functions are contrary to the spirit of the Trust Act and will not qualify a SED enterprise for State of New Jersey certification; and

4. Which has been certified pursuant to the New Jersey Uniform Certification Act (N.J.S.A. 52:27H-1 et seq.) or pursuant to the provisions of 49 CFR Part 23 by the New Jersey Commerce and Economic Growth Commission, the New Jersey Department of Transportation, the Port Authority of New York and New Jersey, the New Jersey Transit or other agencies deemed appropriate by the Office, as an eligible minority business or female business.

i. "Socially disadvantaged individuals" means those individuals who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities.

ii. "Economically disadvantaged individuals" means those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged.

iii. "Socially and economically disadvantaged individuals" shall include women, Black Americans, Hispanic Americans, Native Americans, Asian Americans, and members of other groups, or other individuals, found to be socially and economically disadvantaged by the Small Business Administration under Section 8(a) of the Small Business Act, as amended (15 USC 637(a)). Black Americans, Hispanic Americans, Native Americans and Asian Americans shall be defined as follows:

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

(2) "Hispanic American" means a person of Spanish or Portuguese culture, with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race;

(3) "Asian American" means a person having origins in any of the original peoples of the Far East, Southeast Asia, Indian Subcontinent, Hawaii, or the Pacific Islands;

(4) "Native American" means a person having origins in any of the original peoples of North America.

"Small business concern" means a business which is independently owned and operated and which is not dominant in its field of operation. A business is independently owned and operated if the management which controls the business is responsible for both its daily and long term operations.

"Subcontract" means an agreement to perform a portion of a contract.

"Subcontractor" means a third party that is engaged by the contractor to perform part of the work under a subcontract.

"10 percent SED utilization," "10 percent goal" and "10 percent" means SED business concern participation, which includes 7 percent for minority-owned SED business concerns and 3 percent for women-owned SED business concerns.

"Trust" means the New Jersey Environmental Infrastructure Trust established pursuant to the Trust Act.

"Trust Act" means the New Jersey Environmental Infrastructure Trust Act (N.J.S.A. 58:11B-1 et seq.), as amended and/or supplemented.

7:22-9.3 SED utilization requirements for projects

(a) A goal of not less than 10 percent (or a higher percentage as may be required by Federal law) of the total amount of all contracts for building, materials and equipment, or services for a project funded by a New Jersey environmental infrastructure facilities financing program must be awarded to SEDs.

(b) The 10 percent SED utilization requirement shall be accomplished by the following:

1. Bids shall be solicited on an unrestricted basis. The bid documents, however, shall include a statement to the effect that the successful bidder must fulfill the SED utilization requirements by subcontracting portions or the work to SEDs; or

2. Contractors also have the option of establishing unrestricted bidding procedures to fulfill the 10 percent SED utilization requirement for the project.

7:22-9.4 Requirement to develop SED Utilization Plan

(a) Each project sponsor shall develop, in consultation with the Office, a plan for achieving its SED utilization requirements (the "project plan"). Development of a plan shall be completed before the Department and, when relevant, the Trust may approve an application pursuant to the applicable program rules

(b) The project plan shall identify those contracts proposed to be bid on an unrestricted basis. For each unrestricted contract, the project plan shall also identify the SED utilization requirements that the successful bidder shall meet.

(c) All contractors, including SED contractors, shall submit their own SED utilization plan ("contractor's plan"), for the aspects of the project covered by the contract, to the project sponsor and to the Office within 30 days of the awarding of a contract. The Contractor's Plan shall contain provisions to meet the specific SED utilization requirements imposed upon the contractor by the project sponsor as well as to meet the general SED utilization requirements for the project pursuant to this subchapter.

(d) If the contractor does not comply with the requirements of the contractor's plan and the project sponsor does not take steps to otherwise comply with N.J.A.C. 7:22-9.3(a), the Department and, in the case of a Trust loan, the Trust, may take any of the actions or combinations thereof specified in N.J.A.C. 7:22-3.40 through 3.44, 7:22-4.40 through 4.44, 7:22-6.40 through 6.44 and 7:22A-1.8 through 1.13.

7:22-9.5 (Reserved)

7:22-9.6 Notice of SED utilization opportunities

(a) All project sponsors, at least 30 days prior to public advertisement for bids, shall notify the agencies specified in N.J.A.C. 7:22-9.13(a)8, of the availability of opportunities for SEDs to provide

services, to bid on unrestricted contracts or subcontracts, or to provide any other necessary purchase or procurement. The notice shall include a description of the type and scope of the services involved.

(b) All notices shall include a statement to the effect that the project or contract is funded in part by New Jersey wastewater treatment financing programs and the successful bidder must comply with all the provisions of N.J.A.C. 7:22-9.1 et seq. for the participation of small business enterprises owned and controlled by socially and economically disadvantaged individuals.

7:22-9.7 Advertisements for SED utilization

(a) All advertisements for bids shall include a statement to the effect that the project or contract is funded in part by New Jersey environmental infrastructure financing programs and the successful bidder must comply with the provisions of N.J.A.C. 7:22-9 for the participation of small business enterprises owned and controlled by socially and economically disadvantaged individuals.

(b) The advertisement for bids shall indicate that:

1. Awards will be made only to socially and economically disadvantaged business concerns that are certified by the New Jersey Commerce, Economic Growth and Tourism Commission, the New Jersey Department of Transportation, the Port Authority of New York and New Jersey, New Jersey Transit or other agencies deemed appropriate by the Office as eligible minority businesses or female businesses; or

2. The invitation to bid is on an unrestricted basis whereby the successful bidder must fulfill the SED utilization requirements. The agencies specified in N.J.A.C. 7:22-9.13(a)8 will have a list of eligible SED firms and shall, upon request, provide them to the project sponsor. The project sponsor shall, during the advertisement phase, provide copies of the list to all contractors on unrestricted contracts.

(c) The advertisement for bids shall be in such newspaper or newspapers and other periodicals identified by the agencies specified in N.J.A.C. 7:22-9.13 as will best give notice thereof to appropriate bidders and shall be sufficiently in advance of the purchase or contract to promote competitive bidding. In no case shall the advertisement for bids be published less than 30 days prior to the date fixed for receiving bids on the purchase or contract.

(d) In the case of a set aside contract, the newspaper or newspapers in which the advertisement for bids appears shall be selected by the contracting agency in consultation with the Office.

(e) If there are no responses to the bid solicitation from SEDs or if the successful bidder's proposal does not meet the SED utilization requirements, the successful bidder shall advertise and continue the search for SED participants for a minimum of 30 days after the contract is awarded. The contract shall include a provision to this effect.

7:22-9.8 (Reserved)

7:22-9.9 (Reserved)

7:22-9.10 Lowest bid resulting in payment of unreasonable price

(a) If the contracting agency determines that the acceptance of the lowest responsible bid will result either in the payment of an unreasonable price or in a contract otherwise unacceptable pursuant to the statutes and rules governing public contracts, the contracting agency shall reject all bids.

(b) Bidders and the office shall be notified of the rejection of all bids, the reasons for the rejection, and the contracting agency's intent to solicit bids for a second time.

(c) If the contracting agency determines a second time that the acceptance of the lowest responsible bid will result either in the payment of an unreasonable price or in a contract otherwise unacceptable pursuant to the statutes and rules governing public contracts, the contracting agency shall reject all bids and notify the Office and, after receipt of the Office's approval, shall amend the project plan accordingly.

(d) Bidders shall be notified of the cancellation, the reasons for the cancellation and the contracting agency's intent to re-solicit bids on an unrestricted basis. SEDs may participate in the bidding on an unrestricted basis.

7:22-9.11 Project compliance officer

(a) Each project sponsor shall designate an officer or employee to serve as its project compliance officer.

(b) The project compliance officer shall be responsible for coordinating SED utilization efforts on the project and for monitoring and enforcing compliance with the affirmative action and SED requirements of the applicable program rules.

(c) SED utilization requirements shall be an agenda item at all contract award meetings and, wherever applicable, at preconstruction conference meetings regardless of whether a loan or grant agreement has been executed or not. Each project sponsor shall be responsible for notifying the Office of the time and place of such meetings.

(d) The project compliance officer shall attend all monthly construction progress meetings.

7:22-9.12 Reports

(a) The contracting agency shall submit its planning and design SED utilization report to the Office at the time of filing of its grant/loan application.

(b) Each project compliance officer shall submit the contracting agency's monthly progress reports to the Office. Once all SED contractors have been obtained, submittal of this report will no longer be required.

(c) Each project compliance officer shall submit a periodic report on behalf of the project sponsor to the Office according to a schedule announced by the Office. At a minimum, this construction report shall be submitted quarterly; that is, January, April, July and October. Where appropriate, the Office may approve a variation in the frequency of reporting requirements specified in (b) through (d) of this section. This report shall include the following information:

1. The value of each contract and subcontract awarded to SEDs and the total dollar value and number of contracts and subcontracts awarded to SEDs;

2. The percentage of SED utilization in comparison to the cost of each contract, as well as the total percentage of SED utilization (including set aside contracts) in comparison to overall project costs;

3. The types and sizes of the participating SEDs and the nature of goods and services being provided; and

4. The efforts made to publicize and promote the project sponsor's SED utilization plan.

(d) Contractors shall submit a quarterly construction report to the project sponsor and to the Office. The project compliance officer may be contacted for assistance if needed.

(e) The report forms required by (a) through (d) above shall be obtained from the Office.

(f) The project compliance officer shall submit reports or information in addition to what is required by (a) through (c) above when requested to do so by the Office.

(g) Failure to comply with the reporting requirements of (a) through (d) and (f) above may subject the project sponsor to the remedies for noncompliance with State and Trust loan or grant conditions specified in the applicable program rules.

7:22-9.13 Assessment of compliance

(a) Where the Office determines that a project sponsor has failed or is failing to meet the 10 percent SED utilization requirement, the project sponsor shall, upon the written request of the Office, submit the following:

1. Advertisements;
2. Signed contracts and subcontracts;
3. Documentation of solicitations of bids from SEDs;
4. Copies of Requests for Proposals;
5. Records of telephone quotations;
6. (Reserved);
7. Adequate and timely notice for encouraging SED participation; and
8. Proof that the assistance of State Agencies was solicited, including:

Office of Equal Opportunity and Public Contract Assistance
New Jersey Department of Environmental Protection
PO Box 420
Trenton, New Jersey 08625-0402

Division for the Development of Small Businesses and Women Businesses and Minority
Businesses
New Jersey Commerce and Economic Growth Commission
PO Box 835
1 West State Street
Trenton, New Jersey 08625-0835

(b) Where the project sponsor determines that a contractor has failed or is failing to meet the 10 percent SED utilization requirement, the contractor shall, upon the written request of the project sponsor, submit the documents specified in (a) above.

(c) The Office shall summarize in writing its evaluation of the reason given for noncompliance and the efforts made by the project sponsor or contractor to comply with its plan for achieving the 10 percent SED utilization requirement. The Office shall take into consideration good faith efforts made by the project sponsor or contractor to meet the goal to achieve the ten percent SED utilization requirement. These findings shall be submitted to the Department and, in the case of a Trust loan, to the Trust who, in conjunction with the Office, shall determine the nature and extent of the project sponsor's or contractor's noncompliance.

7:22-9.14 Penalties

Whenever a project sponsor or a contractor has failed to comply with the requirements of this subchapter, including the 10 percent requirement for SED utilization, the Department, or the Department and the Trust, in the case of a Trust loan recipient, may withhold all of the loan or grant money, or a portion thereof, and may take any of the other actions or combinations thereof specified in N.J.A.C. 7:22-3.40 through 3.44, 7:22-4.40 through 4.44, 7:22-6.40 through 6.44 and 7:22A-1.8 through 1.13 which are remedies for noncompliance with any of the conditions of a loan or grant.

7:22-9.15 Administrative hearings

(a) The Department and, in the case of a Trust loan, the Trust, shall make a determination regarding all disputes arising under this subchapter. The project sponsor shall specifically detail in writing the basis for its dispute. The Department and/or the Trust shall produce a decision in writing and mail or otherwise furnish a copy thereof to the project sponsor.

(b) A project sponsor may request an administrative hearing within 20 days of receipt of a decision by the Department and/or the Trust. The request for a hearing shall be sent to the Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection, PO Box 402, Trenton, New Jersey 08625-0402. The request for an administrative hearing shall specify in detail the basis for the appeal. Administrative hearings shall be conducted in accordance with the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(c) Following receipt of a request for a hearing pursuant to (b) above, the Department and/or the Trust may attempt to settle the dispute by conducting such proceedings, meetings and conferences as deemed appropriate.

7:22-9.16 Severability

If any of the provisions of this subchapter are found to be invalid, the remainder of the provisions of this subchapter shall not be affected thereby.

**OFFICE OF EQUAL OPPORTUNITY
AND
PUBLIC CONTRACT ASSISTANCE**

**MUNICIPAL FINANCE
AND
CONSTRUCTION ELEMENT**

SED PARTICIPATION

BUILDING PHASE

QUARTERLY REPORTING FORM

FOR

CONTRACTING AGENCIES & CONTRACTORS

(OEO-002)

REPORTING REQUIREMENTS ON SOCIALLY AND ECONOMICALLY DISADVANTAGED (SED) BUSINESS UTILIZATION

These instructions apply to reporting on the utilization of Socially and Economically Disadvantaged Businesses (MBEs/WBEs/SEDs) under the New Jersey Department of Environmental Protection and the New Jersey Environmental Infrastructure Financing Programs. They are intended to provide guidance to Project Sponsors and Contractors in filling out the Building Phase (SED) Utilization Form. The reporting requirements apply to all Contracting Agencies and Contractors pursuing New Jersey Financing Assistance through programs administered by the New Jersey Department of Environmental Protection and the New Jersey Environmental Infrastructure Trust pursuant to N.J.A.C. 7:22-3.; N.J.A.C. 7:22-4.; N.J.A.C. 7:22-6; N.J.A.C. 7:22A-6; N.J.A.C. 7:22-7.

Each Project Sponsor and Contractor must submit this building SED Report (Form OEO-002) quarterly on MBE/WBE utilization for each contract for which a Project Sponsor or its Contractor(s) awards a subagreement. The form must be submitted to the New Jersey Department of Environmental Protection (NJDEP), Office of Equal Opportunity, Public Contract Assistance within 15 days following the close of each fiscal year quarter (i.e., January 15, April 15, July 15, and October 15).

INSTRUCTIONS FOR FILLING OUT SED UTILIZATION REPORT

1. Read instructions carefully before completing form, and refer to N.J.A.C. 7:22-9.1 et seq. for further guidance.
- 2a. The name and address of Project Sponsor participating in the grant/loan programs for environmental infrastructure facilities.
- 2b. Name of the Project Compliance Officer responsible for submitting periodic reports.
3. Name and address of party contracting directly with the Project Sponsor.
4. Self-explanatory.
- 5a. The grant/loan project number for the agreement between the State of New Jersey and the Project Sponsor.
- 5b. The grant/loan project number for the contract between the Project Sponsor and its contractor(s).
6. Include brief description of project.
7. Self-explanatory.
- 8a. The county in which the Project Sponsor is located.
- 8b. The municipality in which the Project Sponsor is located.
9. The date of the agreement between the State of New Jersey and the Project Sponsor.
- 10a. The date of agreement between the Project Sponsor and the contractor.
- 10b. Self-explanatory.
11. Indicate MBE and WBE goals based upon project plan for SED utilization developed in consultation with the Office. These goals may vary depending upon local law. Where a Project Sponsor has a SED participation goal which exceeds ten percent, the Project Sponsor's goal shall take precedence.
12. Enter the name, address and telephone number of each SED participating in the building phase as a subcontractor under agreement with the construction management firm or the Project Sponsor. Check applicable MBE or WBE status of each listed SED. Explain type of service rendered and list the total dollar amount of the subcontract. Each entry must be accompanied by a copy of the signed subcontract.
Restricted - Bids may be solicited on a restricted basis by setting aside a contract for building, materials and equipment, or services which is designated as a contract for which bids are invited and accepted only from SEDs. **Unrestricted** - Bids may be solicited on an unrestricted basis and not designated for a set-aside contract, but the contract document shall include a statement to the effect that the successful bidder must fulfill the SED utilization requirements.
13. See instructions for Item 12. This section is designated for SEDs participating in the building phase of a project as a subcontractor under agreement with building contractor(s).
14. Person signing must be the designated Project Compliance Officer of the Project Sponsor. The contractor(s) or the authorized representative of the contractor(s).

15. Additional comments or explanations. Refer to the specific item number on the form, if applicable.
OEO-002

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
NEW JERSEY MUNICIPAL FINANCE & CONSTRUCTION ELEMENT
OFFICE OF EQUAL OPPORTUNITY & PUBLIC CONTRACT ASSISTANCE

CONSTRUCTION REPORT

SOCIALLY AND ECONOMICALLY DISADVANTAGED (SED) BUSINESS UTILIZATION

1. **Read Instructions Before Completing Form.**

2a. Project Sponsor

Name _____

Address _____

2b. Project Compliance Officer _____

3. Contractor

Name _____

Address _____

4. Financing Program (*check applicable program(s)*)

_____ a. Wastewater Treatment Fund _____ b. Wastewater Treatment Trust _____ c. Pinelands Infrastructure Trust

_____ d. Stormwater Management _____ e. Water Supply

5a. Project Number _____

5b. Contract Number _____

6. Project Name _____

7. Contract Amount \$ _____

8a. County _____

8b. Municipality _____

9. Date of Grant/Loan Agreement _____

10a. Date of Contract Award _____

10b. Duration of Contract: Mo. _____ Days _____

11. STATE GOAL OR OTHER STANDARDS (IF ANY)

Contracting Agency's Requirement

	DOLLAR AMOUNT	PERCENTAGE OF CONTRACT AMOUNT
MBE	\$ _____	_____ %
WBE	\$ _____	_____ %
TOTAL SED	\$ _____	_____ %

12. A/E and Other Professional Service Subcontracts Awarded During the Building Phase

Name, Address and Telephone No.	MBE/ WBE	Type of Service Rendered	Dollar Amount	Subcontract Number	Subcontract Amount	Date of Subcontract Award	Type of Award* (R/U)
1. _____ _____ _____	_____	_____	_____	_____	_____	_____	_____
Number of Full-time Employees	_____	_____	_____	_____	_____	_____	_____
2. _____ _____ _____	_____	_____	_____	_____	_____	_____	_____
Number of Full-time Employees	_____	_____	_____	_____	_____	_____	_____
3. _____ _____ _____	_____	_____	_____	_____	_____	_____	_____
Number of Full-time Employees	_____	_____	_____	_____	_____	_____	_____
4. _____ _____ _____	_____	_____	_____	_____	_____	_____	_____
Number of Full-time Employees	_____	_____	_____	_____	_____	_____	_____
5. _____ _____ _____	_____	_____	_____	_____	_____	_____	_____
Number of Full-time Employees	_____	_____	_____	_____	_____	_____	_____
6. _____ _____ _____	_____	_____	_____	_____	_____	_____	_____
Number of Full-time Employees	_____	_____	_____	_____	_____	_____	_____

** Restricted/Unrestricted*

13. Other Subcontract Awards Made Under the Building Phase

Name, Address and Telephone No.	MBE/ WBE	Type of Service Rendered	Dollar Amount	Subcontract Number	Subcontract Amount	Date of Subcontract Award	Type of Award* (R/U)
1. _____ _____ _____ Number of Full-time Employees	_____	_____	_____	_____	_____	_____	_____
2. _____ _____ _____ Number of Full-time Employees	_____	_____	_____	_____	_____	_____	_____
3. _____ _____ _____ Number of Full-time Employees	_____	_____	_____	_____	_____	_____	_____
4. _____ _____ _____ Number of Full-time Employees	_____	_____	_____	_____	_____	_____	_____
5. _____ _____ _____ Number of Full-time Employees	_____	_____	_____	_____	_____	_____	_____
6. _____ _____ _____ Number of Full-time Employees	_____	_____	_____	_____	_____	_____	_____
Number of Full-time Employees	_____	_____	_____	_____	_____	_____	_____

** Restricted/Unrestricted*

14. _____
(Signature of Project Compliance Officer)

(Signature of Contractor)

(Title)

(Title)

(Date)

(Date)

15. Space Provided for Additional Comments or Explanations
h:\pleo\leoe002.vpd\br

**OFFICE OF EQUAL OPPORTUNITY
AND
PUBLIC CONTRACT ASSISTANCE**

**MUNICIPAL FINANCE
AND
CONSTRUCTION ELEMENT**

SED PARTICIPATION

MONTHLY PROGRESS REPORT

(OEO-003)

New Jersey Department of Environmental Protection

OEO-003

**NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
SED UTILIZATION IN ENVIRONMENTAL INFRASTRUCTURE
FINANCING PROGRAM**

MONTHLY PROGRESS REPORT

Contractor _____

Project Number _____

Project Name _____

Contract Amount _____

Report Month/Year _____

The following information is required in order to assist the Project Compliance Officer and the New Jersey Department of Environmental Protection in monitoring the SED (small business enterprises owned and controlled by socially and economically disadvantaged individuals) Utilization progress and activity in the Environmental Infrastructure Financing Program. Each contractor shall respond to each of the listed items. Whenever evidence of completion of each item is available, copies of itemized documents are to be submitted to the Project Compliance Officer.

Over the past month has any action on any item taken place? Please explain each.

- | | |
|--|-----------|
| 1. Copies of Solicitation to SEDs | _____ Yes |
| _____ No | |
| 2. Advertisement of bidding or procurement opportunities | _____ Yes |
| _____ No | |
| 3. Evidence of negotiation with SEDs | _____ Yes |
| _____ No | |
| 4. Copies of telephone quotes/negotiations | _____ Yes |
| _____ No | |
| 5. Copies of signed subagreements | _____ Yes |
| _____ No | |
| 6. Have any subcontracts been awarded in the past month | _____ Yes |
| _____ No | |

Please provide an explanation for Questions 1 through 6.

Signature of Contractor

Signature of Project Compliance Officer

Date

Date

ATTACHMENT B

**New Jersey Department of Environmental Protection Office of Equal Opportunity and
Public Assistance Small, Minority and Women's Business Vendor Listing**

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
OFFICE OF EQUAL OPPORTUNITY AND PUBLIC CONTRACT ASSISTANCE
SMALL, MINORITY AND WOMEN'S BUSINESS VENDOR LISTING

<p>A & T Iron Works, Inc. 25 Cliff Street New Rochelle, NY 10801 914-632-8992(p) 914-632-2645(f)</p>	WBE	Metal Supplies
<p>A & A Glove & Safety Co. 20 Richey Avenue Collingswood, NJ 08107 Email: anafisher@comcast.net 856-854-4357(p) 856-854-6422(f)</p>	M/WBE	Sourcing safety or industrial supply
<p>AC Photo 199 New Road Suite44 Linwood, NJ 08821 609-926-1200(p) 609-927-3874 (f)</p>	WBE	Photography
<p>AD-Vision Promotions, Inc. 1580 Parkside Ave Ewing, NJ 08638 Email: advision@verizon.net 609-883-6000(p) 609-883-5900(f)</p>	WBE	Embroider, silk-screen apparel, printing & advertising specialty
<p>Ahera Consultants Inc. PO Box 385 Oceanville, NJ 08231-0385 Email: ahera@comcast.net 609-652-1833(p) 609-652-1140(f)</p>	WBE	Asbestos safety control monitoring services, indoor air quality services
<p>American Blast Clean Restoration 1137 Goffle Road Hawthorne, NJ 07506 973-423-0888(p) 973-423-0653</p>	WBE	Concrete floor finishes concrete floor restoration
<p>American Indian Builders & Suppliers Inc. 1162 Ridge Road Lewistown, NY 14092 716-754-8385(p) 716-754-8636(f)</p>	MBE	Dealer/supplier of Construction Materials

Ames Trucking PO Box 4197 Hamilton Twp., 08610 609-394-0546(p)	MBE	Trucking
AMF Fence, Inc. PO Box 804 Barnegat, NJ 08005 609-698-4100(p) 609-698-4165(f)	WBE/DBE	supply, install fencing
Amin Engineering, P.C. 530 Union Avenue Middlesex, NJ 08846 732-868-0678(p) 732-868-0679(f)	WBE	Consulting Engineers
Amy S. Greene Environ Constlt., Inc. 4 Walter E. Foran Blvd., Suite 209 Flemington, NJ 08822 908-788-9676(p) 908-788-6788(f) Email: bgillespie@amygreene.com	MBE	Environ Consulting
Angela's Hauling LLC 1124 Jarvis Road Erial, NJ 08081 856-435-1557(p) 856-435-1478(f)	WBE	Trucking, Hauling, Disposal
ANS Consultants, Inc. 4405 South Clinton Avenue South Plainfield, NJ 07080 908-754-8383(p)	MWBE/DBE	Materials Inspections and Testing concrete,soil testing, soil boring GEOProbe sampling
Aparri & Associates 166 Main St. 2 nd Floor Suite 4 Hackensack, NJ 07601-7123 201-343-7747(p) 201-343-7242(f)	MBE	Engineer & Consultants
Archie's Contracting Co., Inc. 22 8th Ave. Newark, NJ 07104 973-482-7686(p) 973-482-7850(f)	MBE	Asphalt Paving, Construction Contractor
Armand Corporation 1815 Garden Avenue Cherry Hill, NJ 08003 856-489-8200(p) 856-489-8212(f)	WBE	Engineering & Construction

Aspen Landscaping Contracting Inc. 51 Progress St. Union, NJ 07083 908-964-8883(p) 908-964-8835(f)	M/WBE	Landscaping Contractor
Associated Group Engineers 10 Sleepy Hollow Lane Warren, NJ 07059 732-805-0212(p) 732-469-4766(f)	MBE	Engineering, Cons. Eng.
Assuncao Brothers, Inc. 29 Wood Avenue Edison, NJ 08820 732-549-8582(p) 732-549-9521(f)	MBE/DBE	Curbs & Sidewalks, Misc. Concrete
Atlantic Concrete Cutting, Inc. 396 N. Pemberton Road PO Box 98 Mount Holly, NJ 08060 609-261-7200(p) 609-261-7246(f)	DBE	Concrete cutting sawing, drilling etc.
Atlas Flasher & Supply Co., Inc. 430 Swedesboro Ave. Mickleton, NJ 08056 856-423-3333(p) 856-423-3313(f)	WBE	Traffic & Public Safety Fields
B&B Constuction LLC 175 Ramtown-Greenville Rd. Howell, NJ 07731 732-840-8908(p) 732-840-1014(f)	MBE	Sitework, demolition, dump truck service
Barker Graphics 6 Pierson Place Sicklerville, NJ 08081 609-728-3776(p) 609-262-1036(f)	MBE	Printing
Baseline Supply LLC 65 Turnberry Drive Monroe Township, NJ 08831 732-835-2080(p) 888-398-2080(f)	WBE/DBE	Supplier of construction plumbing, lumber, paint, metal, electrical, roofing
Bayshore Recycling Corp. 75 Crows Mills Rd. Keasbey, NJ 08832	WBE	recycling, disposal

732-738-6000(p)

BDF Industrial Fasteners
1358 Whitman Avenue
Camden, NJ 08104
856-963-1600(p)
856-963-1604(f)

DBE

Threaded fasteners

Berto Construction, Inc.
P.O. Box 276
Rahway, NJ 07065
732-396-0099(p)
732-396-0065(f)

MBE

Curb & Sidewalk

Brent Material Company
325 Columbia Turnpike #308
Florham Park, NJ 07932
972-325-3030(p)
info@brentmaterial.com

WBE

Construction materials for Water works, sewer, storm drainage and erosion control systems

Brinkerhoff Environmental Services, Inc.
1805 Atlantic Avenue
Manasquan, NJ 08736
732-223-2225(p)
732-223-3666(f)

WBE

Environmental Consulting

Carl A. Venable Inc d/b/a AlphaGraphics
689 US Hwy 1 South
Edison, NJ 08817
732-985-6677(p)
732-985-2909(f)

MBE

Printing and reprographic center

Carol Hardy Mechanical Inc.
140 Long Pond Road
Hewitt, NJ 07421
973-728-5750(p)
973-728-7730(f)

WBE

Heating, ventilating & air conditioning

Caron Pipe Jacking, Inc.
77 Willow Brook Drive
Berlin, CT 06037
860-828-0050(p)
860-828-9568(f)

WBE/DBE

Pipe Jacking & Horizontal Boring

Carter Contracting Co. Corp.
P.O. Box 655, Salem Road
Union, NJ 07083
908-687-0075(p)
908-687-0084(f)

WBE

General construction, renovation and alteration

CCL Electric, LLC
4 Beverly Place
Edgewater, NJ 07020

MBE

201-886-9040(p) 201-969-1603(f)		
Chambres Maintenance Inc. 3792 Route 27 Princeton, NJ 08540 732-951-1006(p) 732-951-1008(f)	MBE	Maintenance
Chenango Contracting Inc. 29 Arbutus Road Johnston City, NY 13790 607-729-8500(p) 607-729-2415(f)	MBE	Installation & Supply of Geosynthetics Installation & Supply of Artificial Turf
Circle Janitorial Supplies, Inc. 5 E. 12 th Street Paterson, NJ 07524 973-345-1212(p) 973-345-1975(f)	MBE	Distributor of janitorial supplies
Coastal Environmental Compliance, LLC P.O. Box 167 Hammonton, NJ 08037 609-820-9312 (P) 609-561-6197 (f)	WBE	Environmental consulting Asbestos Svc. , Right to Know Svc. Mold services, Indoor Air Quality Geotechnical Services Phase I Site Assessments
Coastal Steel Construction of NJ 194 Nassau Street Princeton, NJ 08540 609-921-8178(p) 609-921-8179(f)	WBE	Installation Of Reinforcement Steel (Rebar)
Collazo Contractors, Inc. 18 King St. Morristown, NJ 07960 973-267-0261 (p)	MBE	
Collings Industrial Supply, Inc. PO Box 2061 Haddonfield, NJ 08033 856-456-1414(p) 856-456-0907(f)	MBE	Pipe Supplier Electrical Supplies
Concept Printing Incorporated 160 Woodbine Street Bergenfield, NJ 07621 201-387-6000(p) 201-387-6363(f)	WBE	Printing and advertising specialty
Consolidated Steel & Aluminim Fence Co., Inc. 316 North 12th Street Kenilworth, NJ 07033	MWBE	Fence work

908-272-6262 ext. 110(p)
908-272-0494(f)

Consolidated Envelope Company, Inc.
21 Third Street
Ridgefield Park, NJ 07660
201-296-0500(p)
201-296-0533(f)

WBE

Envelopes specialists,
Web offset Printing

CS Business Systems, Inc.
1236 Main Street
Buffalo, NY 14209
800-886-6521(p)
716-886-7142(f)

MBE

Computer distributor

CSR Construction Corp.
139 Chestnut Street
Nutley, NJ 07110
973-667-1600(p)
973-667-6461(f)

MBE

Construction, Architecture
Design/Build Services

Dawn Underground Engineering, Inc.
9 Village Court
Hazlet, NJ 07730
732-739-8840(p)
732-739-8870(f)

WBE

Geotechnical/Tunnel &
Engineering Firm

Deca Concrete Inc.
Edgewater Plaza
725 River Road, Suite 204
Edgewater, NJ 07020
201-840-0069(p)
201-840-0544(f)

MBE

Underground piping, fixtures and
manhole covers

De Silvio & Co., Inc.
PO Box 240
38 South Cedar Brook Road
Cedar Brook, NJ 08018
609-567-9200(p)
609-567-9299(f)

WBE

Fence, Gates, Automatic
Operators

Delta Line Construction
7 Robert Best Road
Egg Harbor Township, NJ 08234
609-927-2785(p)
609-927-9433(f)

WBE

Electrical construction

Diamond Paint & Drywall, LLC.
6 Enterprise Court
Sewell, NJ 08080
856-256-1760(p)
856-256-1762(f)

WBE

Dinas Environmental Services 7730 Maple Avenue Pennsauken, New Jersey 08109 609-556-3034(f) 856-317-1566(p)	MBE	Environmental Services
Diehl Electric, Inc. PO Box 209 Hammonton, NJ 08037 609-567-8080(p) 609-567-8222	WBE/DBE	Electrical contractors
DMD Trucking, Inc. 3720 Park Avenue S. Plainfield, NJ 07080 908-769-0770(p) 908-769-7551(f)	WBE	Trucking
Don Todd Associates, Inc. 535 Route 38E - Suite 170 Cherry Hill, NJ 08002 856-663-2532(p) 856-663-4081(f)	MBE	Construction Management Project support services
DW Smith Associates, LLC 149 Yellowbrook Rd., Suite 101 Farmingdale, NJ 07727 732-363-5850(p) 732-905-8669(f)	WBE	Civil Engineering, Land Planning Environmental, Site Remediation
East Coast Contractors 403 N. Grove Street East Orange, NJ 07017 973-672-3520(p/f)	MBE	Building Maintenance
ED-O Insulation Inc. 45 Lexington Avenue Trenton, NJ 08618 609-530-08618	WBE	
EGS Associates, Inc. 124 N. Mississippi Ave. Atlantic City, NJ 08401 609 345-2727 (p) 609 345-1329 (f)	MBE	Subsurface exploration, Laboratory and in-situ testing, Foundation Design, Earthwork monitoring, environmental consultation
Elliot Palmer Paving Co. 405-407 Frelinghuysen Ave. Newark, NJ 07114 973 286-2066 (p) 973 286-0377 (f)	MBE	Paving

Entech Corporation 304 Harrington Avenue Closter, NJ 07624 201 784-1034 (p) 201 784-0855 (f)	WBE	Sewer Rehabilitation
Environmental Compliance, Inc. 101 Mt. Bethel Road Warren, NJ 07059 908-754-1700(p) 908-754-1866(f)	DBE	Environmental Consulting specializing in Phase I Env. Site Assessments, Site investigations, permitting assistance
Environmental & Occupational Safety Svc. Inc. 116-118 Chestnut St., Ste 303 Red Bank, NJ 07701 732-450-0003(p) 732-450-0401(f)	MBE/WBE	Air Permitting Drafting, Site Security, health & safety services, Engineering Services Environmental Services
Envision Consultants, LTD 8 South Branch Ct. Mullica Hill, NJ 08062 856-223-0800(p) 856-223-8886(f)	WBE	Project Management, CPM scheduling, cost estimating
Eva Glasgow Contractors Inc. 9215 Collins Ave. Pennsauken, NJ 08110 856-661-6242(p) 856-661-6243(f)	WBE	dump truck hauling, material
Events Plus Inc. 102 Dayton Avenue Collingswood, NJ 08108 856-854-7257(p) 856-854-0773(f)	WBE	
Filling Marble and Tile Inc. PO Box 956 Cologne, NJ 08213 609-965-0303(p) 609-965-7476	WBE	furnish and installation of ceramic tile granite, marble & pavers. granite, marble & pavers. water jet cutting
Fisher Enterprises, Inc. 7964 Michener Avenue Philadelphia, PA 19150 215-924-6740(p) 215-924-0389(f)	MBE	Asbestos abatement, lead abatement, sewage & water treatment
Franklin Masonry Associates 8 Bellview Ave. Erial, NJ 08081 856-627-4808(p)	WBE	Bridge and block

856-627-4966(f)

Frank Perlestein & Sons, Inc.
815 South Broad St.
Trenton, NJ 08611
609-393-4877(p)
609-394-5106(f)

SBE/WBE

Plumbing, Mechanical

Gami and Associates
PO Box 4849
Weehawkin, NJ 07088
862-215-6974(p)
866-277-4406(f)

MBE

architecture, interior design,
Planning and Construction
Management

Gentech Engineering Assoc., P.C.
160 Route 35 North
Cliffwood Beach, NJ 07735
732-290-7113(p)
732-290-7115(f)

DBE
Exp.

Materials Testing
Civil Engineering

Glasgow Contractors Inc.
2403 Nassau Road
Cinnaminson, NJ 08077
609-829-0982(p)

WBE

Asphalt Milling

G.Q. Maintenance Company
903 North Ohio Ave.
Atlantic City, NJ 08401
609-344-6694(p)
609-344-3404(f)

MBE

Janitorial Services
construction clean up

Griffith Electric Supply Co., Inc.
5 Second Street
Trenton, NJ 08611
609-695-6121(p)
609-695-6695(f)

MBE

Electrical Supplies

Hall Trucking
1638 Malaga Road
Mays Landing, NJ
609-625-2076(p)

MBE

Hauling

Hamada, Inc.
2848 Frankford Avenue
Philadelphia, PA 19134
215-427-2100(p)
215-427-1437(f)

DBE

Roofing, Waterproofing
Sheet Metal Work

Herbert G. McDonald Associates, Inc.
205 Route 9 North
Freehold, NJ 07728
732-303-8255(p)
732-303-8104(f)

MBE

land surveying,civil engineering

IACONELLI Contracting Co. Inc 943 Mill Rd. Pleasantville, NJ 08232 609 645-2165 (p) 609 383-0484 (f)	WBE	Crane Rental, Demolition, Site Work, Roll-off service
I-Tan Yu Associates 2210 Walnut Street Philadelphia, PA 19103 215-636-9771(p) 215-636-9976(f)	MBE	Engineering
IMS Safety Inc. 20 Shagbark Street Middletown, NY 10941 845-692-7226(p) 845-692-9006(f)	MBE/WBE	
Iron Eagle Environmental, Inc. 3401 Merrick Road, Suite 2 Wantagh, N.Y. 11793 516-826-6848(p) 516-826-6865(f)	MBE	Asbestos Removal Tank Remediation
J R C Construction Co., Inc. 710 Elm Street Kearny, NJ 07032 201-998-7348(p) 201-998-9463(f)	M/W/SBE	Construction, Concrete work
JCMS, Inc. P. O. Box 3223 1741 Whitehorse-Mercerville Rd. Mercerville, NJ 08619- 609-631-0700 (p)	MBE Exp:	Construction & Project Management
JDB Equipment Company, Inc. 116 West Almont Street Vineland, NJ 08360 856-264-0746(p) 856-691-4071(f)	WBE	Equipment
JPC Logistics LLC 853 Nottingham Way Hamilton, NJ 08638 (609)890-4343(p)	MWBE	Trucking Services, Construction Support
Jersey Boring & Drilling Co. Inc. 150-152 Wright St. Newark, NJ 07114 973-242-3800(p) 973-802-1272(f)	WBE	Subsurface drilling, monitor wells, concrete core drilling

JMS Visual Communications 1666 Route 206, P.O. Box 2326 Vincentown, NJ 08088 609-859-8400(p) 609-268-8006(f)	DBE	Photography Video
Joe's Auto Repair & Towing 176 Hay Road Winslow, NJ 08095 609-561-2317(p) 609-561-1760(f)	MBE	Mechanical repairs on vehicles and towing
John F. Scanlan Inc. 1238 Belmont Ave, Philadelphia, PA 19104 Philadelphia, PA 19104 215-879-4700(p) 215-879-4714(f)	WBE	Ventilation, Air collectors, Blowers Air conditioners, furnaces
John J. Tardy, Jr. Trucking & Equipment Rental PO Box 109 Pleasantville, NJ 08232 609-645-0025(p) 609-645-2126(f)	MBE/DBE	Dump Truck and tractor trailer hauling
John Sykes Home Improvement Corp. 300 North Florida Avenue Atlantic City, NJ 08404 609-344-1952(p) 609-344-1952(f)	WBE	General Contracting
KMETZ INC 10 Fresh Ponds Road East Brunswick, NJ 08816 732- 821-0533(p) 732- 821-5099(f)	WBE	Water& Sewer Line, Drilling Oil & Gas wells, Other Heavy & Civil Engineering Construction.
Kishor Y. Joshi 142 Schibanoff Road Freehold, NJ 07728 732-780-8822(p) 732-308-0752(f)	MBE	A/E
LH Nelson Enterprises, LLC 413 Crystal Lake Ave. Haddonfield, NJ 08033 856-337-0070(p) 856-337-0089(f)	M/WBE	Hauling service (tri-axle dump trucks)
The Liner Company Inc. 7 Meadows Run Drive Colts Neck, NJ 07722	WBE	Supply liners & erosion control products, liner installers

732-761-0700(p)
732-761-1525(f)

L & R Construction Co. Inc.
P.O. Box 215
Haddonfield, NJ 08033
856-795-9800(p)
856-795-6425(f)

DBE

Lucille Maud Corporation
513 North Olden Avenue
Trenton, NJ 08638
609-393-7555(p)
609-393-1140(f)

MBE

IT hardware, cabling, networking
telecommunications

Manna Supply Corp.
13 Sleepy Hollow Drive
Tabernacle, NJ 08088
609-268-5836(p)
609-268-0737(f)

M/WBE

Electrical Equipment & Supply
Mechanical & Gen Construction
Telecom & Network Integration

Mann's Heating & Air Conditioning, Inc.
522 Smith Street, PO Box 601
Perth Amboy, NJ 08862
908-826-8655(p)
908-826-8551(f)

MBE

Heating &
Air Conditioning

Marion Security Agency
P.O. Box 8624
Red Bank, NJ 07701
732-530-7133(p)
732-530-7273(f)

WBE

Security Services

Markias, Inc.
14 Twin Hill Drive
Willingboro, NJ 08046
609-877-0600(p)
609-871-7077(f)

M/WBE

Electrical, electronics
chemicals, paints, safety supplies

Metopolitan Acoustics
40 W Evergreen Ave.
Suite 108
Philadelphia, PA 19118
215-248-4352(p)
215-248-4353(f)

WBE

Architectural acoustics, noise
control and sound and a/v design

Montana Construction Corp. Inc.
80 Contant Avenue
Lodi, New Jersey 07644
973-478-5200(p)
973-478-7604(f)

WBE

Sewer, pipe, watermain
pump stations and excavation

Mowatt, Inc. 381 Park St. Suite 2C Hackensack, NJ 07601-4320 201-287-9100(p) 201-928-1951(f)	M/WBE	Janitorial Services
MZM Construction & Management 105 Lock Street, Suite 405 Newark, NJ 07103 973-242-7100(p) 973-242-1612(f)	MWBE	Solid waste disposal
Naik Consulting Group, P.C. Metroplex Office Plaza 200 Metroplex Drive, Suite 403 Edison, NJ 08817 732-777-0030 (p) 732-777-0040(f)	MBE	Engineering firm, Civil, bridge, surveying, highway, utilities resident engineering
National Fence Systems 1033 Route One Avenel, NJ 07001 732-636-5600(p) 732-636-5605(f)	MBE	Fences and gates
Pantaleo Electric, Inc. 400 Okerson Road Freehold, NJ 07728 732-409-3600(p) 732-409-3603(f)	WBE	Highway Lighting Traffic Signals, Sign Lighting
Para Plus Translations, Inc. 430 Clements Bridge Rd. Barrington, NJ 08007 856-547-3695(p) 856-547-3345(f)	M/WBE	Interpretation, translations
PDK Commercial Photographers LTD D/B/A Berstein Associates 83 Clavert St Harrison, NY 10528 914-835-2121(p) 914-835-6161(f)	WBE	Construction Progress Photos Images
Petric & Associates, Inc. 1162 Greenpond Road Newfoundland, NJ 07435 973-697-0102(p) 973-208-8463(f)	DBE	Painting, sandblasting, anti- graffiti coating and waterproofing
Powell Environmental Services, Inc. 2615 River Road, Unit 2 Cinnaminson, NJ 08077 856-786-7171	WBE	Engineering & Environmental Consulting Services, Geophysical Surveying and Mapping

856-786-7174

Precision Abrasives & Tools, Inc. 41 Orchard St. Ramsey, NJ 07446 201-962-7434(p) 201-962-7437(f)	WBE	Wholesale Industrial Distributor
Prestige Environmental, Inc. 27 Progress Street Edison, NJ 08820 908-757-9700(p) 908-757-5050(f)	MBE	Environmental Consulting & Contracting Services
Princess Electric, Inc. 21 Maryland Avenue Hainesport, NJ 08036 609-261-9336(p) 609-267-7736(f)	DBE	Electrical
Protec Documentation Services PO Box 266 Rancocas, NJ 08073 609-267-2666(p) 609-267-3969(f)	DBE	Construction documentation video/photo inspections
R. Spark Inc. 7 Commerce St., Suite 4 Somerville, NJ 08876 908-534-9600(p)	WBE	Electrical Services
R. Maxwell Construction Co. 206 W. Delilah Road Pleasantville, NJ 08232 609-646-6699(p)	WBE	Asbestos Removal/treatment
R&R Ceilings Inc. 390 Glassboro Rd. Monroeville, NJ 08343 856-769-1313(p) 856-769-9311(f)	WBE	Acoustical Ceilings and Wall Panels
RG Associates 13 Rolling Road Middlesex, NJ 08846 732-968-4850(p) 732-968-3793(f)	WBE	Pump & Instrumentation Vendor
RLS Communications, LLC 72 Rosalind Circle, Ste.201-A Sicklerville, NJ 08094 856-740-2401(p) 856-740-2402(f)	MBE	Public Relations (Community Outreach)

Ramirez Enterprises, Inc. 66-78 Morris Avenue Newark, NJ 07103 973-643-5400(p) 973-643-4343(f)	MBE	General Contractor
Richard Grubb & Associates, Inc. 30 N. Main Street, PO Box 434 Cranbury, NJ 08512 609-655-0692(p) 609-655-3050(f)	WBE	Archaeological surveys, architectural survey, historical research
Ritter Contracting, Inc. PO Box 1038 Southampton, PA 18966 215-364-9446(p) 215-364-9485(f)	WBE	Construction/Contracting Construction Materials
S & J Enterprises, Inc. 284 Main St., 2 nd floor Oceanport, NJ 07757 201-997-0526(p) 201-997-0526(f)	WBE	Trucking of Construction Materials
S & S Subsurface Investigations 310 No. Prague Avenue Egg Harbor, NJ 08215 609-804-0290	DBE	Water and Sewer Line Construction
S&K Transport Company, Inc. 2 Arlenes Way Cream Ridge, NJ 08514 609-443-5904(p)	WBE	Asphalt Milling
Samson Electrical Supply 1764 New Durham Road South Plainfield, NJ 07080 732-393-7070(p) 732-393-7080(f)	WBE	Electrical Distributor, energy retrofits, MRO contract support
Schifano Construction Corp. 1 Smalley Avenue, PO Box 288 Middlesex, NJ 08846 732-356-4140(p)	WBE/DBE	Construct Contractor, Paving, Utilities, Milling
SDM & Associates Inc. 20 E. High St. Glassboro, NJ 08028 856-863-9493 (p) 856-881-6830 (f)	M/WBE	Electrical-Electronic Products

Shared Systems Tech, Inc. 127 Salem Ave. Thorofare, NJ 08086 856-853-5700 (p)	WBE	
SJA Construction, Inc. 8004A Greentree Commons Marlton, NJ 08053 856-985-3400(p) 856-985-7700(f)	WBE	Paving, Trucking, Milling Supplier of Ready Mix Concrete
Sharp Decisions Inc. 55 West 39 th St 4 th Floor New York, NY 10018 212-481-5533(p) 212-354-8142(f)	WBE	Consulting firm provides contract Programming, computer facilities Engineering, software systems Development, and net-work Engineering services
Shore Supply Company 745 West Delilah Road Pleasantville, NJ 08232 609-272-8383(p) 609-272-8380(f)	WBE	Retail building supply distribution center
SLX Infrastructure LLC 1039 Bell Street Suite 101 Toms River, NJ 08753 732-801-4909 (p) 732-377-8612 (f)	MBE	Civil and Engineering Design Svc. Survey, Construction Management Permitting Svc Construction Materials, Pipe (Concrete, PVC, Precast Manholes Catchbasins, Metal castings, etc.
SJA Construction Inc. 8004A Greentree Commons Marlton, NJ 08053 856-985-3400(p) 856-985-7700(f)	WBE	Road construction, milling paving, excavation, trucking
Skyline Environmental, Inc. 254 Highway 34 – Suite 4 Matawan, NJ 07747 732-583-2500(p) 732-583-5200(f)	MBE	Regulatory Consultant in Safety, Health and Environmental Standards
Software International, Inc. One Executive Drive Somerset, NJ 08873 732-302-9001	MBE	Industry Specific Solutions, Strategic Outsourcing, Integration Services
Star of the Sea Concrete Corp. 448 Marlboro Road Old Bridge, NJ 08857 732 238-4980(p) 732 238-1215(f)	DBE	Concrete/Paving Roadway Reconstruction

Strategic Business Products 51 Taurus Drive, Suite 3C Hillsborough, NJ 08844 908-281-5693(p) 908-281-5208(f)	MBE	Office Products & Furniture, Computer Supplies, Space Planning
Summit Graphics Corporation 35 Middlesex Blvd Monroe Twp, NJ 08831 732-828-5551(p) 732-828-7324(f)	WBE	Printing
Technical Associates Inc. 1640 Vauxhall Road, Suite 1B Union, NJ 07083 908-688-3830(p) 908-688-5804(f)	MBE/DBE	Engineering Services & Construction Management
Techno Consult, Inc. 32 Jefferson Plaza, Suite A Princeton, NJ 08540 732-438-0540(p) 732-438-9219(f)	MBE/SBE	Engineering & Construction Mgt. Services, CPM Scheduling, Cost Estimating, Construction Inspection Services
Tomar Construction LLC 108A Liberty Street Metuchen, NJ 08840 732-549-9506(p) 732-549-9509(f)	DBE	Industrial Building Construction, Commercial & Institutional building construction
Tony Sanchez, LTD P.O. Box 649 Stanhope, NJ 07874 973-398-3398(p) 973-398-7123(f)	DBE/WBE	Clearing, grading, hauling, supplier of stone, gravel & asphalt
Turtle & Hughes Inc. 1900 Lower Road Linden, NJ 07036 732-574-3600(p) 732-574-9635(f)	WBE	Electrical Materials Plumbing Supplies
Trijay Systems 10 Maple Avenue Line Lexington, PA 18932 215-997-5833(p) 215-997-5834(f)	MBE	Instrumentation/Process Control Systems
Triod Inc. 1922 N. Route 9 Cape May Court House, NJ 08210-1110 609-368-1180(p)	WBE	Petroleum distributor

609-691-6441(f)

United Energy Systems
45 Park Place South #140
Morristown, NJ 07960
973-214-2100(p)
509-479-1859(f)

WBE

Environmental Consulting

Varlotta Construction Corp.
3365 Richmond Terrace
Staten Island, NY 11023
718-720-8029(p)
718-720-5764(f)

WBE

Construction water mains, sewers

VIP Contractors Inc.
2461 Iorio St.
Union, NJ 07083
908-810-0008(p)
908-810-0601(f)

WBE

Landscaping contractor

VW Painting/Coatings, Inc.
313 Stokes Ave
Ewing, NJ 08638
609-671-9315(p)

WBE

Painting

West Bay Construction, Inc.
133 Pleasant Avenue
Absecon, NJ 08201
609-380-5955(p)
609-432-5227(f)

DBE

Highway, street & bridge
construction

Western Courier, Inc.
312 Baldwin Avenue
Jersey City, NJ 07306
201-653-0701(p)
201-653-0379(f)

WBE

Messenger Service

Winchester Roofing Corp.
204 Scarlet Oak Road
Turnersville, NJ 08012-2323
856-256-8585(p)
856-218-8936(f)

WBE

Roofing

Wyman Resources, Inc.
1508 Winans Avenue
Linden, NJ 07036
908-862-8468(p)
908-862-2995(f)

M/WBE

Auditing, Accounting
taxes, etc.

Xtreme Coating and Construction LLC
941 garden Street Apt. 1
Elizabeth, NJ 07202
386-931-4716(p)

WBE

Painting

908-662-0388(f)

Your Peace of Mind Investigations LLC
788 Shrewsbury Avenue, Suite 2166
Tinton Falls, NJ 07724
732-268-8044(p)

WBE

Federal Monitoring
Fraud examiner

YU & Associates, Inc.
611 River Dr., 3rd Floor
Elmwood Park, NJ 07407
201-791-0075(p)
201-791-4533(f)

MBE

Engineering Consulting
geotechnical, site/civil and
environmental

ATTACHMENT C

**New Jersey Department of Environmental Protection Change Order Form:
"Contract Modification Proposal and Acceptance"**

Use of the Change Order Form entitled “Contract Modification Proposal and Acceptance

- When the Loanee wishes to issue a change to the contract, the attached “Contract Modification Proposal and Acceptance” form should be used as a request for proposal. Upon final settlement of the change, this same form is then completed and serves as the contract modification.
- The Loanee in requesting a proposal for a change would execute items 1 thru 8 (exclusive of the revised contract price and duration data) and 9 thru 12. Pages 1 and 2 of this form are then forwarded to the contractor, specifying scope of work and requesting the contractor’s proposal.
- The contractor should execute page 2 of the form. He then submits pages 1 and 2 of the form as his proposal, attaching additional sheets as necessary to provide his detailed breakdown of costs.
- Upon negotiation of a final settlement, the Loanee completes page 1 of the form, and all concerned parties (Contractor, Engineer, Owner) sign this document as the contract modification.
- Page 3 of the form is executed by the Loanee for documentation of the change, and to provide the necessary details for review by the Regulatory Agencies.
- Submit a minimum of one original with raised engineer’s seal and one copy. It is suggested that one original be kept for your records.

Detailed Instructions for Executing “Contract Modification Proposal and Acceptance” Form

Item 1. Enter the name of the Loanee.

Item 2. Enter State Project number.

Item 3. Enter the contract number or designation.

Item 4. Enter the number identifying this modification.

Item 5. Enter the name of the Contractor.

Item 6. Enter the project title and location.

Item 7. Requests a proposal for the specified change order work, but does not direct contractor to proceed. The owner or his authorized representative must execute this statement by signature with date and title blocks entered.

Item 8. Provide a clear description of the scope of work for this change. Upon final settlement of the modification costs, enter cost data by line item for unit priced items or by sum; and state total cost of this modification – net increase, decrease or no change in contract price. Enter appropriate information for any change in contract time, including number of calendar days involved. The modification is executed when all appropriate signatures are included.

Items 9 – 12. Same as items 1 – 4.

Item 13. Executed by the contractor, stating net effect of change in appropriate box for money and time. A detailed breakdown must be provided in this item; and appropriate signature of authorized representative of contractor included.

Item 14. Enter the Loanee’s name and State Project number.

Item 15. Enter the contract number or designation.

Item 16. Enter number identifying this modification.

Item 17. Enter appropriate financial data.

Item 18. Explain and justify the reasons for this change order

Item 19. Explain all other impacts resulting from this change with estimate of costs involved. This should include impact on other contractors and the Consulting Engineers.

Item 20. Document that negotiations were held as required by the regulations and explain the events leading to the final settlement in price and time. This statement should include, at a minimum, date and location of negotiations, persons attending, summary of negotiations leading to final price and time settlements, and a statement that the agreed-to price is “fair and reasonable”.

CONTRACT MODIFICATION PROPOSAL AND ACCEPTANCE

1. ISSUING OFFICE	2. PROJECT NO.	3. CONTRACT NO.	4. MODIFICATION NO.
5. TO (CONTRACTOR)		6. PROJECT LOCATION AND DESCRIPTION	

7. A proposal is required for making the hereinafter described change in accordance with specification and drawing revisions cited herein or listed in attachment hereto. Submit your proposal in space indicated on page 2, attach detailed breakdown of prime and sub-contract costs (See the clause of this contract entitled, "Changes". DO NOT start work under this proposed change until you receive a copy signed by the Contracting Officer or a directive to proceed).

Date	Type Name and Title	Signature
------	---------------------	-----------

8. DESCRIPTION OF CHANGE: Pursuant to the clause of this contract covering changes, the contractor shall furnish all labor and material, and all work necessary to accomplish the following described work:

As a result of the above, the contract price is revised as follows:

ITEM NO.	ITEM DESCRIPTION	UNIT PRICE	ESTIMATED QUANTITY	TOTAL COST
----------	------------------	------------	--------------------	------------

TOTAL COST OF THIS MODIFICATION \$ _____

The contract time is hereby: increase decrease or remains the same by _____ calendar days as a result of this modification.

The foregoing modification is hereby accepted:

CONTRACTOR	OWNER	(NJPE SEAL)	ENGINEER
BY: _____	BY: _____	BY: _____	
DATE: _____	DATE: _____	DATE: _____	

APPROVAL:

_____	_____
STATE OF NEW JERSEY	DATE

CONTRACT MODIFICATION PROPOSAL AND ACCEPTANCE

9. ISSUING OFFICE	10. PROJECT NO.	11. CONTRACT NO.	12. MODIFICATION NO.
-------------------	-----------------	------------------	----------------------

13. CONTRACTOR'S PROPOSAL – CHANGE IN CONTRACT PRICE
 (Detailed breakdown, attach additional sheets as necessary)

(Proposed)

NET INCREASE \$ _____	NET DECREASE \$ _____	CALENDER DAYS INCREASE _____ DAYS
--------------------------	--------------------------	--------------------------------------

DATE:	TYPE NAME AND TITLE:	SIGNATURE:
-------	----------------------	------------

CONTRACT MODIFICATION PROPOSAL AND ACCEPTANCE

14. ISSUING OFFICE & PROJECT NO.	15. CONTRACT NO.	16. MODIFICATION NO.
17. ORIGINAL CONTRACT BID PRICE \$ _____ TOTAL OF PREVIOUS CHANGE ORDERS \$ _____ TOTAL CONTRACT COST INCLUDING CHANGE ORDERS ... \$ _____		
18. NECESSITY FOR CHANGE AND REASON FOR OMISSION FROM PLANS AND SPECIFICATIONS:		
19. OTHER IMPACTS RESULTANT OF THIS CHANGE:		
20. RESUME OF NEGOTIATIONS OR RECOMMENDATIONS (Loanee's Representative) :		
DATE:	TYPE NAME AND TITLE OF LOANEE'S REPRESENTATIVE:	SIGNATURE:

ATTACHMENT D

Federal Labor Standards Provisions (EPA Form 5720-4)

Content Last Revised: Current as of 5/26/2015

CFR Code of Federal Regulations Pertaining to ESA

Title 29 – Labor Chapter I

Part 5 - Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction

Subpart A - Davis-Bacon and Related Acts Provisions and Procedures

Section Number: 5.5 Contract provisions and related matters.

(a) The Agency head shall cause or require the contracting officer to insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a 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 §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 contracting officer 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 contracting officer 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 contracting officer 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 by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

(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 (write in name of Federal Agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from 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 (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 (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)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). 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 <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 (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or 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 sponsoring government agency (or the applicant, sponsor, or 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 (write the name of the agency) 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 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 contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) *Certification of eligibility.* (i) By entering into this contract, the contractor certifies that neither it (nor 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 Agency Head shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by §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 \$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 (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (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 Agency Head shall cause or require the contracting officer to insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency Head shall cause or require the contracting officer 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 (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

(The information collection, recordkeeping, and reporting requirements contained in the following paragraphs of this section were approved by the Office of Management and Budget:

Paragraph	OMB Control Number
(a)(1)(ii)(B)	1215-0140
(a)(1)(ii)(C)	1215-0140
(a)(1)(iv)	1215-0140
(a)(3)(i)	1215-0140,
	1215-0017
(a)(3)(ii)(A)	1215-0149
(c)	1215-0140,
	1215-0017

[48 FR 19540, Apr. 29, 1983, as amended at 51 FR 12265, Apr. 9, 1986; 55 FR 50150, Dec. 4, 1990; 57 FR 28776, June 26, 1992; 58 FR 58955, Nov. 5, 1993; 61 FR 40716, Aug. 5, 1996; 65 FR 69693, Nov. 20, 2000; 73 FR 77511, Dec. 19, 2008]

EFFECTIVE DATE NOTE: At 58 FR 58955, Nov. 5, 1993, §5.5 was amended by suspending paragraph (a)(1)(ii) indefinitely.

ATTACHMENT E

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

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

Preamble

With respect to the Clean Water and Safe Drinking Water State Revolving Funds, EPA provides capitalization grants to each State which in turn provides subgrants or loans to eligible entities within the State. Typically, the subrecipients are municipal or other local governmental entities that manage the funds. For these types of recipients, the provisions set forth under Roman Numeral I, below, shall apply. Although EPA and the State remain responsible for ensuring subrecipients' compliance with the wage rate requirements set forth herein, those subrecipients shall have the primary responsibility to maintain payroll records as described in Section 3(ii)(A), below and for compliance as described in Section 1-5.

Occasionally, the subrecipient may be a private for profit or not for profit entity. For these types of recipients, the provisions set forth in Roman Numeral II, below, shall apply. Although EPA and the State remain responsible for ensuring subrecipients' compliance with the wage rate requirements set forth herein, those subrecipients shall have the primary responsibility to maintain payroll records as described in Section 11-3(ii)(A), below and for compliance as described in Section 11-5.

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

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

1. Applicability of the Davis- Bacon (DB) prevailing wage requirements.

Under the FY 2013 Continuing Resolution, DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund and to any construction project carried out in whole or in part by assistance made available by a drinking water treatment revolving loan fund. If a subrecipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the subrecipient must discuss the situation with the recipient State before authorizing work on that site.

2. Obtaining Wage Determinations.

(a) Subrecipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated

into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

- (i) While the solicitation remains open, the subrecipient shall monitor www.wdol.gov weekly to ensure that the wage determination contained in the solicitation remains current. The subrecipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the subrecipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the subrecipient.
- (ii) If the subrecipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the subrecipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The subrecipient shall monitor www.wdol.gov on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(b) If the subrecipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the subrecipient shall insert the appropriate DOL wage determination from www.wdol.gov into the ordering instrument.

(c) Subrecipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a subrecipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the subrecipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the subrecipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The subrecipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract provisions.

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

(1) Minimum wages.

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

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

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

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

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

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

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

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the subrecipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the subrecipient (s) to the State award

official. The State award official will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

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

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

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

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

(2) Withholding. The subrecipient(s), shall upon written request of the EPA Award Official or an authorized representative of the Department of labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or 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 subrecipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the subrecipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the subrecipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the subrecipient(s).

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

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

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

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

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

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

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or 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 EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

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

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

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

(10) Certification of eligibility.

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

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

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

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

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

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

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$10 for each calendar day on

which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

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

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

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

5. Compliance Verification

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

(b) The subrecipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Subrecipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with DB. Subrecipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence."

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

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

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

ATTACHMENT F

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

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

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

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

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

Implementation

The Act states:

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

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

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

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

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

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

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

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

(e) The Administrator may retain up to 0.25 percent of the funds appropriated in this Act for the Clean and Drinking Water State Revolving Funds for carrying out the provisions described in subsection (a)(1) for management and oversight of the requirements of this section.

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

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

Project Coverage

What classes of projects are covered by the AIS requirement?

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

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.

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.

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.

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.

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, assistance agreements signed prior to January 17, 2014 would be excluded from AIS requirements while those signed on January 17, 2014, or later would be covered by the AIS requirements.

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).

What about refinancing?

If a project began construction prior to January 17, 2014, but is financed or refinanced through an 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.

Covered Iron and Steel Products

What is an iron or steel product?

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

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

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

‘Primarily iron or steel’ places constraints on the list of products above. For one of the listed products to be considered subject to the AIS requirements, it must be made of greater than 50% iron or steel, measured by cost. If one of the listed products is not made primarily of iron or steel, United States (US) provenance is not required.

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

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

What is the definition of steel?

Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements. Often, other metals are added to give steel a particular property, such as chromium and nickel to make it stainless.

Are other alloys of iron required to be produced in the US?

No, only iron and steel products as listed above must be produced in the US, even though iron may be the primary constituent of another metal alloy.

What does ‘produced in the United States’ mean?

Production in the United States of the iron or steel products used in the project requires that all manufacturing processes, including application of coatings, must take place in the United States, with the exception of metallurgical processes involving refinement of steel additives. All manufacturing processes includes processes such as melting, refining, forming, rolling, drawing, finishing, fabricating and coating. Further, if a domestic iron and steel product is taken out of the US for any part of the manufacturing process, it becomes foreign source material. However, raw materials such as iron ore, limestone and iron and steel scrap are not covered by the AIS requirement, and the material(s), if any, being applied as a coating are similarly not covered. Non-iron or steel components of an iron and steel product may come from non-US sources. For example, for products such as valves and hydrants, the individual non-iron and steel components do not have to be of domestic origin.

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

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

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

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

What is the definition of ‘municipal castings’?

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

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

What is 'structural steel'?

Structural steel is rolled flanged shapes, having at least one dimension of their cross-section 3 inches or greater, which are used in the construction of bridges, buildings, ships, railroad rolling stock, and for numerous other constructional purposes. Such shapes are designated as wide-flange shapes, standard I-beams, channels, angles, tees and zeeks. Other shapes include H-piles, sheet piling, tie plates, cross ties, and those for other special purposes.

What is a 'construction material' for purposes of the AIS requirement?

Construction materials are those articles, materials, or supplies made primarily of

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

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

The following examples are NOT considered construction materials: gear reducers, drives, mixers, heat exchangers, pumps, motors, blowers/aeration equipment, meters, variable frequency drives (VFDs), valve actuators, controls, supervisory control and data acquisition (SCADA), membrane bioreactor systems, membrane filtration systems, filters, disinfection systems, belt presses, HVAC (excluding ductwork), water heaters, generators, cabinetry and housings, lighting fixtures, electrical conduit, emergency life systems, metal office furniture, shelving, laboratory equipment, and analytical instrumentation.

Are welding rods considered a construction material?

For purposes of construction of the project, yes, welding rods are a construction material and must be produced in the US. Additionally, if welding rods are used in the production of a listed product, that welding rod used by a manufacturer, fabricator, etc., must also be produced in the US.

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

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

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

While reinforced precast concrete may not be at least 50% iron or steel, in this particular case, the reinforcing rebar must be produced in the US and meet the same standards as for any other iron or steel product. Additionally, the casting of the concrete product must take place in the US. If the reinforced concrete is cast at the construction site, the reinforcing rebar is considered to be a construction material and must be produced in the US.

How should an assistance recipient document compliance with the AIS

requirement?

In order to ensure compliance with the AIS requirement, EPA recommends that specific AIS contract language be included in each contract, starting with the assistance agreement, all the way down to the purchase agreements. 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 adherence to AIS requirements. The process would also establish accountability and better enable States to take enforcement actions against intentional 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. It should include 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 is a sample certification.

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

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

In order to ensure compliance with the AIS requirement, States SRF programs should, as a best practice, conduct onsite inspections of projects during construction.

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

If a potentially noncompliant product is identified, the assistance recipient should be notified by the State 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. If EPA determines that the State is not enforcing the AIS

requirements, EPA may use remedies available to it under the Clean Water Act, the Safe Drinking Water Act, and 40 CFR part 31 grant regulations.

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 fraudulent activities are suspected, the OIG should be contacted immediately. The OIG can be reached at 1-888-546-8740 or OIG_Hotline@epa.gov. More information can be found at this website: <http://www.epa.gov/oig/hotline.htm>.

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

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

Waiver Process

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

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

Definitions

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

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

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

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

Step-By-Step Waiver Process

Application by Assistance Recipient

Each local entity that receives SRF water infrastructure financial assistance is required by section 436 of the Act to use American made iron and steel products in the construction of its project. However, if the recipient can justify a claim made under one of the categories below, 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 seek a waiver at any point before, during, or after the bid process, but before installation of the product, if one or a combination 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 (staff to be determined). 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 3-step process:

1. Posting – After receiving a complete application for a waiver, EPA is required to publish the application and all material submitted with the application on EPA's website for 15 days. During that period, the public will have the opportunity to review the request and provide informal comment to EPA.
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.

Public Interest Waivers

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

existing valves may need to be unnecessarily replaced, and portions of the system may need to be redesigned. Therefore, requiring the community to install an alternative valve would be inconsistent with public interest.

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

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

Split Funding

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 segregable 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.

Any questions concerning the contents of this memorandum may be directed to 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 I: Information Checklist for Waiver Request

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

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

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
<p>Cost</p> <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%? 				
<p>Availability</p> <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? <p>Examples include:</p> <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 				
<ul style="list-style-type: none"> • 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 4: Construction Contract Language

The Contractor acknowledges to and for the benefit of the _____ (“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 and such law contains provisions commonly known as “American Iron and Steel;” (P.L. 113-76, Consolidated Appropriations Act, 2014 (Act), section 436) 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 Certification for Step Certification Process

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

Date

Company Name

Company Address

City, State Zip

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

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

Item, Products and/or Materials:

1. Xxxx
2. Xxxx
3. Xxxx

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

Signed by company representative

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

Date

Company Name

Company Address

City, State Zip

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

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

Item, Products and/or Materials:

1. XXXX
2. XXXX
3. XXXX

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

Signed by company representative

Bond #0205569

ENVIRONMENTAL MAINTENANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS: That "the Contractor," Tomar Construction Services Inc., a corporation X, individual _____, partnership _____, joint venture _____, of the State of NJ, qualified to do business in the State of New Jersey, as Principal, and "the Surety," Berkley Insurance Company, of the State of DE, licensed to do business as surety in the State of New Jersey, are hereby held and firmly bound unto the Rockaway Valley Regional Sewerage Authority, "the Owner," as Oblige, in the amount of TWENTY FIVE THOUSAND DOLLARS AND ZERO CENTS Dollars (\$ 25,000.00), which equals \$25,000 or 50 percent of the price bid to fulfill the environmental specifications, (i.e. the work associated with Sections 01014, 01015, 01380, 01561, 01568 and 02100) whichever is greater, for the payment of which the Contractor and the Surety hereby bind themselves, their respective heirs, successors, legal representatives and assigns, jointly and severally, firmly by these presents in accordance with New Jersey Law.

WHEREAS, the Contractor entered into "the Contract" with the Owner for the Final Clarifiers Repair Project, "the Work," covered by Contract Documents, which are incorporated into this Bond by this reference:

NOW, THEREFORE, the condition of this obligation is such that, the Contractor will remedy, without cost to the Owner, any defects which are proved to have resulted from poor workmanship, or failure to comply with any requirements of said Contract Documents pertaining to the restoration for all areas as well as from poor workmanship in such areas. The obligation under this Bond shall commence on the first anniversary date of final acceptance of said Contract and continue in full force and effect for a period of one year; OTHERWISE, it shall remain in full force and effect.

The Contractor and the Surety agree that any alterations, changes and/or additions to the Contract Documents, and/or any alterations, changes and/or additions to the work to be performed under the Contract in accordance with the Contract Documents, and/or any alterations, changes and/or additions to the Contract, and/or any giving by the Owner of any extensions of Contract Time in accordance with the Contract Documents, and/or any act of forbearance of either the Contractor or the Owner toward the other with respect to the Contract Documents and the Contract, and/or the reduction of any percentage to be retained by the Owner as permitted by the Contract Documents and by the Contract, shall not release, in any manner whatsoever, the Contractor and the Surety, or either of them, or their heirs, executors, administrators, successors and assigns, from liability and obligations under this Bond; and the Surety, for value received, does waive notice of any such alterations, changes, additions, extensions of time, acts of forbearance and/or reduction of retained percentage.

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

IMPORTANT: The Surety shall (a) hold a current Certificate of Authority as an acceptable surety or reinsurer under 31 CFR Part 223 (and be listed on the current U.S. Department of the Treasury

Circular 570), and (b) unless otherwise authorized by the Owner in writing, have at least "A" Best's rating and a Class VII or better financial size category per the current A.M. Best Company ratings.

IN WITNESS WHEREOF, we have hereunto set our hands and seals

to three (3) counterparts of this Bond, this 10th day of August, in the year Two Thousand and Seventeen

Tomar Construction Services Inc.

Principal (Seal)

M. Thomas (Seal)
Principal
MARY K. THOMAS, PRESIDENT
Berkley Insurance Company

Surety (Seal)

[Signature] (Seal)
Surety
Michael S. Culnen, Attorney-in-Fact

(Note:

If the Principal (Contractor) is a partnership, the Bond should be signed by each of the partners.

If the Principal (Contractor) is a corporation, the Bond should be signed in its correct corporate name by its duly authorized officer or officers.

If this Bond is signed on behalf of the Surety by an attorney-in-fact, there should be attached to it a duly certified copy of his power of attorney showing his authority to sign such Bonds.

There should be executed an approximate number of counterparts of the Bond corresponding to the number of counterparts of the AGREEMENT.)

Certificate of Acknowledgment of Contractor if a Corporation

FOR CONTRACT BONDS

State of New Jersey)

) ss:

County of Middlesex)

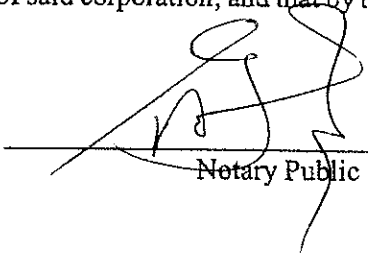
On this 10th day of August, 20 17, before me
personally came Mary K. Thomas to me known, who being by me duly sworn,
did depose and say as follows:

That he resides at 38 Logan Lane, Piscataway Twp, NJ 08854

and is the President

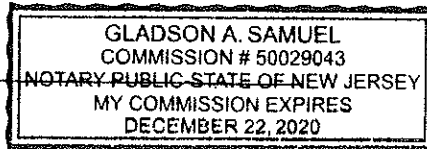
of Tomar Construction Services, Inc.

the corporation described in and which executed the foregoing instrument; that he knows the corporate seal of said corporation; that 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 like order he signed thereto his name and official designation.



Notary Public (Seal)

My commission expires



SURETY DISCLOSURE STATEMENT AND CERTIFICATION
pursuant to N.J. S.A. 2A:44-143

Berkley Insurance Company, 475 Steamboat Road, Greenwich CT 06830,

surety(ies) on the attached bond, hereby certifies(y) the following:

(1) The surety(ies) meets (meet) the applicable capital and surplus requirements of R.S.17: 17-6 or R.S. 17:17-7 as of the surety's most current annual filing with the New Jersey Department of Insurance.

(2) The capital and surplus, as determined in accordance with the applicable laws of this State, of the surety(ies) participating in the issuance of the attached bond is (are) in the following amounts as of the calendar year ended **December 31, 2016**, which amounts have been certified by the Certified Public Accountant listed below:

KPMG, LLP, New York, New York

Surety Companies(y)	Capital and Surplus
Berkley Insurance Company	\$5,493,043,732

(3a) With respect to each surety participating in the issuance of the attached bond that has received from the United States Secretary of the Treasury a certificate of authority pursuant to 31 U. S. C. §9305, the underwriting limitation established therein on **July 1, 2017** is as follows:

Surety Companies(y)	Limitation
Berkley Insurance Company	\$455,938,000

(3b) With respect to each surety participating in the issuance of the attached bond that has not received such a certificate of authority from the

United States Secretary of Treasury, the underwriting limitation of that surety as established pursuant to R.S.17:18-9 as of **July 1, 2017** is as follows:

Surety Companies(y)	Limitation
Not Applicable	Not Applicable

4) The amount of the bond to which the statement and certification is attached is \$ **25,000.00**

5) If by virtue of one or more contracts of reinsurance, the amount of the bond indicated under item (4) above exceeds the total underwriting limitation of all sureties on the bond as set forth in item (3) above, then for each such contract of reinsurance:

(a) The name and address of each such reinsurer under that contract and the amount of the reinsurer's participation in the contract is as follows:

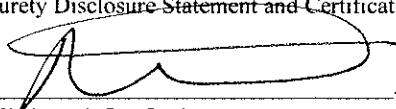
<u>Reinsurer</u>	<u>Address</u>	<u>Amount</u>
------------------	----------------	---------------

and;

(b) Each surety that is party to any such contract of reinsurance certifies that each reinsurer listed under item (5)(a) satisfies the credit for reinsurance requirement established under P.L. 1993,c.243(C.17:51:B-1 et seq.) and any applicable regulations in effect as of the date on which the bond to which this statement and certification is attached shall have been filed with the appropriate public agency.

CERTIFICATE

I, **Michael S. Culnen**, as Attorney-in-Fact, for Berkley Insurance Company, a corporation domiciled in the State of Delaware, DO HEREBY CERTIFY that, to the best of my knowledge, the foregoing statements made by me are true, and ACKNOWLEDGE that, if any of those statements made by me are false, this bond is VOIDABLE. Further, this form and my signature can be used in Facsimile for the purposes stated within this Surety Disclosure Statement and Certification.


_____, Attorney-in-Fact
Michael S. Culnen

POWER OF ATTORNEY
BERKLEY INSURANCE COMPANY
WILMINGTON, DELAWARE

NOTICE: The warning found elsewhere in this Power of Attorney affects the validity thereof. Please review carefully.

KNOW ALL MEN BY THESE PRESENTS, that BERKLEY INSURANCE COMPANY (the "Company"), a corporation duly organized and existing under the laws of the State of Delaware, having its principal office in Greenwich, CT, has made, constituted and appointed, and does by these presents make, constitute and appoint: *Michael S. Culnen; Cathy Knoke; or Pamela B. Lipkin-Sauertig of USI Insurance Services LLC of West Orange, NJ* its true and lawful Attorney-in-Fact, to sign its name as surety only as delineated below and to execute, seal, acknowledge and deliver any and all bonds and undertakings, with the exception of Financial Guaranty Insurance, providing that no single obligation shall exceed **Fifty Million and 00/100 U.S. Dollars (U.S.\$50,000,000.00)**, to the same extent as if such bonds had been duly executed and acknowledged by the regularly elected officers of the Company at its principal office in their own proper persons.

This Power of Attorney shall be construed and enforced in accordance with, and governed by, the laws of the State of Delaware, without giving effect to the principles of conflicts of laws thereof. This Power of Attorney is granted pursuant to the following resolutions which were duly and validly adopted at a meeting of the Board of Directors of the Company held on January 25, 2010:

RESOLVED, that, with respect to the Surety business written by Berkley Surety, the Chairman of the Board, Chief Executive Officer, President or any Vice President of the Company, in conjunction with the Secretary or any Assistant Secretary are hereby authorized to execute powers of attorney authorizing and qualifying the attorney-in-fact named therein to execute bonds, undertakings, recognizances, or other suretyship obligations on behalf of the Company, and to affix the corporate seal of the Company to powers of attorney executed pursuant hereto; and said officers may remove any such attorney-in-fact and revoke any power of attorney previously granted; and further

RESOLVED, that such power of attorney limits the acts of those named therein to the bonds, undertakings, recognizances, or other suretyship obligations specifically named therein, and they have no authority to bind the Company except in the manner and to the extent therein stated; and further

RESOLVED, that such power of attorney revokes all previous powers issued on behalf of the attorney-in-fact named; and further

RESOLVED, that the signature of any authorized officer and the seal of the Company may be affixed by facsimile to any power of attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligation of the Company; and such signature and seal when so used shall have the same force and effect as though manually affixed. The Company may continue to use for the purposes herein stated the facsimile signature of any person or persons who shall have been such officer or officers of the Company, notwithstanding the fact that they may have ceased to be such at the time when such instruments shall be issued.

IN WITNESS WHEREOF, the Company has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunto affixed this 31st day of July, 2017.

Attest:

Berkley Insurance Company

(Seal)

By Ira S. Lederman
Executive Vice President & Secretary

By Jeffrey M. Hafter
Senior Vice President

WARNING: THIS POWER INVALID IF NOT PRINTED ON BLUE "BERKLEY" SECURITY PAPER.

STATE OF CONNECTICUT)

) ss:

COUNTY OF FAIRFIELD)

Sworn to before me, a Notary Public in the State of Connecticut, this 31st day of July, 2017, by Ira S. Lederman and Jeffrey M. Hafter who are sworn to me to be the Executive Vice President and Secretary, and the Senior Vice President, respectively, of Berkley Insurance Company.

MARIA C. RUNDBAKEN
NOTARY PUBLIC
MY COMMISSION EXPIRES
APRIL 30, 2019

Maria C. Rundbaken
Notary Public, State of Connecticut

CERTIFICATE

I, the undersigned, Assistant Secretary of BERKLEY INSURANCE COMPANY, DO HEREBY CERTIFY that the foregoing is a true, correct and complete copy of the original Power of Attorney; that said Power of Attorney has not been revoked or rescinded and that the authority of the Attorney-in-Fact set forth therein, who executed the bond or undertaking to which this Power of Attorney is attached, is in full force and effect as of this date.

Given under my hand and seal of the Company, this 10th day of August, 2017.

(Seal)

Vincent P. Forte
Vincent P. Forte

WARNING: Any unauthorized reproduction or alteration of this document is prohibited. This power of attorney is void unless seals are readable and the certification seal at the bottom is embossed. The background imprint, warning and verification instructions (on reverse) must be in blue ink.

Please **verify the authenticity** of the instrument attached to this Power by:

Toll-Free Telephone: (800) 456-5486; or

Electronic Mail: BSGInquiry@berkleysurety.com

Any written notices, inquiries, claims or demands to the Surety on the bond attached to this Power should be directed to:

Berkley Surety
412 Mount Kemble Ave.
Suite 310N
Morristown, NJ 07960
Attention: Surety Claims Department

Or

Email: BSGClaim@berkleysurety.com

Please include with all communications the bond number and the name of the principal on the bond. Where a claim is being asserted, please set forth generally the basis of the claim. In the case of a payment or performance bond, please also identify the project to which the bond pertains.

Berkley Surety is a member company of W. R. Berkley Corporation that underwrites surety business on behalf of Berkley Insurance Company, Berkley Regional Insurance Company and Carolina Casualty Insurance Company.

BERKLEY INSURANCE COMPANY

STATUTORY BALANCE SHEET

DECEMBER 31, 2016

(AMOUNTS IN THOUSANDS)

Admitted Assets

Bonds	\$	8,869,092
Common & Preferred Stocks		3,581,692
Cash & Short Term Investments		862,834
Premiums Receivable		1,408,458
Other Assets		<u>3,418,390</u>
<u>Total Admitted Assets</u>	\$	<u>17,940,465</u>

Liabilities & Surplus

Loss & LAE Reserves	\$	9,199,960
Unearned Premium Reserves		2,661,678
Other Liabilities		<u>585,784</u>
<u>Total Liabilities</u>	\$	<u>12,447,422</u>
Common Stock	\$	43,000
Preferred Stock		10
Additional Paid In Capital		2,839,504
Unassigned Surplus		<u>2,610,530</u>
<u>Total Policyholders' Surplus</u>	\$	<u>5,493,044</u>
<u>Total Liabilities & Surplus</u>	\$	<u>17,940,465</u>

Officers:

President: William Robert Berkley, Jr.
Secretary: Ira Seth Lederman
Treasurer: Eugene George Ballard

Directors:

William Robert Berkley,
(Chairman)
William Robert Berkley, Jr.
Eugene George Ballard
Paul James Hancock
Carol Josephine LaPunzina
Ira Seth Lederman
Carl Fred Madsen

Recovery of any claimant under the bond shall be subject to the conditions and provisions of N.J.S.A. 2A:44-143 to the same extent as if such conditions and provisions were fully incorporated in this bond the form set forth above.

The said surety hereby stipulates and agrees that no modifications, omissions, or additions in or to the terms of the said Contract or in or to the plans or Specifications therefore, shall in anywise affect the obligation of said surety on its bond.

IN WITNESS WHEREOF said principal and surety have hereunto set their respective hands and seals or caused there presents to be signed and sealed by their proper representatives.

McLomen

MARY K. THOMAS

PRESIDENT

Tomar Construction Services Inc.

18 Connerty Court, Suite B

East Brunswick, NJ 08816

CONTRACTOR

Signed, Sealed and Delivered
in the Presence of:

Shirlath

SHIRLEY CATHERINE, WITNESS

By: _____

Bonding Company

APPROVAL OF BOND

The foregoing bond approved this _____ day of _____, 20____.

Berkley Insurance Company
412 Mt. Kemble Ave., Suite 310N
Morristown, NJ 07960

BY [Signature]
Attorney-In-Fact Michael S. Cuinen

SURETY DISCLOSURE STATEMENT AND CERTIFICATION
pursuant to N.J. S.A. 2A:44-143

Berkley Insurance Company, 475 Steamboat Road, Greenwich CT 06830,

surety(ies) on the attached bond, hereby certifies(y) the following:

(1) The surety(ies) meets (meet) the applicable capital and surplus requirements of R.S.17: 17-6 or R.S. 17:17-7 as of the surety's most current annual filing with the New Jersey Department of Insurance.

(2) The capital and surplus, as determined in accordance with the applicable laws of this State, of the surety(ies) participating in the issuance of the attached bond is (are) in the following amounts as of the calendar year ended **December 31, 2016**, which amounts have been certified by the Certified Public Accountant listed below:

KPMG, LLP, New York, New York

Surety Companies(y)	Capital and Surplus
Berkley Insurance Company	\$5,493,043,732

(3a) With respect to each surety participating in the issuance of the attached bond that has received from the United States Secretary of the Treasury a certificate of authority pursuant to 31 U. S. C. §9305, the underwriting limitation established therein on **July 1, 2017** is as follows:

Surety Companies(y)	Limitation
Berkley Insurance Company	\$455,938,000

(3b) With respect to each surety participating in the issuance of the attached bond that has not received such a certificate of authority from the

United States Secretary of Treasury, the underwriting limitation of that surety as established pursuant to R.S.17:18-9 as of **July 1, 2017** is as follows:

Surety Companies(y)	Limitation
Not Applicable	Not Applicable

4) The amount of the bond to which the statement and certification is attached is \$ **5,594,000.00**

5) If by virtue of one or more contracts of reinsurance, the amount of the bond indicated under item (4) above exceeds the total underwriting limitation of all sureties on the bond as set forth in item (3) above, then for each such contract of reinsurance:

(a) The name and address of each such reinsurer under that contract and the amount of the reinsurer's participation in the contract is as follows:

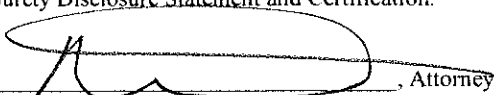
<u>Reinsurer</u>	<u>Address</u>	<u>Amount</u>
------------------	----------------	---------------

and;

(b) Each surety that is party to any such contract of reinsurance certifies that each reinsurer listed under item (5)(a) satisfies the credit for reinsurance requirement established under P.L. 1993,c.243(C.17:51:B-1 et seq.) and any applicable regulations in effect as of the date on which the bond to which this statement and certification is attached shall have been filed with the appropriate public agency.

CERTIFICATE

I, **Michael S. Culnen**, as Attorney-in-Fact, for Berkley Insurance Company, a corporation domiciled in the State of Delaware, DO HEREBY CERTIFY that, to the best of my knowledge, the foregoing statements made by me are true, and ACKNOWLEDGE that, if any of those statements made by me are false, this bond is VOIDABLE. Further, this form and my signature can be used in Facsimile for the purposes stated within this Surety Disclosure Statement and Certification.


_____, Attorney-in-Fact
Michael S. Culnen

POWER OF ATTORNEY
BERKLEY INSURANCE COMPANY
WILMINGTON, DELAWARE

NOTICE: The warning found elsewhere in this Power of Attorney affects the validity thereof. Please review carefully.

KNOW ALL MEN BY THESE PRESENTS, that BERKLEY INSURANCE COMPANY (the "Company"), a corporation duly organized and existing under the laws of the State of Delaware, having its principal office in Greenwich, CT, has made, constituted and appointed, and does by these presents make, constitute and appoint: Michael S. Culnen; Cathy Knoke; or Pamela B. Lipkin-Sauertig of USI Insurance Services LLC of West Orange, NJ its true and lawful Attorney-in-Fact, to sign its name as surety only as delineated below and to execute, seal, acknowledge and deliver any and all bonds and undertakings, with the exception of Financial Guaranty Insurance, providing that no single obligation shall exceed Fifty Million and 00/100 U.S. Dollars (U.S.\$50,000,000.00), to the same extent as if such bonds had been duly executed and acknowledged by the regularly elected officers of the Company at its principal office in their own proper persons.

This Power of Attorney shall be construed and enforced in accordance with, and governed by, the laws of the State of Delaware, without giving effect to the principles of conflicts of laws thereof. This Power of Attorney is granted pursuant to the following resolutions which were duly and validly adopted at a meeting of the Board of Directors of the Company held on January 25, 2010:

RESOLVED, that, with respect to the Surety business written by Berkley Surety, the Chairman of the Board, Chief Executive Officer, President or any Vice President of the Company, in conjunction with the Secretary or any Assistant Secretary are hereby authorized to execute powers of attorney authorizing and qualifying the attorney-in-fact named therein to execute bonds, undertakings, recognizances, or other suretyship obligations on behalf of the Company, and to affix the corporate seal of the Company to powers of attorney executed pursuant hereto; and said officers may remove any such attorney-in-fact and revoke any power of attorney previously granted; and further

RESOLVED, that such power of attorney limits the acts of those named therein to the bonds, undertakings, recognizances, or other suretyship obligations specifically named therein, and they have no authority to bind the Company except in the manner and to the extent therein stated; and further

RESOLVED, that such power of attorney revokes all previous powers issued on behalf of the attorney-in-fact named; and further

RESOLVED, that the signature of any authorized officer and the seal of the Company may be affixed by facsimile to any power of attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligation of the Company; and such signature and seal when so used shall have the same force and effect as though manually affixed. The Company may continue to use for the purposes herein stated the facsimile signature of any person or persons who shall have been such officer or officers of the Company, notwithstanding the fact that they may have ceased to be such at the time when such instruments shall be issued.

IN WITNESS WHEREOF, the Company has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunto affixed this 31st day of July, 2012.

Attest:

Berkley Insurance Company

(Seal)

By Ira S. Lederman
Executive Vice President & Secretary

By Jeffrey M. Hafner
Senior Vice President

WARNING: THIS POWER INVALID IF NOT PRINTED ON BLUE "BERKLEY" SECURITY PAPER.

STATE OF CONNECTICUT)
) ss:
COUNTY OF FAIRFIELD)

Sworn to before me, a Notary Public in the State of Connecticut, this 31st day of July, 2012, by Ira S. Lederman and Jeffrey M. Hafner who are sworn to me to be the Executive Vice President and Secretary, and the Senior Vice President, respectively, of Berkley Insurance Company.

MARIA C. RUNDBAKEN
NOTARY PUBLIC
MY COMMISSION EXPIRES
APRIL 30, 2019

Maria C. Rundbaken
Notary Public, State of Connecticut

CERTIFICATE

I, the undersigned, Assistant Secretary of BERKLEY INSURANCE COMPANY, DO HEREBY CERTIFY that the foregoing is a true, correct and complete copy of the original Power of Attorney; that said Power of Attorney has not been revoked or rescinded and that the authority of the Attorney-in-Fact set forth therein, who executed the bond or undertaking to which this Power of Attorney is attached, is in full force and effect as of this date.

Given under my hand and seal of the Company, this 10th day of August, 2017

(Seal)

Vincent P. Forte

WARNING - Any unauthorized reproduction or alteration of this document is prohibited. This power of attorney is void unless seals are readable and the certification seal at the bottom is embossed. The background imprint, warning and verification instructions (on reverse) must be in blue ink.

Please **verify the authenticity** of the instrument attached to this Power by:

Toll-Free Telephone: (800) 456-5486; or

Electronic Mail: BSGInquiry@berkleysurety.com

Any written notices, inquiries, claims or demands to the Surety on the bond attached to this Power should be directed to:

Berkley Surety
412 Mount Kemble Ave.
Suite 310N
Morristown, NJ 07960
Attention: Surety Claims Department

Or

Email: BSGClaim@berkleysurety.com

Please include with all communications the bond number and the name of the principal on the bond. Where a claim is being asserted, please set forth generally the basis of the claim. In the case of a payment or performance bond, please also identify the project to which the bond pertains.

Berkley Surety is a member company of W. R. Berkley Corporation that underwrites surety business on behalf of Berkley Insurance Company, Berkley Regional Insurance Company and Carolina Casualty Insurance Company.

BERKLEY INSURANCE COMPANY

STATUTORY BALANCE SHEET

DECEMBER 31, 2016

(AMOUNTS IN THOUSANDS)

Admitted Assets

Bonds	\$	8,869,092
Common & Preferred Stocks		3,581,692
Cash & Short Term Investments		862,834
Premiums Receivable		1,408,458
Other Assets		<u>3,418,390</u>

Total Admitted Assets \$ 17,940,465

Liabilities & Surplus

Loss & LAE Reserves	\$	9,199,960
Unearned Premium Reserves		2,661,678
Other Liabilities		<u>585,784</u>

Total Liabilities \$ 12,447,422

Common Stock	\$	43,000
Preferred Stock		10
Additional Paid In Capital		2,839,504
Unassigned Surplus		<u>2,610,530</u>

Total Policyholders' Surplus \$ 5,493,044

Total Liabilities & Surplus \$ 17,940,465

Officers:

President: William Robert Berkley, Jr.
Secretary: Ira Seth Lederman
Treasurer: Eugene George Ballard

Directors:

William Robert Berkley,
(Chairman)
William Robert Berkley, Jr.
Eugene George Ballard
Paul James Hancock
Carol Josephine LaPunzina
Ira Seth Lederman
Carl Fred Madsen



UNDERSTAND. SERVICE. INNOVATE.

USI INSURANCE SERVICES LLC
300 Executive Drive
West Orange, NJ 07052
Direct: 973.965.3165
Corynne .Albertson@usi.com

August 10, 2017

Rockaway Valley Regional Sewerage Authority
R.D. # 1, 99 Greenbank Road
Boonton, NJ 07005

Re: Contract No. 40 – Final Clarifiers Repair Project

To Whom It May Concern,

Please note that a quote has been prepared for the Builders Risk Policy for Tomar Construction Services, Inc. at 38 Logan Lane, Piscataway, NJ 08854-5804. The policies will be put into effect prior to the commencement of work. At that time we will be able to provide an updated certificate of insurance which will show the policy numbers and coverages.

If you have any questions, please do not hesitate to contact me.

Kindly,

A handwritten signature in black ink, appearing to read "C. Albertson", written in a cursive style.

Corynne Albertson
Account Manager
Corynne.Albertson@usi.com
973-965-3165

This page has been left blank intentionally.

STATE OF NEW JERSEY
 DEPARTMENT OF LABOR & WORKFORCE DEVELOPMENT
 CONSTRUCTION EEO COMPLIANCE MONITORING PROGRAM

Official Use Only

Assignment

Code

FORM AA-201
 Revised 11/11

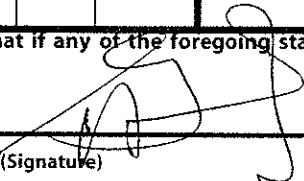
INITIAL PROJECT WORKFORCE REPORT CONSTRUCTION

For instructions on completing the form, go to: http://www.state.nj.us/treasury/contract_compliance/pdf/aa201ins.pdf

1. FID NUMBER 22-3696444	2. CONTRACTOR ID NUMBER	5. NAME AND ADDRESS OF PUBLIC AGENCY AWARING CONTRACT Name: Rockaway Valley Regional SA Address: RD#1, 99 Greenbank Rd Boonton, NJ 07005	
3. NAME AND ADDRESS OF PRIME CONTRACTOR Tomar Construction Services, Inc. (Name) 18 Connerty Court, Suite B (Street Address) E. Brunswick NJ 08816 (City) (State) (Zip Code)		CONTRACT NUMBER 40	DATE OF AWARD 07-31-2017
		DOLLAR AMOUNT OF AWARD \$5,594,000.00	7. PROJECT NUMBER
4. IS THIS COMPANY MINORITY OWNED [] OR WOMAN OWNED [X]		6. NAME AND ADDRESS OF PROJECT Name: Rockaway Valley Regional SA Address: 99 Greenbank Rd Boonton, NJ 07005 (Final Clarifiers Repair Project) COUNTY MORRIS	
		8. IS THIS PROJECT COVERED BY A PROJECT LABOR AGREEMENT (PLA)? YES [X]	

9. TRADE OR CRAFT	PROJECTED TOTAL EMPLOYEES				PROJECTED MINORITY EMPLOYEES				PROJECTED PHASE - IN DATE	PROJECTED COMPLETION DATE
	MALE		FEMALE		MALE		FEMALE			
	J	AP	J	AP	J	AP	J	AP		
1. ASBESTOS WORKER										
2. BRICKLAYER OR MASON										
3. CARPENTER	2	2			2	2			12/17/17	03/30/19
4. ELECTRICIAN	2	4			1	3			11/17/17	03/15/19
5. GLAZIER										
6. HVAC MECHANIC										
7. IRONWORKER	2	4			1	3			11/17/17	03/15/19
8. OPERATING ENGINEER	1								04/15/18	10/20/18
9. PAINTER	2	3			1	1			01/15/18	02/15/19
10. PLUMBER										
11. ROOFER										
12. SHEET METAL WORKER										
13. SPRINKLER FITTER										
14. STEAMFITTER										
15. SURVEYOR	1								11/20/17	11/22/17
16. TILER										
17. TRUCK DRIVER	1				1				10/16/17	11/17/17
18. LABORER	1	2			1	2			09/18/17	05/17/19
19. OTHER										
20. OTHER										

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.


 (Signature)

10. (Please Print Your Name) GLADSON SAMUEL			CONTRACT ADMINISTRATOR	
732	354-0317	221	08/10/2017	
(Area Code)	(Telephone Number)	(Ext.)	(Date)	

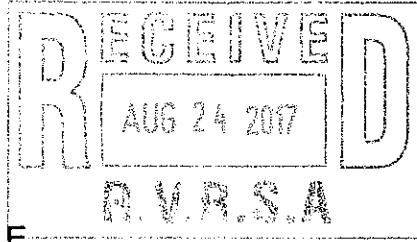
Tomar Construction Services, Inc

18 Connerty Court
East Brunswick NJ 08816
732 238-0700

Transmittal

Date: 08/23/2017
Control No 342
Sent via Regular Mail

To: Rockaway Valley RSA
99 Greenbank Road
Boonton NJ 07005



Project: 80
Final Clarifiers Repair-RVRS
99 Greenbank Road
Boonton NJ 07005

Attn: ~~Carrie D. Feuer, P.E.~~

Bob B.

Tel: Fax

E mail:

Contract No 40

Prepared By: Bob Sobhan

Item	Quantity	Description
	1	3

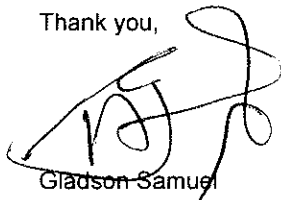
Notes

Dear Ms. Feuer, *Bob,*

Attached for the above referenced Contract please find the following;

1. Executed Agreements (QTY 3)
2. Environmental Maintenance Bond (QTY 3)
3. Performance and Maintenance Bond (QTY 3)
4. Certificate of Liability Insurance and Letter of undertaking concerning Builders Risk Policy. (QTY 1)
5. Copy of Initial Manning Report (Form AA-201) sent to state of New Jersey. (QTY 1)

Thank you,



Gladson Samuel
Contract Administrator

Please sign and date this form as proof that you are in receipt of the above listed items. Return form to

Tomar Construction Services, Inc

Your Comments, if any _____

Signed: _____ Date: _____

