

FIRM'S NAME _____

File No. 2015-032-00

ADDRESS _____

PHONE _____

EMAIL _____

CITY OF AKRON, OHIO
DEPARTMENT OF PUBLIC SERVICE
BUREAU OF ENGINEERING
REQUEST FOR PROPOSALS AND QUALIFICATIONS AND CONTRACT FOR THE
HAZEL STORAGE BASIN (CSO RACK 10 AND 11)
FOR CONSTRUCTION MANAGER AT RISK
VOLUME ONE

PROPOSALS AND QUALIFICATIONS DUE: AUGUST 1, 2018 BY 12:00 PM LOCAL TIME

FOR QUESTIONS CONTACT PROJECT MANAGER: Heather Ullinger, P.E., Project Manager
HUllinger@akronohio.gov

COMPLETE THE FORMS BOUND HEREIN AND
SUBMIT THE ENTIRE BOOK. DO NOT REMOVE ANY PAGES.

PLANS AND PROPOSAL DOCUMENTS MAY BE PURCHASED AT: SE Blueprint, Inc., 540 South
Main Street, Suite 211, Akron, Ohio 44311 (www.seblueprint.com) AT A COST OF ONE HUNDRED
SEVEN DOLLARS AND FIFTY-FIVE CENTS (\$107.55) (NON-REFUNDABLE)

HAZEL STORAGE BASIN (CSO RACK 10 AND 11)

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VOLUME ONE

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ARTICLE 1 – DEFINED TERMS

- 1.01 Terms used in these Instructions to Firms have the meanings indicated in Article 1 of the General Conditions.
- 1.02 As used on the Contract Documents, the term “CONTRACTOR” shall mean the construction manager at risk for the Project, which construction manager at risk shall be selected by City pursuant to the selection process described in this RFPQ.

ARTICLE 2 – COPIES OF PROPOSAL DOCUMENTS

- 2.01 Copies of the Proposal Documents are on file and can be obtained from SE Blueprint, Inc., 540 South Main Street, Suite 211, Akron, Ohio 44311, Phone 330-376-1689 at a cost of \$107.55, which amount is not refundable. Please fax or email your requested quantity of Proposal Documents prior to purchase. Fax: 330-376-2511, Email: akron@seblueprint.com. Firms will then be contacted when Proposal Documents are available for pickup. Proposal Documents can also be viewed in the office of the Bureau of Engineering, 7th Floor Municipal Building, Akron, Ohio. Additional information may be found at www.seblueprint.com / www.plancycle.com.
- 2.02 Complete sets of Proposal Documents shall be used in preparing Proposals. City does not assume any responsibility for errors or misinterpretations resulting from the use by firms of incomplete sets of Proposal Documents.
- 2.03 City makes copies of Proposal Documents available on the above terms only for the purpose of obtaining Proposals for the Project and does not authorize or confer a license for any other use.
- 2.04 Volumes Three, Four, Five, Six, and Seven of the Proposal Documents include the current Drawings and Specifications for the Project, which are approximately ninety percent (90%) complete. By submitting their Proposals, Proposers acknowledge that the Drawings and Specifications set forth in Volumes Three, Four, Five, Six, and Seven are not final and continue to be subject to City's review, approval and revisions.
- 2.05 Attached hereto is a description of certain tasks and scope of work for the Project, whose details have not yet been finalized, but are nonetheless intended to be included as part of the Work for the Project (“Project Considerations”). Proposers shall review and address each item in the Project Considerations in the Proposal Qualifications and Assumptions document included as part of the Proposal, as described in the Proposal Form referenced in Article 11.

ARTICLE 3 – SELECTION SCHEDULE

- 3.01 A summary of the major activities relating to this selection process is set forth below. City reserves the right to modify any or all of the following dates.

Activity	Date
Issuance of RFPQ	June 28, 2018
Pre-Proposal Meeting	July 11, 2018 at 9:00 am local time
Deadline for Questions to the City	July 20, 2018 by 12:00 pm local time
Deadline for City Responses to Questions	July 27, 2018 by 12:00 pm local time

Proposal Submission Due Date	August 1, 2018 by 12:00 pm local time
Interviews (if any)	Week of August 13, 2018
Contract Award	August 27, 2018

ARTICLE 4 – PRE-PROPOSAL MEETING AND INTERVIEW

- 4.01 One non-mandatory Pre-Proposal Meeting shall be scheduled by City at a time, date and location to be provided to firms by City. The meeting will be scheduled for the purpose of providing firms with an opportunity to discuss the Contract Documents with City. All firms that received this RFPQ are encouraged, but not required, to attend.
- 4.02 Representatives of City will be present at the Pre-Proposal Meeting to discuss the Project. Firms are encouraged to attend and participate in the Pre-Proposal Meeting. City will transmit to all firms that received this RFPQ such Addenda as City considers necessary in response to questions arising at the Pre-Proposal Meeting and during the selection period. Oral statements may not be relied upon and will not be binding or legally effective.
- 4.03 City may, in its sole discretion, interview one or more firms after City analyzes the Proposals. The purpose of the interviews, if any, will be to meet the proposed Project team, become familiar with key personnel, and understand the Project approach and ability to meet the stated objectives for the Project. Please be prepared to discuss with specificity the firm's capacity to conduct this work in compliance with the timetable, budget, Local Hiring and Workforce Participation Policy and Local EDGE, DBE, MBE, SBE, VBE and WBE goals. City will notify firms to schedule individual interview times, if any.

ARTICLE 5 – PROPOSAL SUBMITTAL REQUIREMENTS

- 5.01 Qualification Review and Determination
 - A. City shall award the contract to the firm that City deems to be the lowest and best responsible firm in accordance with this RFPQ, applicable laws and the Contract Documents for the Project.
 - B. City may conduct any additional inquiries to verify that firms and their Subcontractors have the technical qualifications and performance capabilities necessary to successfully complete the Project in terms of controlling costs, quality of the Work and meeting deadlines, and a sufficient record of such successful past performance for similar projects. In conducting such inquiries, City may seek relevant information from firms, prior customers or clients, both public and private, Subcontractors or any other relevant sources.
 - C. All business entities engaged in contracts for this Project shall be qualified designers, consultants, contractors and subcontractors that have sufficient capabilities in all respects to successfully perform contracts on which they are engaged, including the necessary experience, equipment, technical skills, licenses, and qualifications and organizational, financial, and personal resources, including successful completion of projects similar in size and scope to this Project within the owner's time and budget constraint. Firms shall also be required to have a satisfactory past performance record for similar projects and a satisfactory record of compliance with all applicable laws. No award will be made to any firm who cannot demonstrate to City sufficient ability and experience in this class of Work and sufficient capital and plant to enable prosecution and completion of the Work successfully within the Contract Time. City's decision or judgment on these matters shall

be final, conclusive, and binding. Provision of such information by firms shall not establish a presumption of the firm's qualifications and City may require any additional information it deems necessary to evaluate the firm's status, including, but not limited to, technical or professional qualifications and experience, availability of qualified personnel, equipment and facilities, past performance on similar projects.

- D. **Note: City has determined that it is in its best interest to allow the selected firm to self-perform items of Work. As the previously distributed Request for Qualifications requested information on projects that contained no self-performance, the responses are no longer relevant to the Project. As such the City has determined to reject all of the previously submitted qualifications and will not be pre-approving firms for this Project.**

5.02 Each firm is required to submit one hard and one electronic copy of this RFPQ and one copy of all documents required in Section 5.04.

5.03 Please adhere to the following requirements in preparing and submitting the documents required in 5.04 to be part of the Proposal:

- A. Use 8½" x 11" paper only, except that the Construction Schedule should be submitted on 11" x 17" paper.
- B. Minimum font size of 11-point with margins of 1" on all four sides.
- C. Page numbers must be centered at the bottom of each page.
- D. Hard copies to be bound in a manner that will allow for easy photocopying.
- E. Do not provide tabbed inserts or other features that may interfere with machine copying.

5.04 The Proposal shall include the following information and documents, completed in accordance with the Proposal Documents:

- A. A statement of the firm's qualifications for the Project, including:
 - 1. A list of relevant project experience, on projects similar to the Project proposed herein, and specifically identifying any projects where the firm as part of a design team to finalize plans during preconstruction through value engineering, constructability reviews, and other preconstruction services as described in the Agreement. Firms shall include the following information for each listed project:
 - (A) The contract amount (separately identifying preconstruction services and General Conditions items from Cost of the Work);
 - (B) Description of the project and a description of the firm's relevant experience, consistent with the above;
 - (C) The percentage of the contract amount that was self-performed (excluding preconstruction services and General Conditions Items);
 - (D) The names of each subcontractor and the percentage of the contract amount that each subcontractor performed; and
 - (E) Contact information for the project owner.

2. Evidence of the firm's authority to do business in the State of Ohio. The firm's State Contractor license number, if any, shall also be included. If the firm has ever operated under another name, or controls, or is controlled by another company or business entity or in the past five years controlled or was controlled by another company or business entity, whether as a parent company, subsidiary, joint venture or any other business relation, it shall attach a separate statement to its Proposal that identifies the owners, officers, and members of such company or business entity and explains in detail the nature and duration of any such business relationship. City may request additional information from such entity if the business relationship could potentially impact contract performance.
 3. Information identifying the firm's staff and personnel for the Project, including: (a) names of the Project Executive, Senior Project Manager, Superintendents, Shift Foreman, and Local Hiring and Diversity Participation Compliance Manager; (b) the qualifications and experience of such staff and personnel; and (c) a full staffing chart for the firm's team for the Project. For all aforementioned personnel of this section, provide the following information to the best of your knowledge:
 - (A) The individual's position and authority within the firm.
 - (B) Each individual's function and involvement with previous projects similar in nature to the proposed project of this RFPQ.
 - (C) Identify all projects that the individual will be involved with concurrently with the proposed project of this RFPQ as well as the individuals' anticipated time commitment to each (in terms of percentage of time),
 - (D) Relevant experience, professional registrations, education, and other qualifications applicable to this Project.
 - (E) Any unique qualifications.
 - (F) A statement indicating that the individual is currently employed with the firm at the time of the Proposal submittal.
 4. The firm's current and future workload, including all current and committed projects, and the scheduled durations of such projects. The Proposal shall also contain, for each person included in the firm's staffing plan required in Section 5.04.A.3, a chart of such individual's current and committed assignments, and an indication (in terms of percentage of time) of their time commitment to each current or committed assignment, and identify the phase(s) of this Project to which the individual will be assigned and the percentage of that individual's time to be devoted to this Project.
 5. Insurance certificates and evidence of bonding in the amounts required in this RFPQ and the Agreement.
- B. A fully completed Proposal Form and Proposal Qualifications and Assumptions, completed in accordance with the requirements of Article 11 hereof.
- C. A description of the trade packages the firm anticipates for the Project, and the areas of Self-Performed Work the firm intends to pursue. The projects described in the list provided in response to Section 5.04.A should be projects where the firm acted as a

construction manager at risk, with a level of self-performance similar to what is proposed for this Project.

- D. The Local EDGE, DBE, MBE, SBE, VBE and WBE Company Participation Plan, as described in Article 27 of these Instructions to Firms.
- E. The Local Workforce Participation Plan, as described in Article 28 of these Instructions to Firms.
- F. Each Contractor, Subcontractor and Supplier (over \$25,000) shall complete the Certification Regarding Debarment, Suspension, and Other Responsibility Matters form and these forms shall be included with the Proposal.
- G. The firm's billing rates for its staff identified pursuant to Section 5.04.A.3, and the firm's not to exceed amount for such staff as described in Section 7.01 of these Instructions to Firms.
- H. Description of General Conditions Items for the Project and the firm's not to exceed amount for such General Conditions Items as described in Section 7.02 of these Instructions to Firms.
- I. Proposed Construction Schedule required by Article 8 of these Instructions to Firms.
- J. The Bid Security, as required by Article 9 of these Instructions to Firms.
- K. The Non-Collusion Affidavit, as required by Article 10 of these Instructions to Firms, in the form set forth in the Project Forms & Information section of this RFPQ.
- L. Local Hiring Policy Form 1: Local Hiring Workforce Projection, in the form set forth in the Project Forms & Information section of this RFPQ.
- M. Local Hiring Policy Form 2: Local Hiring Plan, in the form set forth in the Project Forms & Information section of this RFPQ.
- N. Local Hiring Policy Form 3: Conditional Waivers, in the form set forth in the Project Forms & Information section of this RFPQ, as needed.
- O. Local Hiring Policy Form 4: Conditional Waivers, in the form set forth in the Project Forms & Information section of this RFPQ.
- P. Contractor Equal Employment Opportunity Certification, in the form set forth in the Project Forms & Information section of this RFPQ.
- Q. Independent Contractor Acknowledgement, in the form set forth in the Project Forms & Information section of this RFPQ.
- R. EPA Form 6100-3 (DBE Subcontractor Performance Form), in the form set forth in the Project Forms & Information section of this RFPQ.
- S. EPA Form 6100-4 (DBE Subcontractor Utilization Form), in the form set forth in the Project Forms & Information section of this RFPQ. If additional forms are needed, they may be reproduced by the firm and included in the Proposal accordance with this Article 5.

- T. Certification of Non-Segregated Facilities, in the form set forth in the Project Forms & Information section of this RFPQ.
- U. Two copies of the Bidder Employment Practices Report, in the form set forth in the Project Forms & Information section of this RFPQ.
- V. American Iron and Steel Acknowledgement, in the form set forth in the Project Forms & Information section of this Project Book.

ARTICLE 6 – INTERPRETATIONS AND ADDENDA

- 6.01 To receive consideration, all questions about the meaning or intent of the Proposal Documents must be submitted in writing to Heather Ullinger, P.E. Questions shall be either hand delivered at the Bureau of Engineering, 7th Floor Municipal Building, 166 S. High Street, Akron, Ohio 44308 or submitted by email to HUllinger@akronohio.gov. Interpretations or clarifications considered necessary by City in response to such questions will be issued, in writing, by Addenda mailed or delivered to all plan holders. Questions received after the Deadline for Questions to the City set forth in Section 3.01 may not be answered. Only questions answered by Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.
- 6.02 No later than the applicable date set forth in Section 3.01, City will issue Addenda, which shall become a part of the Contract Documents, that include responses to questions and other information that, in City's reasonable judgment, are appropriate to clarify or complement the Proposal Documents.

ARTICLE 7 – STAFF COSTS AND GENERAL CONDITIONS ITEMS

- 7.01 The Proposal shall include (a) hourly billable rates for the firm's staff and personnel listed on the staffing chart required in the Qualification Statement and supplemented (as applicable), (b) the not-to-exceed amount for the firm's staff and personnel listed on the staffing chart for the Pre-Construction Services (which shall be included in the "Pre-Construction Services Amount"), and (c) the not-to-exceed amount for the firm's staff and personnel listed on the staffing chart for the construction phase of the Project (which shall constitute the "Personnel Amount").
- 7.02 The Proposal shall contain a detailed list of the General Conditions Items, including (a) a detailed listing of all General Conditions Items to be provided by the firm, (b) the costs associated with such General Conditions Items for the Project, and (c) the not-to-exceed amount for the General Conditions Items. Note that all such General Conditions Items shall be provided and paid on a separate line item basis. "General Conditions Items" include all Site-related items such as, but not limited to, site trailers, office supplies, computers, IT, internet and other computer software and hardware, telephone, facsimile, postage, photos, photocopying, equipment, safety equipment, hand tools, simple scaffolds, tool breakage, tool repairs and replacement, pre-approved travel, lodging, parking costs, site transportation, bond and insurance premiums, and other costs and expenses incurred that are necessary for execution of the Work that cannot be allocated to any particular trade.

ARTICLE 8 – PROPOSED CONSTRUCTION SCHEDULE

- 8.01 Each Proposal must include the proposed Construction Schedule to complete the Project in accordance with the Milestone Dates Schedule set forth in Exhibit B of the Agreement. Such proposed Construction Schedule shall include duration and completion dates for the Project showing when the firm anticipates meeting the milestone dates set forth in the Agreement. The selected firm shall be obligated to comply with the approved construction schedule.

ARTICLE 9 – BID SECURITY

- 9.01 Each Proposal must be accompanied by a certified check in the sum of five percent (5%) of the proposed Initial Guaranteed Maximum Price (as defined in the Agreement) on a solvent bank or a bid bond in like amount, acceptable to City, as a guarantee that if the Proposal is accepted, the Agreement will be entered into. Each Proposal shall also include evidence that the firm can bond the full Initial Guaranteed Maximum Price.
- 9.02 The bid security of firms that City believes do not have a reasonable chance of receiving the award and who furnished certified checks will have checks returned within fourteen (14) days after opening Proposals. Bid forms will be returned upon request.
- 9.03 The bid security of firms whom City believes to have a reasonable chance of receiving the award may be retained by City until the earlier of seven days after the Effective Date of the Agreement or 120 days after opening the Proposals, whereupon bid security furnished by such firms will be returned.
- 9.04 The bid security of the selected firm will be retained until such firm has executed the Agreement, furnished the required performance and payment bond, and met the other conditions of the Notice of Award. If the selected firm fails to execute and deliver the Agreement and furnish the required performance and payment bond and other required documents within 15 days after the Notice of Award, City may consider such firm to be in default, annul the Notice of Award, and the bid security of that firm will be forfeited. Such forfeiture shall be City's exclusive remedy if the firm defaults.

ARTICLE 10 – NON-COLLUSION AFFIDAVIT

- 10.01 Each firm shall submit with its Proposal a Non-Collusion Affidavit on the form contained in the Project Forms & Information Section of this RFPQ. If the firm is a joint venture, the firm must attach a copy of the joint venture agreement to the Non-Collusion Affidavit.

ARTICLE 11 – PREPARATION OF PROPOSAL FORMS

- 11.01 The Proposal Form is included in the Proposal Form Section of this RFPQ.
- A. All blanks on the Proposal Form shall be completed in ink and the Proposal Form signed in ink. Erasures or alterations shall be initialed in ink by the person signing the Proposal Form.
 - B. A price shall be indicated for each Item listed on the Proposal Form.
 - C. The Proposal Form shall contain an acknowledgement of the receipt of all Addenda, the numbers of which shall be filled in on the Proposal Form.
 - D. Street mailing address, email address and telephone number for communications with firms regarding the Proposal shall be shown. Post office box addresses are not acceptable.
 - E. All names shall be printed in ink below the signatures.
- 11.02 When signing the Proposal Form, the firm shall meet the following requirements:
- A. A Proposal by an individual shall show firm's name and official address.

- B. A Proposal by a partnership shall be executed in the partnership name and signed by a partner (whose title must appear under the signature) accompanied by evidence of authority to sign. The official address of the partnership shall be shown.
 - C. A Proposal by a corporation shall be executed in the corporate name by the president or a vice-president or other corporate officer accompanied by evidence of authority to sign. The corporate seal shall be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation shall be shown.
 - D. A Proposal by a joint venture shall be executed by each party to the joint venture. The official address of the joint venture shall be shown. Every party to a joint venture must meet those qualifications with respect to the services it will provide. The Proposal shall identify who shall sign all documents for the joint venture, and, should the joint venture be the selected firm, who shall act in all matters relative to the Contract resulting therefrom for the joint venture.
 - E. A Proposal by a limited liability company shall be executed in the name of the firm by a member and accompanied by evidence of authority to sign. The State of formation of the firm and the official address of the firm shall be shown.
- 11.03 The Proposal Form must include all qualifications and assumptions upon which the price and schedule are based (the "Proposal Qualifications and Assumptions"). The Proposal Qualifications and Assumptions shall be included as an attachment to the Proposal Form. The Proposal Qualifications and Assumptions may include clarifications and assumptions relating to the scope of work, but may not include other new or different terms and conditions, unless expressly agreed to by the City. The Proposal Qualifications and Assumptions shall address all open or unclear scope issues, including without limitation the Project Considerations. Only those qualifications and assumptions included in the Proposal Qualifications and Assumptions and accepted by the City and attached to the Agreement will be considered for this Project. Firms will not be entitled to an increase in the price or extension of time in consideration of issues that were not addressed in the Proposal Qualifications and Assumptions accepted by the City and attached to the Agreement. The Proposal Qualifications and Assumptions must contain detailed information about what the firm used as the design basis for the Proposal and that any significant changes from this in the final design must be evaluated.

ARTICLE 12 – SUBMITTAL OF PROPOSALS

- 12.01 A Proposal shall be submitted no later than the date and time set forth in Section 3.01 of this RFPQ at the City of Akron Department of Public Service, Room 201, 166 South High Street, Akron, Ohio 44308. The Proposal shall be enclosed in a plainly marked sealed envelope with the project title, the name and address of the firm, and "PROPOSAL ENCLOSED" clearly printed thereon.
- 12.02 The submission of a Proposal will constitute an incontrovertible representation by the firm that, without exception, the Proposal is premised upon performing and furnishing the Work required by the Contract Documents and applying any specific means, methods, techniques, sequences, and procedures of construction that may be shown or indicated or expressly required by the Contract Documents, that the firm has given City written notice of all conflicts, errors, ambiguities, inconsistencies, omissions, or discrepancies in the Contract Documents and/or any applicable standard, rule, ordinance, regulation or law in the Proposal Documents and the written resolutions thereof by City are acceptable to the firm, and that the Contract Documents contained in the Proposal Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work.

- 12.03 City accepts no liability for costs or expenses incurred by firms for work performed in connection with this selection process.
- 12.04 It is the responsibility of the firm to submit a neat, accurate and complete Proposal.

ARTICLE 13 – MODIFICATION AND WITHDRAWAL OF PROPOSALS

- 13.01 Prior to City opening the Proposals, Proposals may be withdrawn upon written request of the firm or the personal appearance of the firm or its designated representative. Withdrawn Proposals may not be modified and resubmitted prior to the Proposal opening time if a firm claims a mistake, omission, or error in the preparation of the Proposal. Proposals may not be resubmitted unless the Work is re-advertised and a new selection process based upon such advertisement is initiated by City.
- 13.02 If, within twenty-four (24) hours after Proposals are opened, any firm files a duly signed written notice with City and promptly thereafter demonstrates to the reasonable satisfaction of City that there was a material and substantial mistake in the preparation of its Proposal, then that firm may withdraw its Proposal and the bid security will be returned. Thereafter, if the selection process is re-initiated by City, that firm will be disqualified from further participation in the selection process.

ARTICLE 14 – ACCEPTANCE OF PROPOSALS

- 14.01 Proposals will be accepted until the applicable time set forth in Section 3.01 of this RFPQ and at the place indicated in Section 12.01 of this RFPQ.

ARTICLE 15 – EVALUATION OF PROPOSALS AND AWARD OF CONTRACT

- 15.01 In evaluating Proposals, City shall consider the qualifications submitted with the firm's Proposal as provided by this RFPQ.
- 15.02 City reserves the right to reject any and all Proposals, to waive any and all informalities and to negotiate Contract terms with the selected firm, and the right to disregard all nonconforming, nonresponsive or conditional Proposals. Discrepancies between words and figures will be resolved in favor of words. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the corrected sum.
- 15.03 As part of the selection process or in evaluating Proposals, City may conduct investigations as deemed necessary to assist in the evaluation of any Proposal and to establish the responsibility, qualifications and financial ability of the firms, proposed Subcontractors, and other persons and organizations to do the Work, to City's satisfaction within the Contract Time, in accordance with the Contract Documents.
- 15.04 City reserves the right, at any time during the selection process, to reject the Proposal of any firm that does not comply with the criteria required by the Proposal Documents.
- 15.05 City may reject any Proposal where the unit price or individual lump sum prices are unbalanced and/or unfavorable to City's interest.
- 15.06 City will not make any award or permit any award at any tier to any party that is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549 "Debarment and Suspension".
- 15.07 After the award of the Contract, the selected firm shall submit to City a statement affirmed under oath that the person or entity with whom the Contract is to be made was not charged at

the time the Proposal was submitted with any delinquent personal property taxes on the general tax list of personal property of any County in which the taxing district has territory or that such person was charged with delinquent personal property taxes on any such tax list, in which case the statement shall also set forth the amount of such due and unpaid delinquent taxes and any due and unpaid penalties and interest thereon. If the statement indicates that the taxpayer was charged with any such taxes, a copy of the statement shall be transmitted by City to the County Treasurer within thirty (30) days of the date it is submitted.

- 15.08 A copy of the statement shall also be incorporated into the Contract, and no payment shall be made with respect to any Contract to which this Section applies unless such statement has been so incorporated as a part thereof. (Ohio Revised Code 5719.042).

ARTICLE 16 – SIGNING OF AGREEMENT

- 16.01 City shall prepare the final Agreement and provide it to the selected firm. The selected firm shall sign and deliver four counterparts of the Agreement and attached documents to City no later than 15 days after the selected firm receives the Agreement from City. No Proposal shall be considered binding upon City until the execution of the Agreement by the duly authorized City officials.
- 16.02 See the form of Construction Manager at Risk Agreement Section of this RFPQ for the Agreement.
- 16.03 The selected firm awarded the Contract shall notify the City Income Tax Department prior to beginning work on the Project of any independent contractor or subcontractor and/or IRS Form 1099 employee that will be used on the Project.

ARTICLE 17 – PERFORMANCE AND PAYMENT BOND

- 17.01 When the selected firm delivers the executed Agreement to City, it shall be accompanied by a performance and payment bond in the amount of the IGMP (as defined in the Agreement).
- 17.02 The General Conditions and Section 3.8 of the Agreement sets forth City's requirements as to the performance and payment bond. See Performance and Payment Bond Form in the Project Forms and Information Section of this RFPQ.

ARTICLE 18 – PROTESTS

- 18.01 Any firm that is allegedly aggrieved in connection with the solicitation or award of the Contract may protest. The protest must be submitted in writing to the Director of Public Service within seven days after such aggrieved party knows or should have known of the facts giving rise thereto.
- 18.02 If the protest is not resolved by mutual agreement, the Director of Public Service may issue a decision in writing to the protestant. If the Director of Public Service has not issued a decision within ten days of receipt of the appeal, it will be deemed denied.
- 18.03 The decision of the Director of Public Service shall be final. The Director of Public Service need not consider protests unless this procedure is followed.
- 18.04 Nothing in this protest procedure shall, however, prevent City from awarding the Contract at any time if the Director of Public Service determines it is in the best interest of City.

ARTICLE 19 – EXAMINATION OF PROPOSAL DOCUMENTS AND SITE

19.01 Subsurface and Physical Conditions

- A. Support Reference Documents, if any, made part of the Proposal Documents are not to be considered as part of the Contract Documents. Firms may not rely upon the accuracy of the information contained in these Support Reference Documents. Firms are responsible for any interpretation or conclusion drawn from any information or any other data, interpretations, or opinions, contained in these documents.
- B. No additional soil borings or subsurface exploration or tests will be allowed to be performed by firms prior to entering into the Agreement with City.

19.02 Site Examination

- A. Firms are free to access the Site portions under the City's control and ownership with City's prior approval during the selection process to conduct such examinations, investigations, and studies as firm deems necessary for submission of a Proposal. Firms shall comply with all applicable Laws and Regulations relative to excavation and utility exploration.
- B. Prior to accessing the Site to conduct examinations, investigations, or studies, firms shall provide City with evidence of insurance to protect City from and against any damage or destruction at the Site resulting from firm's access.
- C. Firms shall access the Site from City-owned property or shall obtain appropriate right-of-entry from surrounding property owners. Access to this property must be coordinated with City. Contact Heather Ullinger, P.E. at HUllinger@akronohio.gov for coordination.
- D. If the firm so desires, all additional lands and access thereto to be used for temporary construction facilities, construction equipment, or storage of materials and equipment to be incorporated in the Work are to be obtained and paid for by firm.

19.03 Responsibilities of Each Firm Before Submitting a Proposal

- A. Examine and carefully study the Proposal Documents and the other related data identified in the Proposal Documents.
- B. Visit the Site and become familiar with and satisfied as to the general, local, and site conditions that may affect cost, progress, and performance of the Work.
- C. Become familiar with and satisfied as to all federal, State, and local laws and regulations that may affect cost, progress, and performance of the Work.
- D. Correlate and consider the information known to the firm; information commonly known to construction managers and contractors doing business in the locality of the Site; information and observations obtained from visits to the Site and the Proposal Documents; and the Site-related reports and drawings identified in the Proposal Documents, with respect to the effect of such information, observations, and documents on (1) the design of the Project; (2) the cost, progress, and performance of the Work; (3) the means, methods, techniques, sequences, and procedures of construction to be employed by firm, including applying any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Proposal Documents; and (4) firm's safety precautions and programs.

- E. Include in the Proposal Qualifications and Assumptions any assumptions made regarding the Site conditions, including any examinations, investigations, explorations, tests, studies, or data proposed as necessary for the Project.
- F. Become aware of the general nature of the Work to be performed by City and others at the Site, if any, that relates to the Work as indicated in the Proposal Documents.
- G. Promptly give City written notice of all conflicts, errors, ambiguities, or discrepancies discovered in the Proposal Documents.
- H. Determine that the Proposal Documents are sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work.

ARTICLE 20 – APPROXIMATE QUANTITIES

- 20.01 Where Proposals are based upon estimated quantities, those estimated quantities are prepared by City for the purpose of comparing Proposals only. Such estimated quantities are not guaranteed by City, but are approximate estimates only.

ARTICLE 21 – SUBSTITUTE AND “ACCEPTED EQUAL” ITEMS

- 21.01 The Contract, if awarded, will be on the basis of materials and equipment specified or described in the Proposal Documents without consideration of possible substitute or “accepted equal” items. Whenever it is specified or described in the Proposal Documents that an “accepted equal” item of material or equipment may be furnished or used by CONTRACTOR if acceptable to City, application for such acceptance will not be considered by City until after the Effective Date of the Agreement.

ARTICLE 22 – BASIS OF DESIGN

- 22.01 Unless otherwise indicated, design of this Project is based upon the material or supplier’s equipment named first in the list of manufacturers in the Specifications. When other manufacturers are listed, CONTRACTOR may be required to make modifications or adjustments, at CONTRACTOR’s expense, to coordinate the installation of the furnished equipment with associated elements of Work, such as piping and electrical connections, or support and mounting provisions.

ARTICLE 23 – CONTRACT TIMES

- 23.01 The Agreement sets forth City’s requirements as to Contract Time. The Contract Time is the time for CONTRACTOR to attain Substantial Completion of the Work. Any extension of the Contract Time will be in City’s sole discretion and will be CONTRACTOR’s exclusive remedy for delays, as more particularly set forth in the Contract Documents.
- 23.02 Each firm shall review and accept the Project milestone dates set forth in the Agreement and associated work in connection with Working Days (as defined in the Supplemental Conditions).
- 23.03 In addition, by executing the Agreement, the selected firm acknowledges that the Contract Time, including the specified milestones, is reasonable taking into consideration the weather and other usual conditions for the location of the Project.

ARTICLE 24 – LIQUIDATED DAMAGES AND USEPA/OEPA STIPULATED DAMAGES

- 24.01 Provisions for Liquidated Damages are set forth in Section 6.2 of the Agreement.

- 24.02 Provisions for Consent Decree USEPA/OEPA Stipulated Damages are set forth in Section 6.2 of the Agreement.

ARTICLE 25 – INSURANCE

- 25.01 Article 11 of the General Conditions set forth the City's insurance requirements for CONTRACTOR and all Subcontractors.

ARTICLE 26 – WPCLF CONTRACT REQUIREMENTS

- 26.01 Article 15 of the General Conditions sets forth the WPCLF contract requirements for CONTRACTOR and all Subcontractors for the Contract.

ARTICLE 27 – LOCAL DBE, EDGE, MBE, SBE, VBE AND WBE UTILIZATION

- 27.01 Article 2.6 of the Agreement, Section 34.10 of the Code of Ordinances of the City of Akron, Ohio and Articles 2 and 4 of the Supplemental Conditions set forth City's requirements as to disadvantaged business enterprises (DBE) utilization as well as local EDGE, MBE, SBE, VBE and WBE participation goals.
- 27.02 If CONTRACTOR subcontracts 10% or more of the Work for the Project then CONTRACTOR shall, in accordance with the City of Akron Code of Ordinances Article 1, Section 34.10, award subcontracts to minority business enterprises (as defined in Ohio Revised Code Section 122.71(E)) according to the following minimum percentages: (a) Fifteen percent (15%) for construction, demolition, erection, alteration or repair of city buildings or improvements, including labor and materials; (b) Seven percent (7%) for equipment, supplies, materials and services other than professional services; and (c) Five percent (5%) for professional services.
- 27.03 It is the aim of City to encourage the participation of local EDGE, DBE, MBE SBE, VBE, and WBE-certified firms located in the City in the Project. CONTRACTOR shall comply with that goal and award fifteen percent (15%) of CONTRACTOR's final contract value, including labor and materials, to EDGE, DBE, MBE, SBE, VBE and WBE-certified firms located in City. CONTRACTOR shall comply with that goal and award three percent (3%) of CONTRACTOR's final contract value, including labor and materials, to WBE-certified firms located in City. The total awarded participation shall be at least 18%.

ARTICLE 28 – PROJECT LABOR AGREEMENT / LOCAL HIRING REQUIREMENTS

- 28.01 The Project is subject to the Project Labor Agreement attached to the Request for Qualifications in the Project Forms & Information section. The selected firm shall be required to sign the Project Labor Agreement.
- 28.02 Article 2.5 of the Agreement and Article 5 of the Supplemental Conditions set forth City's Local Hiring Requirements for CONTRACTOR and all Subcontractors.
- 28.03 CONTRACTOR will be expected to meet or exceed City's Local Hiring and Workforce Participation goals set forth in the Local Hiring and Workforce Participation Policy ("Policy") described in the Supplemental Conditions and Agreement. The provisions of the Policy will be incorporated as a material term of the Agreement. CONTRACTOR shall agree that (a) notwithstanding the local resident hiring requirements in the Project Labor Agreement included in the Request for Qualifications, the local resident participation requirement for this Project in terms of Project Work Hours by trade to be performed by local residents is fifty percent (50%); (b) the local participation requirement for this Project is reasonable and achievable by CONTRACTOR and its Subcontractors; (c) CONTRACTOR has had a full and

fair opportunity to review and understand the terms of the Policy; and (d) the provisions of the Policy are reasonable and achievable by CONTRACTOR and its Subcontractors.

28.04 Notwithstanding anything set forth in the Policy to the contrary, the mandatory local participation level in terms of Project Work Hours to be performed by local residents is fifty percent (50%).

PROJECT CONSIDERATIONS

The following list, as noted in Article 2.05, are tasks included in the scope of work for the Hazel Storage Basin (CSO Rack 10 and 11) Project whose details have not yet been finalized due to the Contract Documents being at 90% completion. These items shall be addressed by the Proposer in their Proposal, and must be accounted for in their IGMP.

1.01 EXISTING CONDITIONS

- A. As of June 28, 2018, all parcels and easements shown on the Plans to be within the construction limits have not been acquired by the City.
- B. Extent of tree and brush clearing required has not been quantified due to parcel acquisition not being finalized and lack of access.
- C. Structures shown to be demolished as part of the Project have not been assessed yet for the presence of asbestos due to parcel acquisition not being finalized and lack of access to structures.
- D. Demolition of structures called out to be "Demo by City" may not be demolished at the time this Contract is awarded. These remaining structures may be incorporated into this Project, or coordination of Work would be required between this Project and those performing the structural demolition for the City.
- E. Sheet C27 of the Drawings notes that demolition of private building must be coordinated with the Owner. The City has discussed with the Owner and has agreed that demolition of this building will not begin until January 2019.
- F. Relocation plans of existing Dominion East Ohio gas lines (Work to be performed by Dominion) have yet to be finalized.
- G. Relocation plans of existing AT&T utilities (Work to be performed by AT&T) have yet to be finalized.
- H. As-built drawings of the 33-inch/36-inch/54-inch junction chamber within Wellington Avenue to be removed as part of the Project is shown to be brick and encased in concrete. However, the amount of concrete used has not been determined.
- I. An existing business stockpiles materials within the area north of the proposed Hazel Storage Basin site and west of Wellington Avenue. The location and size of these stockpiles is variable. The size and location of these stockpiles will affect the work adjacent to this area, such as construction of the sewer and fencing along the western edge of Wellington Avenue.
- J. An existing 18-inch combined sewer runs through the proposed basin site and is shown to be relocated along Wellington and Eastland Avenue. CCTV and field investigations have concluded that any existing laterals will not need to be re-connected after construction of the basin. Flow metering is being conducted to determine if this sewer acts as a relief sewer during wet-weather events. If it is concluded that this sewer does not contribute significantly to flow conveyance during wet-weather events, this work will be non-performed.
- K. As shown on C18 of the Plans, existing private drive (Carter-Jones, Parcel No. 6762556) shall be relocated to maintain access to the property. Gate and fencing shall also be maintained during construction.

- L. Per C10 and C11, Contractor shall ensure fencing along Wellington is intact after each work day.

1.02 STORAGE BASIN

- A. Sheeting/shoring details for the construction of the storage basin have not been provided. Any details provided in the future will be based on input from the Contractor.
- B. Tieback details for the construction of the storage basin have not been provided. Any details provided in the future will be based on input from the Contractor. Additional soil borings may be required for tieback design.
- C. The current Proposal Documents provide design criteria for the use of ground anchors to prevent flotation of the storage basin. Final diameter and length of ground anchors, or an alternative method of preventing the basin from floating, will be the responsibility of the Contractor.
- D. Dewatering means and methods for excavations required for construction of the storage basin and related work have not been specified within the current Proposal Documents. The geotechnical report provided within the Proposal Documents includes information to estimate dewatering requirements. Groundwater sampling results have concluded that dewatering efforts can be discharged to the existing sewers and eventually the WRF during dry-weather periods.
- E. Details related to the bore and receiving pits for the dewatering sewer have not been provided in the current Proposal Documents. These details, along with any related excavation support, will be the responsibility of the Contractor.
- F. Section 43 23 59 of the Technical Specifications specifies two Manufacturers to provide the screw pumps. The final design of the concrete upper support bases for the screw pumps will be based on recommendations from the selected screw pump manufacturer.
- G. Precaution and care must be taken to protect the Ohio Edison transmission poles, located along the western edge of the proposed basin site. This includes vibration monitoring to prevent shifting or settlement of the poles, along with abiding by all OSHA regulations dealing with activity near transmission lines.

1.03 OPERATIONS BUILDING

- A. The Contractor will be responsible for the final design of the helical piles, or some other alternative foundation, to support the Operations Building. Additional soil borings may be required in order to finalize design of the operations building foundation.
- B. Nominal dimensions of both generator and enclosure have been included within the Proposal Documents for the design of the concrete generator pad. Contractor shall verify dimensions of generator, enclosure, and concrete pad design upon selection of generator and enclosure.
- C. Precaution and care must be taken to protect the Ohio Edison transmission poles, located near the Operations Building site. This includes vibration monitoring to prevent shifting or settlement of the poles, along with abiding by all OSHA regulations dealing with activity near transmission lines.

1.04 DIVERSION STRUCTURES

- A. Dewatering means and methods for excavations required for the construction of the diversion structures and related work have not been specified within the current Proposal Documents. The geotechnical report provided within the Proposal Documents includes information to estimate dewatering requirements. Groundwater sampling results have concluded that dewatering efforts can be discharged to the existing sewers and eventually the Water Reclamation Facility during dry-weather periods.
- B. Details related to the bore and receiving pits for jack-and-bore construction of any piping/conduits related to the diversion structures have not been provided in the current Proposal Documents. These details, along with any related excavation support, will be the responsibility of the Contractor.
- C. Location of the temporary drive, temporary fencing, new drive and fencing near Diversion Structure No. 3 shall be coordinated with the property owner.
- D. Precaution and care must be taken to protect the Ohio Edison transmission poles, located near the diversion structures. This includes vibration monitoring to prevent shifting or settlement of the poles, along with abiding by all OSHA regulations dealing with activity near transmission lines.
- E. Contractor shall coordinate with the City to reduce the pressure within the 30-inch water transmission main during construction nearby. This includes any excavation in Hazel Street (78-inch diversion sewer construction).

1.05 LITTLE CUYAHOGA INTERCEPTOR (LCI)

- A. Method of rehabilitation of the LCI has not been determined. A technical memorandum summarizing the potential rehabilitation methods and related design criteria is provided within the Support Reference Documents.
- B. Means and methods relating to bypass pumping during rehabilitation of the LCI has not been specified and will be the responsibility of the Contractor. Flow metering is currently being performed to determine recent flow rates, but will only measure flows from the most recent wet-weather events. The Contractor will be responsible to provide adequate bypass pumping during all wet-weather events during sewer rehabilitation.
- C. Existing manhole COM 304993 has not been located and subsequently its invert has not been confirmed. The invert of Proposed Manhole No. 14 was estimated based on an approximation from inverts surveyed from the upstream (COM 312668) and downstream (COM 304994) manholes. Work is currently being performed to locate COM 304993 to confirm its invert at this time but has not been completed. This manhole is also in the right-of-way of the Wheeling and Lake Erie Railroad and the Contractor will have to gain right-of-entry to access this manhole to complete the Work (See "Permits" below).
- D. The City has prepared a map to reflect constraints relative to the lining of the LCI. Constraints are not limited to those shown on the map. The map is included in Support Reference Documents.

1.06 PERMITS

- A. Wheeling and Lake Erie RR Crossings (x3) – Permits have been submitted to Wheeling and Lake Erie and application fees processed. Wheeling and Lake Erie is awaiting details of sheeting and shoring of excavations near the RR prior to approval. Wheeling and Lake Erie has

also requested easement/licensing documentation of all existing crossings (i.e. LCI, 54-inch combined sewer)

- B. Wheeling and Lake Erie RR Right-of-Entry – Permit has been submitted and application fee processed. Permit is pending easement/licensing documentation of existing sewers as noted above.
- C. Ohio Edison Encroachment – Encroachment application has been submitted to City for submission. Based on discussions with Ohio Edison, they have requested details of the sheeting and shoring of excavations near their poles prior to approval.
- D. Sunoco Encroachment – Application has been submitted to Sunoco for review. Sunoco has requested that the final plans be provided to them prior to approval, including a plan and profile of the electrical duct bank, which crosses the Sunoco line, be provided to show the vertical clearance.
- E. Ohio EPA (PTI, NOI) – Permits have been submitted and are awaiting review from EPA.
- F. SHPO – Application has been submitted and is awaiting review.
- G. U.S. Fish and Wildlife Service (USFWS) – Based on correspondence with USFWS dated 12/22/2017, there are no federal wilderness areas, wildlife refuges, or designated critical habitat located within the vicinity of the project area. The USFWS has requested that a note stating tree removal shall be limited to only between the October 1 and March 31 in order to protect the habitat of endangered species the Indiana bat and the northern long-eared bat. This note is included within the Drawings.
- H. Summit County Soil and Water Conservation District (SCSWCD) – Erosion and Sediment Control (E&SC) Plans have been included within the Drawings to prevent the conveyance of sediment to nearby waterways during construction. It is noted within these E&SC Plans that the impervious area will be reduced by over 20% as part of this Project. Therefore, no additional stormwater BMP is required.

PROPOSAL FORM

PROJECT IDENTIFICATION: **Hazel Storage Basin (CSO Rack 10 AND 11)**
CONTRACT 2015-032-00

THIS PROPOSAL IS SUBMITTED TO: City of Akron Department of Public Service
166 South High Street, Room 201
Akron, Ohio 44308

1. The undersigned firm proposes and agrees, if this Proposal is accepted, to enter into an agreement with the City of Akron in the form included in the Proposal Documents to perform all Work as specified or indicated in the Proposal Documents for the prices and within the times indicated in this Proposal and in accordance with the other terms and conditions of the Proposal Documents.

2. The Firm accepts all of the terms and conditions of the Advertisement for Proposals, Legal Notice, Instructions to Firms, Agreement, Supplemental Information, and other Proposal Documents, including those dealing with the disposition of bid security and the requirement for being a Proposal Documents holder. This Proposal will remain subject to acceptance for ninety (90) days after the Proposal opening, or for such longer period of time that the firm may agree to in writing upon request of City.

3. The City of Akron anticipates receiving funding from the Ohio Environmental Protection Agency (OEPA) Water Pollution Control Loan Fund (WPCLF) to aid in financing the Project. Receipt of such agency funding necessitates compliance with the appropriate agency requirements. The firm does hereby agree to a thirty (30) day extension of the period for acceptance of Proposals from expiration of the specified ninety (90) day period set forth in Section 2 (total of 120 days) and that, if awarded the Contract, such thirty (30) day extension shall be at no change in the proposed contract amount.

4. In submitting the Proposal, the firm represents that:

- A. The firm has examined and carefully studied the Proposal Documents and the other related data identified in the Proposal Documents, and the following Addenda, receipt of all of which is hereby acknowledged.

Addendum No.

Addendum Date

- B. The firm has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. The firm is familiar with and is satisfied as to all federal, State, and local Laws and Regulations that may affect cost, progress, or performance of the Work.
- D. The firm does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Proposal for performance of the Work at the proposed Initial Guaranteed Maximum Price contract amount and within the times and in accordance with the other terms and conditions of the Proposal Documents.

- E. The firm is aware of the general nature of the work to be performed by City and others at the Site that relates to the Work as indicated in the Proposal Documents.
- F. The firm has correlated the information known to the firm, information and observations obtained from visits to the Site with Proposal Documents.
- G. The Proposal Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Proposal is submitted.
- H. This Proposal is genuine and not made in the interest or on the behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; the firm has not directly or indirectly induced or solicited any other firm to submit a false or sham Proposal; the firm has not solicited or induced any individual or entity to refrain from proposing on the Project; and the firm has not sought by collusion to obtain for itself any advantage over any other firm or over City.

5. The terms used in this Proposal have the meanings indicated in the Information to Firms and Article 1 of the General Conditions and Section 101 of the City of Akron's Construction and Materials Specifications, 2008 Edition, including all addenda, supplements and amendments thereto that are included in the Proposal Documents. To the extent any definitions conflict, the ones contained in the Article 1 of the General Conditions will control.

6. The Firm shall complete the Work in accordance with the Contract Documents for the following price(s):

PROPOSAL FORM

TO THE DIRECTOR OF PUBLIC SERVICE OF THE CITY OF AKRON:

The undersigned proposes to furnish all labor, materials, and equipment for, and complete the design and construct the following improvement and all other work incidental thereto, including any and all work and materials that may be necessary to connect the work done with the adjoining work, in a proper and workmanlike manner, and according to the plans and profiles on file in the City of Akron Bureau of Engineering, and upon the terms and conditions of the specifications and form of contract bound herewith and the rules and regulations of City, and under the direction and to the satisfaction of the Director of Public Service, at the following unit rates, to-wit:

Ref. No.	ITEM – DESCRIPTION	ESTIMATED QUANTITY AND UNIT		TOTAL ITEM COST (QUANTITY x UNIT PRICE)
1	PRE-CONSTRUCTION SERVICES AMOUNT	1	Not To Exceed	\$
2	CONTRACTOR’S FEE	1	Lump Sum - as a percentage of construction cost (Item 6 of this Proposal Form) and as a dollar value equal to such amount	\$ %
3	PERSONNEL AMOUNT	1	Not To Exceed	\$
4	GENERAL CONDITIONS AMOUNT	1	Not To Exceed (includes all General Conditions Items, including insurance and bond premiums)	\$
5	PROPOSED CONSTRUCTION CONTINGENCY	1	Lump Sum - as a percentage of construction cost (Item 6 of this Proposal Form) and as a dollar value equal to such amount	\$ %
6	ESTIMATED CONSTRUCTION COST	1	Cost of Work Estimate (excludes insurance and bond premiums – which are included in Item 4)	\$
	INITIAL GUARANTEED MAXIMUM PRICE (Total of Items 1-6)			\$
<p>PLEASE COMPLETE THE PROPOSAL FORMS BOUND HEREIN AND SUBMIT THE ENTIRE BOOK. DO NOT REMOVE ANY PAGES. ALL CORRECTIONS AND ERASURES MUST BE INITIALED AND DATED</p>				

6. The Estimated Construction Cost (Item 6 in the Proposal Form pricing sheet) includes all costs and expenses relating to the scope of work identified in the Project Considerations, subject to the Proposal Qualifications and Assumptions document which is attached hereto.

7. MISCELLANEOUS PROVISIONS: In submitting this Proposal, the firm is aware that the following conditions and stipulations are to be a part of the Contract Documents:

- A. The selected firm shall meet all milestone dates in accordance with the Project Milestone Schedule.
- B. In accordance with Section 6.2 of the Agreement, the selected firm shall be charged Liquidated Damages in the amount of \$2,000.00 for each calendar day the Work remains incomplete beyond the specified time for Substantial Completion.
- C. In accordance with Section 6.2 of the Agreement, the selected firm shall be charged USEPA/OEPA Damages (defined as Stipulated Penalties to the City in the Consent Decree) in the following amounts: (a) Day 1 to 30 = \$1,500 per day; (b) Day 31 to 60 = \$3,000 per day; and (c) After 60 days = \$5,000 per day for each calendar day the Work remains incomplete or unavailable for full sustained operation beyond the Consent Decree Achievement of Full Operation (AFO) date.

8. The Firm is advised that a Proposal that does not contain two (2) complete originals of the Employment Practice Report included in the Project Forms & Information Section of this RFPQ will be considered non-responsive. If the firm is a joint venture, the Proposal shall contain two (2) complete originals from each joint venture member. However, said failure to submit two (2) completed originals of the Employees Practices Report may be waived as an informality by the Board of Control if, in its sole discretion, the Board of Control determines such waiver is appropriate under the circumstances and in the best interests of City; provided, however, that the firm Employment Practices Report is submitted prior to the time of the award of the Contract and provided that the Human and Community Relations Commissions does not object to said waiver.

9. In accordance with the Cover Page, this Proposal and associated documents shall not be removed nor copied for submission, but shall be submitted as bound within this RFPQ.

Firm Address, Email & Phone Number: _____ _____ _____ _____	* Firm Name: _____ **Signature: _____ Name: _____ Title: _____ Date: _____
---	--

*Please state the company name the same way on all Contract Documents, otherwise, it will delay processing of the Contract.

**Must be signed at time of the Proposal.

PROPOSAL QUALIFICATIONS AND ASSUMPTIONS

[Insert the Proposer's Qualifications and Assumptions, referenced in Section 11.03 of the ITF.]

**CONSTRUCTION MANAGER AT RISK AGREEMENT
FOR THE HAZEL STORAGE BASIN (CSO RACK 10 AND 11)**

by and between

THE CITY OF AKRON, OHIO

and

Dated as of _____, 2018

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**CONSTRUCTION MANAGER AT RISK AGREEMENT
FOR THE HAZEL STORAGE BASIN (CSO RACK 10 AND 11)**

THIS CONSTRUCTION MANAGER AT RISK AGREEMENT FOR THE HAZEL STORAGE BASIN (CSO RACK 10 AND 11) (this "Agreement") is made as of the ____ day of _____, 2018 (the "Effective Date"), by and between THE CITY OF AKRON, OHIO ("City"), and _____ ("Contractor").

**ARTICLE 1
DEFINITIONS**

1.1 Defined Terms. In addition to other terms defined throughout this Agreement, as used in this Agreement, the following terms shall have the meanings indicated below or in Section 1 of the Supplemental Conditions.

"City's Representative" shall mean the City of Akron Director of Public Service or his designee.

"CMT" shall mean City's construction management team, as more particularly described in the General Conditions.

"Consent Decree AFO Date" shall mean the date set forth on Exhibit B attached hereto for achievement of full operation of the Work, which includes completion of modified operations and maintenance manuals, as such date may be adjusted pursuant to the terms of the Contract Documents.

"Construction Contingency" shall mean the amount agreed upon in the GMP Amendment, and adjusted as set forth in Section 8.2, to cover costs that are properly reimbursable as Costs of the Work but not the basis for a Change Order.

"Construction Drawings and Specifications" shall mean the final working drawings and specifications for the Work, produced by Engineer, describing the size, character, design, construction, materials, finishes, and structural, mechanical, electrical and other systems of the Project, which documents shall conform to the requirements set forth in or reasonably inferable from the drawings and specifications listed on and other information and documents identified in Exhibit G attached hereto.

"Contract Substantial Completion Date" shall mean the date set forth on Exhibit B attached hereto for Substantial Completion of the Work, as such date may be adjusted pursuant to the terms of the Contract Documents.

"Contract Sum" shall have the meaning set forth in Section 8.1.

"Contractor" shall mean _____, which party shall perform the services and Work required by the Contract Documents, including the Scope of Work set forth in Exhibit A attached hereto. As used on the Contract Documents, the term "Contractor" shall mean the construction manager at risk for the Project that has entered into this Agreement with City

"Contractor's Fee" shall have the meaning set forth in Section 8.1.2 hereof.

"Cost of the Work" shall have the meaning set forth in Section 8.6 hereof.

"Engineer" shall mean ms consultants, and its permitted successors and assigns, or such other firms as may be designated by City from time to time, which party has performed initial design services for the Project on behalf of City and shall continue to advise City related to its design intent for the Project.

"General Conditions" shall mean the General Conditions of the Contract for Construction referenced in Exhibit C attached hereto.

"General Conditions Amount" shall mean the not-to-exceed amount of _____ Dollars (\$ _____) for the General Conditions Items.

"General Conditions Items" shall mean all of the materials and equipment to be provided by Contractor in connection with supervision and administration of the Work, including all items necessary for execution of the Work such as, but not limited to, site trailers, office supplies, computers, IT, internet and other computer software and hardware, telephone, facsimile, postage, photos, photocopying, equipment, safety equipment, hand tools, simple scaffolds, tool breakage, tool repairs and replacement, pre-approved travel, lodging, parking costs, site transportation, bond and insurance premiums, and other costs and expenses incurred that are necessary for execution of the Work that cannot be allocated to any particular trade, including without limitation, all items listed on Exhibit I attached hereto.

"General Requirements" shall mean the General Requirements (Division 01 Specifications) referenced in Exhibit C attached hereto.

"GMP" shall mean the guaranteed maximum price established in the GMP Amendment for the Work, which shall consist of the following: the Pre-Construction Services Amount, Contractor's Fee, General Conditions Amount, Personnel Amount, Construction Contingency and the estimated Cost of the Work, as said guaranteed maximum price may be adjusted in accordance with the terms of the Contract Documents.

"GMP Amendment" shall mean the amendment to this Agreement executed by the Parties establishing the GMP for the Work, the form of which is attached hereto as Exhibit J attached hereto.

"GMP Documents" shall mean the GMP Drawings and Specifications, the Prose Statement and the GMP Qualifications and Assumptions, and the other documents referred to in the GMP Amendment.

"GMP Drawings and Specifications" shall mean a set of 100% complete Construction Drawings and Specifications upon which the GMP shall be based.

"GMP Qualifications and Assumptions" shall mean the written statement of qualifications and assumptions (if any) prepared by Contractor, based upon the GMP Drawings and Specifications and Prose Statement, and accepted by City.

"IGMP" shall mean the initial guaranteed maximum price for the Project, which shall be an amount equal to _____ Dollars (\$ _____), as more particularly set forth in the Proposal Form included in Exhibit K attached hereto.

"Lender" shall mean any bank, insurance company, bond trustee, rating agency, trust, corporation, association, firm, partnership, person, or other entity that has, directly or indirectly, loaned or agreed to lend or otherwise provide funds or credit enhancement to enable City to build the Project.

"Liquidated Damages" shall have the meaning set forth in Section 6.2 hereof.

"Parties" shall mean City and Contractor.

"Personnel Amount" shall mean the not-to-exceed amount of _____ Dollars (\$ _____) for the Personnel Expenses.

"Personnel Expenses" shall mean all of the costs and expenses related to Contractor's staff and personnel necessary for execution of the Work, as set forth on Exhibit D attached hereto.

"Pre-Construction Services" shall mean all pre-construction services of Contractor to be provided pursuant to this Agreement for the Work.

"Pre-Construction Services Amount" shall mean the not-to-exceed amount of _____ Dollars (\$ _____) for Pre-Construction Services.

"Progress Report" shall mean a monthly report prepared by Contractor describing the progress of the Work since the last report. The Progress Report shall include all information and documents required to be submitted to City and the CMT throughout the Project (as set forth in more detail in the Contract Documents) and shall include at least the following items: (a) listing of actual costs for completed activities and estimates for uncompleted tasks for each component of the Work; (b) identification of variances between actual and budgeted or estimated costs; (c) any change in the critical path of the Project; (d) approved revisions to the construction schedule as of the end of each reporting period; (e) progress photos; (f) status of Requests For Information ("RFIs"); (g) a safety and accident report; (j) information on each Subcontractor and each Subcontractor's work as well as the entire Work, showing percentages of completion and the number and amounts of Change Orders; (h) a discussion of all material issues relating to the design, construction, equipping and development of the Project, along with proposed solutions for each issue; (i) a list of all identified and threatened claims and issues that, in the reasonable judgment of Contractor, may potentially become claims; (j) submittal summary, (j) local workforce hiring summary, (l) EDGE, DBE, MBE, SBE, VBE and WBE participation summary; and (m) such other relevant information as may be required by City from time to time.

"Project" shall mean the Hazel Storage Basin (CSO Rack 10 and 11), as more particularly described in Exhibit A attached hereto.

"Project Milestone Schedule" shall mean the schedule that lists the critical milestone dates for completion of the Project, attached hereto as Exhibit B attached hereto.

"Prose Statement" shall mean Engineer's detailed written description of all material incomplete design elements of the GMP Drawings and Specifications and the statement of intended scope, anticipated quantity and quality, describing the future design and development to be provided by Engineer for such incomplete elements in the subsequent Construction Drawings and Specifications.

"Self-Performed Work" shall mean items and components of the Work (other than Work relating to any General Conditions Items or Personnel Expenses) that are performed directly by Contractor's own labor forces or the labor forces of any affiliate of Contractor (including the joint venture partners of Contractor, if any), and not through Subcontracts or purchase orders with Subcontractors and suppliers.

"Standard of Care" shall mean the standard of professional care, skill, technical knowledge, diligence, effort and quality that prevail among construction and construction management firms engaged, experienced and specializing in the construction (and construction management) of projects of similar scope, function, size, quality, complexity and detail in comparable urban areas throughout the United States.

"Supplemental Conditions" shall mean those certain Supplemental Conditions referenced in Exhibit C attached hereto.

"Value Engineering" shall mean an analysis of the feasibility of alternative systems, equipment and materials to identify such alternative systems, equipment and materials of equivalent quality (including Life Cycle Cost Analysis), and having equivalent characteristics, to those specified in the applicable Drawings and Specifications that can be fully specified, obtained and installed at a lower price or, in the sole judgment of City, more desirable operating characteristics or greater functionality or any combination of these. For purposes of this definition, "Life Cycle Cost Analysis" shall mean an assessment on the capital and operational cost of a particular construction item, system or equipment during the estimated useful life of the permanent improvements comprising the Project.

1.2 **Other Terms.** Unless otherwise defined herein, capitalized terms in this Agreement shall have the same meaning as those in the General Conditions. Words that have well known technical or construction industry meanings are used in this Agreement with such recognized meanings.

1.3 **Context.** As the context of this Agreement may require, terms in the singular shall include the plural (and vice versa) and the use of feminine, masculine or neuter genders shall include each other. Wherever the word "including" or any variation thereof, is used herein, it shall mean "including, without limitation," and shall be construed as a term of illustration, not a term of limitation. Wherever the word "or" is used herein, it shall mean "and/or".

1.4 **Incorporation By Reference.** All exhibits, schedules or other attachments referenced in this Agreement are hereby incorporated into this Agreement by such reference and are deemed to be an integral part of this Agreement.

1.5 **Calculation of Time.** Unless otherwise stated, all references to "day" or "days" shall mean calendar days. If any time period set forth in this Agreement expires on other than a business day, such period shall be extended to and through the next succeeding business day.

ARTICLE 2 RELATIONSHIP OF THE PARTIES

2.1 **Relationship of the Parties.** Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with City to cooperate with the CMT and exercise Contractor's best skill and judgment in furthering the interests of City; to furnish efficient construction administration, management services and supervision; to furnish at all times and adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with City's interests.

2.2 **Cooperation With City's Management Team.** Contractor shall communicate and cooperate with the CMT. City may, from time to time, designate in writing other persons or entities as being part of the CMT.

2.3 **Financing Assistance.** Contractor shall provide such assistance as City may request in connection with City's financing for the Project. Contractor agrees that it shall make available to City and its Lenders, information relating to the Project, including information relating to the construction progress and expenditures, as any Lenders may request. Contractor shall furnish such consents to assignments and certifications addressed to City or its Lenders as may be requested and as are commercially reasonable and customary for construction projects of similar size, scope and complexity as the Project. Contractor shall cooperate with the independent engineers, if any, of any Lenders.

2.4 **Sales Tax.** Contractor acknowledges that this Project is exempt from sales tax and that there shall be excluded from reimbursed taxes any sales tax on materials and equipment incorporated into the Project as part of the Work. Prior to purchase of such materials and equipment, City shall provide Contractor a sales tax exemption certificate for such equipment and materials, and Contractor shall assure that each Subcontractor receives such certificate in sufficient time to take advantage of the sales tax exemption.

2.5 **Local Hiring and Workforce Policy.** Contractor shall comply with City's Local Hiring and Workforce Participation goals set forth in the Local Hiring and Workforce Participation Policy ("Policy") set forth in the Supplemental Conditions. Contractor hereby acknowledges that (a) notwithstanding the local resident hiring requirements in the Project Labor Agreement signed by Contractor, the local resident participation requirement for this Project in terms of Project Work Hours by trade to be performed by local residents is fifty percent (50%); (b) the local participation requirement for this Project is reasonable and achievable by Contractor and its Subcontractors; (c) Contractor has had a

full and fair opportunity to review and understand the terms of the Policy; and (d) the provisions of the Policy are reasonable and achievable by Contractor and its Subcontractors. In an effort to meet the goals set forth in this Section, Contractor shall comply with the Local Workforce Hiring Plan attached hereto as Exhibit E.

2.6 Local EDGE, DBE, MBE, SBE, VBE and WBE Certified Businesses.

2.6.1 USEPA's DBE Program. Contractor shall comply with the US Environmental Protection Agency ("USEPA") program to encourage the participation of disadvantaged businesses in the construction activities funded by the Clean Water State Revolving Loan Funds (SRF's), which program is applicable to this Project. As used in this Agreement, "DBE" shall be an all-inclusive term that indicates Minority Business Enterprises (MBE), Women Business Enterprises (WBE), Small Business Enterprises (SBE), Small Businesses in Rural Areas (SBRA), HUB Zone Small Business, Labor Surplus Area Firms (LSAF), and other entities defined as socially or economically disadvantaged. While the USEPA program strongly encourages participation by all disadvantaged groups, specific participation goals are negotiated with USEPA only for MBEs and WBEs.

2.6.2 USEPA's Project DBE Goals. As a condition of receiving capitalization grants from USEPA for the Water Pollution Control Loan Fund, the Ohio EPA negotiated "fair share" DBE objectives with the USEPA. The DBE goals for construction related activities for this Project as established by the Ohio EPA are 1.2% of all contracts to MBEs and 1.8% of all contracts to WBEs.

2.6.3 City's Local EDGE, DBE, MBE, SBE, VBE and WBE Goals. It is the aim of City to encourage the participation of local EDGE, DBE, MBE, SBE, VBE, and WBE-certified firms located in the City in the Project. CONTRACTOR shall comply with that goal and award fifteen percent (15%) of CONTRACTOR's final contract value, including labor and materials, to EDGE, DBE, MBE, SBE, VBE and WBE-certified firms located in City. CONTRACTOR shall comply with that goal and award three percent (3%) of CONTRACTOR's final contract value, including labor and materials, to WBE-certified firms located in City. The total awarded participation shall be at least 18%.

2.6.4 Inclusion Plan. In an effort to meet the USEPA's and City's local EDGE/DBE/MBE/WBE goals set forth in this Section 2.6, Contractor shall comply with the Local DBE, EDGE, MBE, SBE, VBE and WBE-Certified Business Inclusion Plan attached hereto as Exhibit F.

2.6.5 Project Labor Agreement. The Contractor acknowledges that the Project is subject to the Project Labor Agreement that was included with the Request for Qualifications for this Project, the terms of which are incorporated herein.

ARTICLE 3 CONTRACTOR'S GENERAL RESPONSIBILITIES

3.1 **Standard of Care**. Contractor shall further City's interests in the Project in accordance with the Standard of Care. Contractor shall furnish efficient construction administration and supervision and shall furnish at all times an appropriate and adequate supply of workers and materials to complete the Project in an expeditious and economical manner consistent with the Contract Documents. Contractor shall cause the entire Work described in the Contract Documents to be completed and executed in accordance with the Contract Documents.

3.2 Contractor's Personnel.

3.2.1 Contractor shall assign sufficient numbers of duly qualified personnel to the Work to the extent necessary to ensure that its obligations under this Agreement are timely carried out with respect to the performance of the Work. Such personnel shall include all of the personnel listed in Exhibit D, all of whom have been approved by City based upon information as to each person's background, experience and qualifications submitted to City by Contractor. Contractor shall not employ any additional

senior project personnel on the Work without City's prior written approval. The approval by City of any project personnel shall not relieve Contractor from any responsibility for such personnel. The personnel identified in Exhibit D shall, while employed by Contractor, devote their full time to the Work, unless City gives prior written consent for such personnel to undertake other responsibilities, and such personnel will not be removed or replaced by Contractor without City's prior written consent.

3.2.2 City may require Contractor to remove from the Project any personnel whose performance under this Agreement is not satisfactory to City. In the event that any personnel are no longer employed by Contractor, Contractor shall notify City within three (3) days after learning of such event. Contractor shall use its best efforts to provide a permanent replacement of any personnel within seven (7) days after City requests removal from the Project of personnel or any personnel is no longer employed by Contractor (as applicable).

3.2.3 Contractor represents that all persons who are directly supervising the Work and required to be licensed under the laws of the State of Ohio are duly licensed.

3.3 **Limitation Of Authority.** Contractor shall have authority to act on behalf of City only to the extent provided in the Contract Documents. Contractor shall not have any authority to bind City for the payment of any costs or expenses not included in the Costs of the Work in excess of the GMP without the express prior written approval of City. In the event of an emergency affecting the safety of persons or the Project, Contractor shall, without special instruction or authorization, act reasonably to prevent or minimize any threatened damage, injury or loss. Contractor's authority to act on behalf of City shall be modified only by an amendment in accordance with the terms hereof.

3.4 **Approvals.** Contractor shall assist City in obtaining all consents and approvals required to be obtained from governmental authorities.

3.5 **Duty of Review.** Contractor shall review the Contract Documents: (a) for compliance with Applicable Laws affecting the performance of the Work; (b) to establish construction means, methods, techniques, sequences and/or procedures; and (c) to establish safety precautions and programs in connection with the Work. Such review shall be performed in accordance with the Standard of Care, the General Conditions, Supplemental Conditions and the General Requirements (Division 01 Specifications). If, in connection with its review, Contractor recognizes that any portion of the Contract Documents is at variance with Applicable Laws, then Contractor shall promptly notify City and CMT in writing. Contractor shall verify that the Contract Documents include requirements and assignment of responsibilities for safety precautions and programs and temporary Work facilities for common use of Contractor and the Subcontractors. Contractor shall review the Construction Drawings and Specifications for each bid package to minimize areas of conflict, gaps and overlapping in the Work to be performed by the various Subcontractors. In conjunction with CMT, Contractor shall identify areas Contractor recognizes as having incomplete documentation and uncoordinated multi-discipline Work.

3.6 **Review of Site.** By execution of this Agreement, Contractor represents and warrants that Contractor (a) has visited the Site and become familiar with local conditions under which the Work is to be performed, (b) has taken such conditions into account in formulating the IGMP, (c) shall take such conditions into account in formulating the GMP, and (d) has and shall continue to correlate personal observations with the requirements of the Contract Documents.

3.7 **Review of Adjacent Property.** By execution of this Agreement, Contractor represents and warrants that, to the extent reasonably practicable, Contractor has visited and generally familiarized itself with the property adjacent to the Site and the operations of the same.

3.8 **Payment and Performance Bond.** Contractor shall furnish and maintain a payment and performance bond for the Project as required by the General Conditions and the Agreement. Contractor shall provide a payment and performance bond for the Project in the full amount of the GMP prior to commencing construction.

ARTICLE 4
CONTRACTOR'S PRE-CONSTRUCTION RESPONSIBILITIES/SERVICES

4.1 Engineer's Drawings and Specifications. Contractor shall review the design documents prepared by Engineer. Contractor shall advise the City and provide written recommendations on relative feasibility of construction methods; availability and selection of materials, building systems, equipment, labor; time requirements for procurement, installation and construction; and factors related to cost, including costs of alternative designs or materials within fourteen (14) days of Contractor's receipt of any design documents. To the extent then known by Contractor, Contractor shall advise City in writing when any proposed design solutions exceed the IGMP.

4.2 Project Schedules.

4.2.1 The Project Milestone Schedule, attached hereto as Exhibit B, has been reviewed and approved by City and Contractor. The construction portions of the Project Milestone Schedule shall be incorporated into the Construction Schedule prepared and submitted by Contractor in accordance with the applicable provisions of the Contract Documents.

4.2.2 Prior to the execution of the GMP Amendment, Contractor shall deliver to City the Construction Schedule. The Construction Schedule shall be updated and distributed monthly to City with the Progress Report throughout the duration of the Work to accurately reflect progress to date, remaining estimated durations, and any new or revised logic or activities. Contractor shall supply with the Progress Report a graphic representation of the Construction Schedule, together with such other reports as requested by City (including those required by the General Conditions, Supplemental Conditions and General Requirements (Division 01 Specifications)).

4.2.3 In preparing the Construction Schedule, Contractor shall investigate and recommend a schedule for the purchase of materials and equipment requiring long lead time procurement.

4.2.4 Contractor shall submit to the CMT a form of the Progress Report for use on the Project. Upon acceptance by City, the form of Progress Report shall establish the standard for detail required for the remainder of the Work and shall be updated monthly. The Progress Report shall be indexed, bound and tabulated in a manner acceptable to City. The Progress Report shall be delivered monthly as required by the Contract Documents. Delivery of the Progress Report shall be a condition precedent to payment of the next Application for Payment.

4.3 Cost Estimates. Contractor shall provide cost estimating and constructability analysis on a prompt and regular basis with respect to all major construction components, systems and elements of the Work so that the Project design and budget can evolve in a timely, consistent and collaborative manner. In preparing the construction cost estimates and any updates thereto, Contractor shall use recognized and accepted cost estimating techniques in the construction industry. In preparing any and all construction cost estimates and updates thereto, Contractor shall use recognized and accepted cost estimating techniques in the construction industry. After preparing the construction cost estimates and updates thereto, City, Contractor and Engineer shall meet to review them and to compare them against the IGMP. If Contractor's construction cost estimates and/or updates exceed the IGMP, then City, Engineer and Contractor shall meet to review alternatives and potential changes, if any, necessary to establish a mutually acceptable GMP.

4.4 Quality Control. As requested by City, Contractor shall participate in coordination and quality review meetings with the CMT.

4.5 Constructability Analysis. As requested by City, Contractor shall work with City and Engineer to provide constructability analysis on a prompt and regular basis with respect to all major construction components, systems and elements of the Work so that the Project design and budget can evolve in a timely, consistent and collaborative manner.

4.6 Value Engineering. As requested by City, Contractor shall provide cost reduction and Value Engineering analysis on major construction components. Contractor shall conduct a series of Value Engineering analysis workshops to develop cost saving ideas for the Work. Contractor shall prepare a report analyzing the Value Engineering options following these workshops and distribute such reports to the CMT.

4.7 Work Plan. As part of the GMP process described in Section 4.9, Contractor shall submit to City, for City's review and approval, a comprehensive Work Plan for the Project. Such Work Plan shall provide information relative to the management and construction of the Project. The Work Plan shall serve as Contractor's overall management plan with respect to Contractor's practices, procedures, staffing plans, tasks, schedules, documentation reviews and quality control pertaining to the Project. Contractor shall make recommendations to City regarding the phasing and prioritization of the Work and include in the Work Plan Contractor's expected construction activities and the division of Work. In doing so, Contractor shall allow for phased construction and take into consideration such factors as time of performance, availability of labor, overlapping trade jurisdictions, and provisions for temporary facilities for the Work.

4.8 Permits. Contractor shall obtain all building permits for the Work, including Site development, shoring and excavation, substructure and superstructure, and finishing components as sequenced in negotiation with building department officials and required for the Work. Contractor shall arrange and coordinate other permits, licenses or approvals that are necessary for proper execution and completion of the Work and that are required by Governmental Authorities and customarily obtained by construction contractors.

4.9 GMP Development.

4.9.1 Contractor understands and agrees that the IGMP constitutes a fixed limit of construction cost available for the Project. The GMP ultimately agreed to in the GMP Amendment cannot exceed the IGMP unless agreed to by City in advance and in writing.

4.9.2 On or before the date set forth in the Milestone Date Schedule, City shall cause Engineer to prepare and deliver to City and Contractor a set of the GMP Drawings and Specifications and the Prose Statement (which Prose Statement shall be based upon the Project Considerations identified in Exhibit G). Within fourteen (14) days after Contractor receives such documents, Contractor shall submit to City and Engineer Contractor's proposed GMP and its GMP Qualifications and Assumptions based upon the GMP Drawings and Specifications and the Prose Statement. The GMP Qualifications and Assumptions must be consistent with the Proposal Qualifications and Assumptions submitted by Contractor and accepted by City (as set forth in Exhibit K), and must resolve and omit any items that have been resolved or omitted from the Prose Statement as compared to the Project Considerations. Within seven (7) days after City receives such documents, Contractor, Engineer and City shall meet to reconcile any questions, discrepancies or disagreements relating to the GMP proposal, the GMP Qualifications and Assumptions, the GMP Drawings and Specifications, and the Prose Statement. The reconciliation shall be documented by an addendum to the GMP Qualifications and Assumptions that shall be approved in writing by City and Contractor. As soon as practicable, but in no event later than seven (7) days after such meeting, Contractor shall then submit to City, for City's approval, Contractor's proposed final GMP based upon the GMP Drawings and Specifications, and the GMP Qualifications and Assumptions (as modified). Contingent upon City's approval of the GMP and City obtaining a loan for the Work, the parties will enter into the GMP Amendment. If City disapproves of the proposed final GMP or does not obtain a loan for the Work, then City may, in City's sole discretion, terminate this Agreement without cause under the terms of the General Conditions. Contractor acknowledges that the GMP Amendment shall not be signed, and Contractor shall not be authorized to begin construction services or receive any payments in

excess of the Pre-Construction Services Amount, until City obtains a loan for the Work. In no event, however, may the GMP be increased by delays in City obtaining such loan.

4.9.3 The GMP shall contain an initial Construction Contingency in an amount not more than _____ percent (___%) of the Cost of the Work. The Construction Contingency shall be adjusted as set forth in Section 8.2.

4.9.4 The Schedule of Values shall allocate the entire GMP (including any Allowances) among the various portions of the Work and shall contain separate line items for the Pre-Construction Services Amount, General Conditions Amount, Personnel Amount, Contractor's Fee, and Construction Contingency, and the various categories of Subcontractor Work shall be shown as single separate line items. The line items for the General Conditions Amount and Personnel Amount shall be supported by (a) a resource-loaded staff chart that shows all Personnel Expenses, including the staff and personnel committed to the Project and their billing rates, and (b) a detailed listing of the General Conditions Items that supports the General Conditions Amount.

4.9.5 The GMP, once established in the GMP Amendment, shall be revised only upon the issuance of a properly authorized Change Order. The GMP shall be based upon completion of the Work pursuant to the dates for Substantial Completion and Final Completion set forth in the Project Milestone Schedule.

4.9.6 In accordance with Section 4.7 hereof, Contractor shall develop and submit to City the Work Plan along with Contractor's proposed GMP, and the approved Work Plan shall be attached to the GMP Amendment.

4.9.7 Contractor acknowledges that it will have had sufficient involvement with the Project to understand the program requirements and Project scope as expressed in the GMP Documents and, therefore, agrees that it will make no claim against City for an increase in the GMP based upon the more fully developed plans, sections or details contained in the Construction Drawings and Specifications, except to the extent that details reflected in the Construction Drawings and Specifications are inconsistent and not reasonably inferable from the GMP Documents and otherwise represent a change pursuant to the General Conditions.

4.10 Construction Drawings and Specifications.

4.10.1 Contractor's obligation to provide specific products, systems or items of equipment, as required or referred to in the Contract Documents, shall include the provision of all customary ancillary devices necessary for the installation or operation of equipment for the Project. When standards, codes, manufacturer's instructions and guarantees are required by the Contract Documents with no edition specified, the current edition as of the Effective Date shall apply. References to standards, codes, manufacturer's instructions and guarantees shall apply in full, except (a) they do not supersede more stringent standards set out in the Contract Documents and (b) any exclusions or waivers that are inconsistent with the Contract Documents do not apply.

4.10.2 During the preparation of the final Construction Drawings and Specifications, City, Engineer and Contractor shall meet weekly (or as may otherwise be required by City) to discuss any material modifications in quantities or qualities from the approved GMP Documents. Contractor shall provide during these meetings written recommendations on relative feasibility of construction methods; availability and selection of materials, building systems, equipment, labor; time requirements for procurement, installation and construction; factors related to cost, including costs of alternative designs or materials; and an analysis of the types and quantities of labor required for the Project. Contractor shall review the availability of appropriate categories of labor required for critical phases of the Work and shall make recommendations for and execute actions designed to minimize adverse effects of labor shortages.

ARTICLE 5 SUBCONTRACTS

5.1 Subcontracts.

5.1.1 Contractor shall verify that all separation of the Project into trade contracts is done in accordance with Applicable Laws. Contractor shall assure that the Construction Drawings and Specifications provide that (a) the Work of the separate Subcontractors is coordinated, (b) all requirements for the Project have been assigned to the appropriate trade, (c) the likelihood of jurisdictional disputes has been minimized, and (d) proper coordination has been provided for phased construction. Contractor shall assure that the Work under all Subcontracts, when aggregated, will be complete and sufficient for the entire construction of the Project as required by the Contract Documents. Prior to its implementation, Contractor shall submit to City, for its review, comment and approval, Contractor's proposed bidding process and bid package plan. All Work except for General Conditions Items and Pre-Construction Services shall be performed by non-related or non-affiliated Subcontractors in accordance with this Article 5 and the other Contract Documents. For the purposes of this Agreement, self-performance includes Work performed by related or affiliated Subcontractors. Notwithstanding anything to the contrary in the Contract Documents, Contractor acknowledges and agrees that Contractor shall not be permitted to self-perform any Work (other than General Conditions Items and Pre-Construction Services) without the express written consent of City (which consent may be conditioned on any terms that City deems appropriate in City's sole discretion). Any such Self-Performed Work shall be governed by the procedures in Section 5.3.

5.1.2 Unless waived in writing by City, Contractor shall submit to City, prior to awarding any subcontract, a list of proposed Subcontractors for all subcontracts Contractor intends to award in excess of \$50,000. Such list shall contain the names of the Subcontractors that are proposed to be used for the Project, contact person and phone number, and a description of the work or services each listed subcontractor will perform for the Project, and their qualifications to meet the requirements set forth in the applicable sections of the Contract Documents. All proposed Subcontractors shall be reputable, qualified firms with an established record of successful performance in their respective trades. City shall have the right to accept or reject any Subcontractor that City deems, in its reasonable discretion, not to be reputable or qualified.

5.1.3 City shall have the right to approve, in its reasonable discretion, any Subcontractor and shall promptly inform Contractor of such approval or disapproval. If City determines that a Subcontractor does not meet the qualification standards set forth in the Contract Documents, then City may, in its sole discretion, after informing Contractor in writing, exercise one of the following options: (a) permit Contractor to substitute a qualified Subcontractor in accordance with the qualification standards set forth herein or (b) require Contractor to self-perform the work or services if Contractor has the required experience, licenses and other qualifications to perform the work or services. If a proposed Subcontractor is disqualified in accordance with this Section, City shall have no liability to Contractor and no cause of action shall inure to the benefit of Contractor on the basis of such disqualification. The Parties acknowledge that the Subcontractors listed in Exhibit H attached hereto and made a part hereof have been accepted and approved by City. By accepting any Subcontractors pursuant to this Section 5.1.3, City does not acquire any responsibility for the selection of such Subcontractor or its qualifications or its performance.

5.1.4 Contractor shall not modify or change any Subcontractor without City's prior written consent unless such modification or change is required to reflect a Change Order approved by City in accordance with the terms of this Agreement or such modification or change does not involve any impact to the GMP, the Construction Contingency or any other cost or expense City is obligated to pay under the terms of the Contract Documents.

5.2 **Assignment of Subcontracts.** Contractor hereby conditionally grants, transfers and assigns to City all the rights, title and interest of Contractor in, to and under any and all Subcontracts, which are now or hereafter entered into by Contractor in connection with the performance of the Work.

The foregoing assignment shall be exercisable by City, at its election, in the event that City has exercised its right to terminate this Agreement in whole or in part or to take control of, or cause control to be taken of, the Work, or any portion thereof. City may reassign the Subcontracts to another Contractor or any other Person, and such assignee may exercise City's rights in the Subcontracts. Contractor agrees that each Subcontract entered into by Contractor in connection with the Work shall contain the consent of each Subcontractor to the foregoing assignment.

5.3 **Self-Performed Work.**

5.3.1 Contractor or its affiliates shall be permitted, with the City's prior written consent, to self-perform portions of the Work. The City may make such determination on a case by case basis as it deems fit, including in connection with each trade package. In any such event, the City shall, in the City's sole discretion, choose one of the following two options for such Self-Performed Work (different options may be selected for different trades, in the City's sole discretion):

5.3.1.1 **No Bidding.** The City has the option, in its sole discretion, to waive the bidding requirements for any Self-Performed Work. In such event, the following shall apply: (a) Engineer shall have prepared the completed Construction Drawings and Specifications for such Self-Performed Work; (b) all permits and other approvals necessary to commence Work on such Self-Performed Work shall have been issued; (c) Contractor shall have submitted, and the City shall have approved, a "not to exceed" Cost of the Work for the Self-Performed Work; (d) Contractor shall have submitted, and the City shall have approved, a detailed construction schedule for the Self-Performed Work; (e) Contractor shall be paid the Cost of the Work for such Self-Performed Work plus the Contractor's Fee, subject to the "not to exceed" Cost of the Work for the Self-Performed Work; (f) Contractor or its affiliates shall not be permitted to use any of the Construction Contingency for the Self-Performed Work, but its bid or proposal may contain a separate construction contingency applicable only to the Self-Performed Work; and (g) such Self-Performed Work shall be performed pursuant to all other terms and conditions of this Agreement and the General Conditions.

5.3.1.2 **Bidding Self-Performed Work.** The City has the option, in its sole discretion, to require Contractor to follow the following bidding requirements for Self-Performed Work. In such event, the following shall apply: (a) Contractor shall submit a sealed proposal for Self-Performed Work pursuant to the competitive procedures applicable to all Subcontractors; provided, however, that Contractor or its affiliates must submit its bid or proposal for Self-Performed Work one (1) day before the deadline for other Subcontractors to submit their proposals; (b) the opening, review and advice with respect to award or rejection of such bids or proposals shall be managed by the City; (c) Contractor shall review the Self-Performed Work (including the bid packaging plan) with the City prior to finalizing the bid package; (d) there shall be a strict separation of the personnel involved with bidding the Self-Performed Work and Contractor's other personnel involved in the Project, and Contractor shall, by written policy distributed to all affected personnel (a copy of which shall be distributed to the City), strictly prohibit any communication prior to bid award among personnel involved with the estimating, bidding, management or other services in connection with the Self-Performed Work and personnel working on other aspects of this Project pursuant to this Agreement (other than such communication as is permitted by all bidders); (e) if less than two other bids from responsible bidders are submitted for Self-Performed Work, then the City may, at its option, disqualify Contractor or its affiliates from award of the bid for Self-Performed Work and, in the City's discretion, cause the bid package with respect to the Self-Performed Work to be rebid; (f) Contractor shall forward copies of all inquiries related to the Self-Performed Work to the City; (g) Contractor or its affiliates shall not, in the bid or proposal, use the Staff Costs/General Conditions Expenses for Self-Performed Work on any terms or conditions different from the terms or conditions on which such items are made available to all other bidders; (h) the solicitation for bids

on Self-Performed Work shall specifically state that Contractor or its affiliates shall have the right to submit a sealed bid or proposal on Self-Performed Work; and (i) Contractor or its affiliates shall not be permitted to use any of the Construction Contingency for the Self-Performed Work, but its bid or proposal may contain a separate construction contingency applicable only to the Self-Performed Work.

5.3.2 If the foregoing procedures chosen by the City are not strictly followed, then the City shall have the right to reject Contractor's or its affiliate's request to Self-Performed Work. In addition, if the "not to exceed" Cost of the Work for the Self-Performed Work described in Section 5.3.1.1, or the bid or proposal by Contractor or its affiliates described in Section 5.3.1.2, is higher than the most recent estimate of the Cost of the Work for such Self-Performed Work, then the City shall have the right to reject Contractor's or its affiliates' "not-to-exceed" Cost of the Work or bid or proposal (as applicable).

5.3.3 Any rejection of the request to Self-Perform Work under this Section 5.3 shall not be the basis for an increase in the GMP or adjustment to the Project Milestone Date Schedule.

ARTICLE 6 TIME

6.1 **Time Is Of The Essence.** Time is of the essence of this Agreement. Contractor shall cause the Work to be performed within the Contract Time and completed in accordance with the Project Milestone Schedule. Dates established and shown in the Project Milestone Schedule shall not be altered except by a Change Order or Construction Change Directive.

6.2 City Liquidated Damages and USEPA/OEPA Damages.

6.2.1 USEPA/OEPA Damages. As described in more detail in the Supplemental Conditions, if City is assessed damages by USEPA/OEPA for failure to meet the Consent Decree AFO Date set forth in the Project Milestone Schedule, which damages include injury to the public interest, then Contractor shall pay to City (by direct payment or offset from the Contract Sum): (a) Day 1 to 30 = \$1,500 per day; (b) Day 31 to 60 = \$3,000 per day; and (c) After 60 days = \$5,000 per day. The Parties hereby acknowledge that such damages are actual damages that may be incurred by City as a result of damages assessed by the USEPA/OEPA, and not a penalty, notwithstanding that the Consent Decree defines such damages as "Stipulated Penalties".

6.2.2 City Liquidated Damages. As described in the Supplemental Conditions, if the date of Substantial Completion of the Work occurs after the Contract Substantial Completion Date, as such date may be extended pursuant to the terms of the Contract Documents, then Contractor shall pay to City (by direct payment or offset from the Contract Sum) \$2,000 for each day beyond the Contract Substantial Completion Date until the date when Substantial Completion of the Work actually occurs.

6.2.3 General. All liquidated damages referenced in this Section 6.2 and in the applicable provisions of the General Conditions are referred to herein as the "Liquidated Damages." The Liquidated Damages shall be payable upon demand at the time they accrue. The Parties acknowledge and agree that it is difficult or impossible to determine with precision the amount of damages that would or might be incurred by City, including injury to the public interest, as a result of Contractor's failure to achieve Substantial Completion by or before the Contract Substantial Completion Date. It is understood and agreed by the Parties that (a) City shall be damaged by failure of Contractor to meet such obligations, (b) it would be impracticable or extremely difficult to fix the actual damages resulting therefrom, (c) any sums that would be payable under this Section 6.2 are in the nature of liquidated damages, and not a penalty, and are fair and reasonable, and (d) such payment represents a reasonable estimate of fair compensation for the losses that may reasonably be anticipated from such failure, and shall, without duplication, be the sole and exclusive measure of damages with respect to any failure by

Contractor to achieve Substantial Completion on or before the Contract Substantial Completion Date. This Section 6.2 and the applicable provisions of the General Conditions regarding liquidated damages shall survive Final Completion or termination of this Agreement. The Liquidated Damages are intended only to cover damages suffered by City as a result of delay and shall not be deemed to cover the cost of completion of the Work or damages other than delay resulting from Defective Work. Construction Contingency shall not be used to pay Liquidated Damages described in this Section 6.2.

ARTICLE 7 CITY'S RESPONSIBILITIES

7.1 City's Decisions. City shall render decisions in a timely manner pertaining to information, observations or requests submitted by Contractor in writing in order to avoid unreasonable delay in the orderly progress of the Work. It shall be Contractor's responsibility to timely advise City of all time requirements and restraints with respect to such approvals and decisions.

7.2 City's Representative. The City's Representative is authorized to act on behalf of City for purposes of this Agreement. City shall have the right to change the City's Representative at any time upon written notice to Contractor.

ARTICLE 8 PAYMENT

8.1 Contract Sum. Except as otherwise provided herein, City shall pay at the times and in the manner provided for in the Contract Document amounts constituting the Contract Sum, which amount shall not exceed the GMP. The parties acknowledge that, except as provided in this Article 8, Contractor is not guaranteeing any specific line item of the GMP, but shall be responsible for all costs in excess of the GMP, as may be adjusted under this Agreement.

8.1.1 Pre-Construction Services Amount. Contractor shall provide the Pre-Construction Services for not more than the Pre-Construction Services Amount. The Pre-Construction Services Amount includes all costs and expenses Contractor may incur in connection with performing the Pre-Construction Services, and there shall be no separate payment or reimbursement for such expenses. The Pre-Construction Services Amount shall be billed to City monthly as such costs are incurred, and shall be paid monthly. Notwithstanding anything herein to the contrary, the total amount to be paid to Contractor for the Pre-Construction Services shall not exceed the Pre-Construction Services Amount, and Contractor shall not be entitled to separate reimbursement or payment for any Cost of the Work related to the Pre-Construction Services other than the Pre-Construction Services Amount.

8.1.2 Contractor's Fee. Contractor shall be paid a fee equal to ___% of the Cost of the Work ("Contractor's Fee"). The Contractor's Fee may, in the City's sole discretion, be fixed based on such calculation at the time of the GMP Amendment using the estimated Cost of the Work set forth in the GMP Amendment. In calculating Contractor's Fee, the following amounts shall be excluded: Pre-Construction Services Amount, General Conditions Amount, Personnel Amount, Construction Contingency, permit fees, premium costs for insurance, and premium costs for bonds. Payments of Contractor's Fee shall commence with the start of construction, shall be billed to City monthly in proportion to the percentage of completion of the Work, and shall be paid monthly at the same time City pays Cost of the Work.

8.1.3 General Conditions Amount. Commencing with the start of construction, Contractor shall provide the General Conditions Items set forth in Exhibit I for not more than the General Conditions Amount. The General Conditions Amount shall be billed to City monthly as such costs are incurred, and shall be paid monthly at the same time City pays the Cost of the Work. Notwithstanding anything herein to the contrary, the total amount to be paid to Contractor for the General Conditions Items shall not exceed the General Conditions Amount, and Contractor shall not be entitled to separate reimbursement or payment for any Cost of the Work related to the General Conditions Items other than the General Conditions Amount.

8.1.4 **Personnel Amount.** Attached hereto as Exhibit D is Contractor's staffing plan with respect to services to be performed by Contractor and each of its employees as part of the Personnel Expenses. Commencing with the start of construction, Contractor shall provide the Personnel Expenses for not more than the Personnel Amount. The Personnel Amount shall be billed to City monthly as such costs are incurred, and shall be paid monthly at the same time City pays Cost of the Work. Notwithstanding anything herein to the contrary, the total amount to be paid to Contractor for the Personnel Expenses shall not exceed the Personnel Amount, and Contractor shall not be entitled to separate reimbursement or payment for any Cost of the Work related to the Personnel Expenses other than the Personnel Amount.

8.1.5 **Cost of the Work.** In addition to the Pre-Construction Services Amount, Contractor's Fee, General Conditions Amount, and Personnel Amount, City shall pay at the times and in the manner provided for in this Article 8 the Cost of the Work.

8.1.6 **Total Paid to Contractor.** Notwithstanding anything in the Contract Documents to the contrary, the total amount of the Pre-Construction Services Amount, Contractor's Fee, General Conditions Amount, Personnel Amount, and the Cost of the Work shall not exceed the GMP.

8.2 **Construction Contingency.**

8.2.1 The Construction Contingency shall be increased or decreased, as the case may require, to reflect net savings or net losses resulting from the award of subcontracts. The amount of the adjustment to the Construction Contingency shall be determined by subtracting the face amount of each subcontract at the time the subcontract is entered into from the amount allocated in the initial Schedule of Values attached to the GMP Amendment to be performed under such subcontract.

8.2.2 Provided that Contractor obtains City's prior written approval, Contractor may expend funds from the Construction Contingency for Cost of the Work incurred for completion of the Work, including buy-out losses from Subcontracts, scope differences, Subcontractor defaults, overtime, corrective Work, or estimating errors; provided, however, that with respect to any expenditure of the Construction Contingency relating to a Subcontractor default, Contractor shall first demonstrate, to City's reasonable satisfaction, that Contractor has in good faith exercised reasonable steps to obtain performance by Subcontractor or Subcontractor's surety and that the claim is not covered by insurance. For purposes of this Agreement, the term "covered by insurance" shall mean that the event or claim underlying Contractor's request for the use of Construction Contingency is an insured claim under any policy of insurance carried by Contractor or any Subcontractor. Any use of the funds in the Construction Contingency must be for permitted Cost of the Work and any recoveries shall be used to replenish the Construction Contingency. In no event shall Contractor be permitted to use the Construction Contingency for any additional costs or expenses caused by: (a) the breach of this Agreement by Contractor; (b) the breach of any agreement by Contractor under any Subcontract; or (c) the negligence of Contractor or any Subcontractor. Construction Contingency shall not be used to pay Liquidated Damages described in Section 6.2.

8.2.3 Contractor shall show the status of the Construction Contingency in the monthly Progress Report. Contractor shall, in its discretion, use its best efforts to ascertain actual or known potential claims against it or actual or reasonably anticipated events that constitute permissible uses of the Construction Contingency.

8.2.4 The Construction Contingency shall be reduced to \$0 upon Substantial Completion. All savings, including without limitation all unused Construction Contingency, shall be returned to City.

8.3 Allowances.

8.3.1 If Allowances are included in the GMP, such Allowances shall be identified in the GMP Amendment. For all Allowances, Contractor shall propose estimates of costs that are properly reimbursable as Costs of the Work.

8.3.2 To the extent any Allowance is inconsistent with the standards set forth above, City shall promptly elect to either:

8.3.2.1 Issue a Change Order increasing the GMP by the amount agreed upon by Contractor and City to furnish or construct the Allowance item; and/or

8.3.2.2 Direct Engineer, to undertake the redesign of the Allowance item or any other item of Work in such a manner that the Allowance item can be installed without the GMP being exceeded or the Contract Time being extended. If City elects to so redesign, Contractor agrees to cooperate with City, Engineer, the CMT and any other consultant of City in order to reduce the cost of constructing or furnishing the Allowance item or any other item of Work.

8.3.3 If the ultimate cost of an Allowance item is less than the Allowance for that item, an appropriate Change Order shall be prepared reducing the GMP.

8.4 **Overtime and Premium Time.** Whenever overtime, extra shift work or similar premium Work is used on the Project at the request of City, Contractor shall implement such Work in a cost efficient manner. Prior to implementation, Contractor shall present for City's review and approval a reasonable plan for scheduled additional shifts, crews, overtime or premium time. City's review or approval of any plan shall not be deemed to imply that Contractor is entitled to an extension of time or an increase in the GMP. City's prior written approval of any plan shall be an express condition precedent to any Claim or Change Order relating to the use of additional shifts, crews, overtime or premium time.

8.5 Progress Payments.

8.5.1 Contractor shall comply with the Progress Payment requirements set forth in the General Conditions and Supplemental Conditions. City shall make Progress Payments for the Pre-Construction Services monthly in accordance with Section 8.1.1. Except as set forth in the preceding sentence, City shall make Progress Payments for the Work as provided in the Contract Documents.

8.5.2 Contractor shall include the following with each Application for Payment:

8.5.2.1 A partial waiver of lien and claims for itself and for each of the Subcontractors and their respective first-tier Sub-subcontractors listed in the prior application for which Contractor has received payment at least three (3) days prior to submitting the Application for Payment, in compliance with Applicable Laws;

8.5.2.2 A sworn statement listing of: (a) the names of all Subcontractors and other parties furnishing materials, labor or services in connection with the Work in excess of \$50,000; (b) the materials, labor or services to be furnished by each such party; (c) the amounts actually paid to each party furnishing materials, labor or services; (d) the amounts due or to become due to each such party; and (e) a statement that such sworn statement is made in order to induce City to make the payment requested;

8.5.2.3 payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence reasonably required by City to demonstrate that cash disbursements already made by Contractor on account of Cost of the Work equal or exceeding: (a) progress payments already received by Contractor; less (b) that portion of those payments attributable to Contractor's Fee; plus (c) payrolls for the period covered by the present Application for Payment; plus (d)

retainage provided in Section 8.5.4 hereof, if any, applicable to prior progress payments, less back-charges or other credits or offsets for Contractor pursuant to Subcontracts or purchase orders;

8.5.2.4 A statement by Contractor certifying that, to the best of its information and belief, there are no Change Orders outstanding, no person or entity has a claim for payment or has asserted a claim for payment arising from or in connection with the Work, other than any claim that has been fully paid and duly released or is included in the current Application for Payment, or, if Contractor knows or believes such a Change Order exists or that a claim has or may be asserted or made, the statement shall disclose the amount of the Change Order and/or disclose the claim to the extent known by stating the name of the claimant or potential claimant, a description of the Work for which payment is claimed and the amount of such claim if known;

8.5.2.5 The updated Schedule of Values showing all committed subcontracts and expenses to date; and

8.5.2.6 The monthly Progress Report.

8.5.3 No Application for Payment shall be processed, nor payment made thereon, unless the documentation set forth in Section 8.5.2 hereof is submitted.

8.5.4 Until 50% of the Work is in place, as determined by City, City shall retain 10% from all payments of the Contract Sum otherwise due and payable. After 50% of the Work is in place, City shall refrain from withholding additional retainage on future payments unless City determines that Contractor or any Subcontractor is not making satisfactory progress or that Contractor or any Subcontractor is in default under any of the terms and provisions of the Contract Documents. If City determines that Contractor or any Subcontractor is not making satisfactory progress or that Contractor or any Subcontractor is otherwise in default under the terms of the Contract Documents, then City may continue or reinstate retainage. Upon Substantial Completion of the Work, City shall retain an amount equal to two times the amount reasonably determined by City for unsettled third party claims against City, including the Liquidated Damages and USEPA/OEPA Damages described in Section 6.2 hereof, for which Contractor may be liable (unless bonded off by Contractor), Punch List work or other incomplete Work. Thereafter, City shall pay Contractor the retained amount once all items are completed or otherwise resolved to the reasonable satisfaction of City, as applicable.

8.5.5 Subject to other provisions of the Contract Documents, the amount of each Progress Payment shall be computed as follows:

8.5.5.1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the Schedule of Values.

8.5.5.2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work or, if approved in advance in writing by City, suitably stored off the Site at a location agreed upon in writing.

8.5.5.3 Add Contractor's Fee, computed in accordance with Section 8.1.2 hereof.

8.5.5.4 Add the applicable General Conditions Items computed in accordance with Section 8.1.3 hereof.

8.5.5.5 Add the applicable Personnel Expenses computed in accordance with Section 8.1.4 hereof.

8.5.5.6 Subtract the aggregate of previous payments made by City.

8.5.5.7 Subtract the shortfall, if any, indicated in the documentation required by Section 8.5.2 hereof to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by City in such documentation.

8.5.5.8 Subtract amounts, if any, for which City is entitled to withhold payment under the Contract Documents.

8.5.5.9 Subtract retainage in accordance with Section 8.5.4 hereof.

8.5.6 Payment for materials stored off the Site shall be conditioned upon compliance with procedures satisfactory to City, in City's sole discretion, to establish City's title to such materials and equipment or otherwise protect City's interest, and shall include applicable insurance, storage and transportation to the Site for such materials and equipment stored off the Site.

8.6 Cost of The Work.

8.6.1 Contractor shall be responsible for, and shall pay without reimbursement from City, all Costs of the Work in excess of the GMP.

8.6.2 The following, to the extent incurred in connection with services rendered and Work performed pursuant to this Agreement, and only the items specifically and expressly described below, shall be "Cost of the Work":

8.6.2.1 Subcontracts: All costs incurred in connection with Work performed and materials provided pursuant to subcontracts with Subcontractors for portions of the Work.

8.6.2.2 Personnel Expenses: Personnel expenses not included in the Personnel Expenses to be covered by the Personnel Amount for additional work and services not anticipated at the time the parties agreed to the GMP, but only if identified in a signed Change Order or other express prior written authorization from City, including the following:

- (a) Labor in Contractor's direct employ at the rates set forth in Exhibit D.
- (b) Personnel performing services related to the Project to the extent of hours devoted to the Project at the rates set forth in Exhibit D.
- (c) With respect to Contractor 's employees described in this Section 8.6.2.2, the scheduled rates include the pro rata portion of the cost of mandatory and customary contributions and benefits as required by law, any applicable collective bargaining agreement or Contractor 's company-wide policy related to the direct salaries of such employees, including employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits pursuant to Contractor 's company-wide policy.

8.6.2.3 Equipment and Materials: Equipment and materials purchased directly by Contractor, including transportation and storage thereof, without any mark-up or fees other than any items included as part of the General Conditions Amount. To the extent that equipment and materials are typically encompassed within the categories listed in the General Conditions Items set forth in Exhibit I, then such equipment and materials shall be included in the General Conditions Amount, and not in the Cost of the Work. Contractor shall furnish City with such documentation as shall be required to enable City to obtain the benefit of all warranties and guarantees made available with respect to such equipment and materials. Payment for materials while stored off site shall be subject to the requirements of the General Conditions and any other applicable requirements set forth in the Contract Documents.

8.6.2.4 Taxes: State, county and municipal taxes, fees or other charges incurred as a direct consequence of the performance of the Work (but not franchise taxes or taxes based

on net income) other than sales tax on materials and equipment incorporated into the Project as part of the Work if exempt from sales tax, which are exempt as set forth in Section 2.4. To the extent that such taxes relate to items that are typically encompassed within the categories listed in the General Conditions Items set forth in Exhibit I, then such taxes shall be subject to the General Conditions Amount.

8.6.2.5 Rental Equipment and Tools: Rental charges of all machinery and equipment used at the Site, including installation, repair and replacement, dismantling, removal, cost of lubrication, transportation and delivery costs thereof other than items included as part of the General Conditions Amount. To the extent that such equipment is typically encompassed within the categories listed in the General Conditions Items set forth in Exhibit I, then such equipment shall be subject to the General Conditions Amount. With respect to equipment owned by Contractor and rented for the Project, rental charges shall be consistent with the then current prevailing rental cost of such equipment in the local area, but in no event shall such rates exceed 80% of the published rates based upon the "Compilation of Nationally Averaged Rental Rates," most current edition, of the Associated Equipment Directors unless otherwise agreed to by City in writing.

8.6.2.6 Equipment Operation, Maintenance and Repair: All costs for the operation, maintenance and repair of Contractor's equipment or of equipment rented from third parties other than any items included as part of the General Conditions Amount, including (a) the cost of all preventive maintenance, fuel, oil, grease and other service to such equipment, and (b) minor repairs wherein the parts necessary to effect repairs to such equipment cost One Thousand Dollars (\$1,000) or less. Above normal maintenance or major repairs are not allowed as Cost of the Work.

8.6.2.7 Transportation: Except as hereinafter provided, all loading, unloading, freight, express, trucking and demurrage charges, including costs of assembling, erecting, moving and dismantling construction equipment at the Site.

8.6.2.8 Applicable Laws: All costs of compliance with all Applicable Laws, including permit fees, inspection and testing costs, licenses and tests, except any liability for payment of any citation or penalty imposed as the result of an act or omission by Contractor, any Subcontractor or their respective employees, licensees or agents.

8.6.2.9 Temporary Facilities, Supplies and Utilities: Costs of fuel, power, communications, light and water used for performance of the Work at the Site, temporary fences, guard rails, scaffolding, hoists, temporary storage, office and sanitary facilities used in connection with the Work other than any items included as part of the General Conditions Amount. To the extent that such costs relate to temporary facilities, supplies or utilities that are listed in the General Conditions Items set forth in Exhibit I, then such costs shall be subject to the General Conditions Amount.

8.6.2.10 Insurance: Subject to the General Conditions Amount, premium costs of the insurance that Contractor is required to carry pursuant to the Contract Documents. Only actual insurance costs shall be reimbursable and in no event shall corporate overhead for insurance be allocated to the Work or payable as Cost of the Work. Contractor shall pay all deductibles, self-insured retentions and co-payments upon such insurance without reimbursement as a Cost of the Work.

8.6.2.11 Bonds: Subject to the General Conditions Amount, premium costs (for Contractor at actual, documented rates) of any bond or bonds required to be furnished by Contractor or any Subcontractor. With respect to premium costs of any bond or bonds provided by Contractor, the sum of such costs shall not exceed one percent (1%) of the GMP.

8.6.2.12 Cleaning: Costs of removal of waste material or rubbish from the Project Site other than any items that are listed in the General Conditions Items set forth in Exhibit I (which are subject to the General Conditions Amount).

8.6.2.13 Emergencies: Costs reasonably incurred due to any emergency affecting the safety of persons and/or property.

8.6.2.14 Casualty Losses: Costs reasonably incurred in connection with any casualty loss, including personal injury or property damage, relating to or arising out of the Project to the extent such costs are not compensated by property insurance or otherwise, except to the extent any such loss or expense is caused by failure on the part of Contractor to exercise good faith or the Standard of Care.

8.6.2.15 Corrective Work: Costs of repairing damaged or nonconforming Work that was not caused by Contractor's negligence or its failure to fulfill a specific responsibility under the Contract Documents, but only to the extent the cost of the repair or replacement is not recoverable by Contractor from Subcontractors, suppliers, sureties or available insurance.

8.6.2.16 Tests: Fees of laboratories for tests required by the Contract Documents.

8.6.2.17 Miscellaneous, City Approved Cost Items: Miscellaneous expenditures not otherwise covered in this Section 8.6.2 that are incurred or payable in connection with the rendering of services or the performance of the Work if in each instance City shall have approved in writing the cost thereof prior to Contractor incurring such expenses, such approval not to be unreasonably withheld or delayed.

8.6.3 Excluded Costs. Costs incurred in connection with the following shall not be Cost of the Work and no payment shall be made by City in connection therewith other than as part of Contractor 's Fee:

8.6.3.1 The services and related expenses of any overhead and general expenses of Contractor, officers or corporate office supervisory personnel of Contractor, personnel in Contractor's human resources, accounting (other than Project accounting services), labor relations, insurance and tax departments and all other costs of doing business, services and related expenses required to maintain and operate Contractor's corporate offices and any established branch offices (except as noted on Exhibit I).

8.6.3.2 Overhead, administrative and general expenses of Contractor.

8.6.3.3 Expenses (including interest) of Contractor's capital employed for the Project.

8.6.3.4 Amounts required to be paid by Contractor for federal, state or local income, activity, doing-business, franchise or any other similar taxes.

8.6.3.5 Penalties for Contractor's failure to comply with Applicable Laws.

8.6.3.6 Losses and expenses sustained by Contractor or Subcontractors, if such losses and expenses are due to infidelity or dishonesty on the part of any employee of Contractor or its Subcontractors.

8.6.3.7 Costs incurred to the extent that such costs result in the GMP being exceeded.

8.6.3.8 Costs incurred in connection with providing the Pre-Construction Services other than the Pre-Construction Services Amount.

8.6.3.9 Costs incurred in connection with providing the General Conditions Items or any items set forth in Section 8.6.2 that are typically encompassed within the categories listed in the General Conditions Items other than the General Conditions Amount.

8.6.3.10 Costs incurred in connection with providing the Personnel Expenses other than the Personnel Amount.

8.6.4 Notwithstanding the breakdown or categorization of any costs to be reimbursed in this Article 8 or elsewhere in the Contract Documents, there shall be no duplication of payment if any particular item for which payment is requested can be characterized as falling into more than one of the types of compensable or reimbursable categories.

8.6.5 Whenever Contractor has been paid, as a Cost of the Work, amounts that are recovered from any other source (e.g., a Subcontractor, its insurer, surety or other third party), Contractor shall credit City with such amounts recovered.

8.6.6 The actual Cost of the Work shall be adjusted to reflect any and all discounts, including trade and cash discounts, rebates, refunds and other similar considerations, provided that City provides any funds when needed to obtain such considerations. Such considerations shall accrue exclusively to the benefit of City. Contractor shall use its best efforts to secure such considerations on behalf of City.

8.6.7 Amounts received from sales of surplus materials and equipment shall accrue to City, and Contractor shall make provisions so that they can be secured. Amounts that accrue to City in accordance with the foregoing provisions shall be credited to City as a deduction from the Cost of the Work.

8.6.8 Upon Substantial Completion, Contractor shall submit a list of any tools, equipment, or office equipment purchased for the Project that have been paid by City as a Cost of the Work. If City so elects, any tools or extra materials purchased for the Project that have been paid for by City as a Cost of the Work shall be returned to City at the end of the Project. If City elects not to take title to any such tools, equipment, or office equipment, then City shall be credited with the fair market value thereof as a deduction to the Cost of the Work.

8.7 **General Conditions Items.** Contractor shall provide and supervise the Work related to the General Conditions Items. City shall not be obligated to pay Contractor for costs and expenses, including Cost of the Work, incurred by Contractor in connection with the General Conditions Items in excess of the General Conditions Amount.

8.8 **Personnel Expenses.** Contractor shall provide and supervise the Personnel Expenses. City shall not be obligated to pay Contractor for costs and expenses, including Cost of the Work, incurred by Contractor in connection with the Personnel Expenses in excess of the Personnel Amount.

ARTICLE 9 MISCELLANEOUS PROVISIONS

9.1 **Representations.** Contractor represents and warrants to City that the qualifications, references and financial information submitted by Contractor were and are true and correct in all material respects and that there have been no material changes to such documents since the date of submission.

9.2 **Ownership of Documents.** Contractor hereby transfers, conveys and assigns to City all of the rights, title and interest in and to all reports, schedules, surveys, drawings and specifications, and other documents prepared by Contractor and any and all design professionals and Subcontractors for the Project (collectively, "Work Product"). City may use all such Work Product in connection with the design, construction, expansion, maintenance, and renovation of the Project. In furtherance of the foregoing, and

in no way a limitation hereof, Contractor hereby unconditionally and irrevocably transfers and assigns to City a non-exclusive, royalty-free license to any and all Work Product, including all patents, copyrights, trademarks, service marks and other intellectual property rights. Contractor shall obtain from each of Contractor's Subcontractors, such assignments and transfers of rights as necessary to effectuate the requirements of this Section, and shall provide, upon City's request, a written consent from such parties to assign and transfer such parties' intellectual property rights as required herein.

9.3 **Governing Law.** This Agreement shall be governed by Ohio law, without regard to its conflicts of law principles. Any litigation under this Agreement shall be brought in Summit County Common Pleas Court and the parties consent to personal jurisdiction and venue in such court.

9.4 **Entire Agreement.** This Agreement represents the entire and integrated agreement between City and Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both City and Contractor.

9.5 **Headings.** The captions contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Agreement or the intent of any provision contained herein.

9.6 **Notices.** Any notice, demand, offer, or other written instrument required or permitted to be given pursuant to this Agreement shall be in writing signed by the Party giving such notice and shall be hand delivered or sent by overnight courier, messenger or registered mail, to the other parties at the address set forth below:

If to City:

City of Akron
Attn: Service Director
166 South High Street, Room 200
Akron, Ohio 44308

With a copy to:

City of Akron
Attn: Director of Law
166 South High Street, Room 200
Akron, Ohio 44308

And a copy to:

City of Akron
Attn: City's Management Team
166 South High Street, Room 701
Akron, Ohio 44308

If to Contractor:

Attn: _____
Phone: _____
Email: _____

Each Party shall have the right to change the place to which notice shall be sent or delivered by sending a similar notice to the others in like manner. The effective date of any notice issued pursuant to this Agreement shall be as of the addressee's receipt of such notice.

9.7 **Relationship Of The Parties.** Contractor is an independent contractor and shall not be deemed an agent, employee or partner of City. Nothing contained in this Agreement shall be construed as constituting a joint venture or partnership between Contractor and City.

9.8 **Non-Discrimination.** The Contractor shall abide by the applicable provisions of Section 34.03 of the Code of Ordinances of the City of Akron, Ohio as if fully rewritten herein..

9.9 **Third Parties.** Nothing contained herein shall be deemed to give any third party any claim or right of action against City or Contractor that does not otherwise exist without regard to this Agreement.

9.10 **Counterparts.** This Agreement may be executed by the Parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

9.11 **Remedies.** Except as otherwise expressly provided herein, all rights and remedies provided in this Agreement are in addition to all other rights and remedies available at law or in equity.

9.12 **Authority.** Contractor and City each have full power and authority to enter into this Agreement and the persons signing on behalf of the respective Parties hereto are authorized to do so.

[Signatures On Next Page]

This Agreement is entered into as of the Effective Date.

OWNER:

THE CITY OF AKRON, OHIO

CONTRACTOR:

By: _____
John O. Moore
Director of Public Service

By: _____
Name: _____
Its: _____

Approved as to form and correctness:

Eve V. Belfance
Director of Law
City of Akron, Ohio

DIRECTOR OF FINANCE CERTIFICATION

I hereby certify, that payment will be made on invoices issued to the City of Akron, Ohio under this Agreement, and that sufficient money is in the treasury or in the process of collection to the credit of the appropriate fund or division to discharge the City's obligation under this agreement authorized by Ordinance No. _____.

 Diane L. Miller-Dawson
 Director of Finance

Must be completed by Division/Department:

Contract Amount: _____
 Originating Division: _____
 Contact Person: _____ Phone: _____

Banner Distribution (by year)

Year	1	2	3	future	Total
Amount to encumber	\$				

Fund					
Org.					
Account					
Actv.					
Locn.					

Funding Source(s)

Underlying source of payment (granting agency, sewer fund, etc.), expected reimbursement and timeline.

Contract Number: _____
 (To be completed by Accounting)

Date: _____

EXHIBITS

Exhibit A	Project Description
Exhibit B	Project Milestone Schedule
Exhibit C	Supplemental Information
Exhibit D	Contractor's Key Personnel, Staff Chart and Hourly Rates
Exhibit E	Local Workforce Hiring Plan
Exhibit F	Local EDGE, DBE, MBE, SBE, VBE and WBE Company Participation Plan
Exhibit G	List of Drawings, Specifications, Permits and other Documents and Information Upon Which the IGMP is Based
Exhibit H	List of Approved Subcontractors and Suppliers
Exhibit I	Description of General Conditions Items
Exhibit J	Form of GMP Amendment
Exhibit K	Contractor's Proposal Form

Exhibit A

Project Description

This project consists of constructing a 4.5 million gallon storage basin with associated instrumentation, controls, and operations building. Three new diversion structures will convey design flows to the basin where it will be temporarily stored until it can be dewatered. Basin operation will include a hybrid system with both gravity influent piping and screw pumps. Project also includes an automated cleaning sequence via tipping buckets, lining of nearly 4,000 feet of existing combined sewers, control gates, and related site work.

Exhibit B

Project Milestone Schedule

The Project Milestone Schedule shall include, as a minimum, the following milestone dates:

Milestone No.	Milestone	Date
1	Commencement Date	TBD
2	Engineer delivers to Contractor the GMP Drawings and Specifications, Prose Statement	TBD
3	Contractor provides City with the proposed GMP and GMP Qualifications and Assumptions	TBD
4	Parties meet to reconcile proposed GMP with the GMP Drawings and Specifications and the Prose Statement	TBD
5	Contractor submits to City its amended GMP Proposal	TBD
6	Substantial Completion	September 30, 2020
7	Achievement of Full Operation (AFO Date)	December 31, 2020
8	End of Warranty Period	December 31, 2021

Exhibit D

Contractor's Key Personnel, Staff Chart and Hourly Rates

[Note: To be provided by Contractor and agreed to by City]

City is entering into this Agreement in reliance on the representations made by Contractor respecting the skill, judgment, experience and abilities of Contractor and its principals and employees in the construction of projects similar to the Project, and in reliance upon assurances by Contractor that the personnel listed below will be assigned to this Project, for the duration of the Work, or portions thereof as necessary.

The personnel indicated in the following list shall be committed to the Work and shall not be assigned any other responsibilities that in any way preempt their responsibilities for the Work, and shall not be replaced without the prior express written consent of City (which shall not be unreasonably withheld), except for reason of death, or discharge or resignation from the employ of Contractor:

1. Project Executive. _____ will be primarily responsible for and will personally supervise the services provided by Contractor hereunder, will give personal attention to the advice and recommendations made to City hereunder and will be available to City at all times that City, in its reasonable judgment, deems necessary or desirable.

2. Senior Project Manager/Director. Contractor shall assign _____ as Senior Project Manager from the commencement of the Work until Final Completion.

3. Project Engineer. Contractor shall assign _____ as Project Engineer from the commencement of the Work until Final Completion.

4. General Superintendent. Contractor shall assign _____ as General Superintendent from the commencement of the Work until Final Completion.

5. Superintendents. Contractor shall assign _____ as the Superintendents from the commencement of the Work until Final Completion.

6. Shift Foreman. Contractor shall assign _____ as Shift Foreman from the commencement of the Work until Final Completion.

7. Local Hiring and Diversity Participation Compliance Manager. Contractor shall assign _____ as the Local Hiring and Diversity Participation Compliance Manager from the commencement of the Work until Final Completion.

8. Health and Safety Officer. Contractor shall assign _____ as the Health and Safety Officer from the commencement of the Work until Final Completion.

9. Other Personnel. Contractor shall assign the persons listed on the Staff Chart attached to this Exhibit D, who shall be responsible for the job descriptions set forth next to each of their names for the durations set forth next to their names. **[Attach Staff Chart]**

10. Hourly Rates. Subject to the Personnel Amount, Contractor shall charge City for Personnel Expenses in accordance with the hourly rate schedule attached to this Exhibit D. **[Attach Hourly Rate Schedule]**

Exhibit E

Local Workforce Hiring Plan

The Local Hiring Plan shall be that Local Workforce Hiring Plan set forth in Contractor's proposal, ___ pages, a copy of which is attached to this Exhibit E.

This Exhibit E includes the following forms that were included in Contractor's proposal: (a) Local Hiring Policy Form 1: Local Hiring Workforce Projection; (b) Local Hiring Policy Form 2: Local Hiring Commitment, (c) Local Hiring Policy Form 3: Conditional Waivers, as necessary, and (d) Local Hiring Policy Form 4: Local Hiring Plan.

Exhibit F

Local EDGE, DBE, MBE, SBE, VBE and WBE Company Participation Plan

The Local EDGE, DBE, MBE, SBE, VBE and WBE Company Participation Plan shall be that Local DBE, EDGE, MBE, SBE, VBE and WBE-Certified Business Inclusion Plan set forth in Contractor's proposal, ___ pages, a copy of which is attached to this Exhibit F.

This Exhibit F includes the following forms that were included in Contractor's proposal: (a) Local EDGE, DBE, MBE, SBE, VBE and WBE Company Participation Plan—Part 1; and (b) Local EDGE, DBE, MBE, SBE, VBE and WBE Company Participation Plan—Part 2.

Exhibit G

List of Drawings, Specifications, Permits and other Documents and Information Upon Which the IGMP is Based

The Construction Drawings and Specifications are set forth in Hazel Storage Basin (CSO Rack 10 and 11) Project Volumes Three, Four, Five, Six and Seven, File No. 2015-032-00, as modified by Addenda Nos. _____, a copy of which has been provided to Contractor. The Project Considerations attached hereto as Exhibit G-1 are also included in and incorporated into this Exhibit G, subject to the Proposal Qualifications and Assumptions accepted by City and included in Exhibit K.

Exhibit G-1
Project Considerations
[See Attached]

Exhibit H

List of Approved Subcontractors and Suppliers

[Insert the list of Proposed Subcontractors included in the Proposal. City shall have the right to accept or reject such Proposed Subcontractors.]

Exhibit I

Description of General Conditions Items

[The Description of General Conditions Items submitted with Contractor's Proposal will be attached]

Exhibit J

Form of GMP Amendment

Pursuant to the Construction Manager at Risk Agreement For The _____ Project (the "Agreement"), dated as of _____, 2018, between the CITY OF AKRON, OHIO ("City"), and _____ ("Contractor"), City and Contractor desire to establish the guaranteed maximum price ("GMP") for the Work described in the Agreement. Therefore, City and Contractor agree as follows:

1. Contractor's GMP for the Work, including the Cost of the Work, the Pre-Construction Services Amount, Contractor's Fee, General Conditions Amount, Personnel Amount, and the Construction Contingency is _____ Dollars (\$_____).
2. Contractor's Fee for the Work shall be an amount equal to \$_____.
3. The Parties acknowledge that Contractor's Pre-Construction Services Amount is an amount equal to \$_____, which Pre-Construction Services Amount has already been paid in total to Contractor by City.
4. The General Conditions Amount shall be an amount equal to \$_____.
5. The Personnel Amount shall be an amount equal to \$_____.
6. The Construction Contingency for the Work shall be an amount equal to \$_____.
7. The attached Exhibits are a part of the Agreement as if each were physically incorporated therein.

Exhibit 1 Schedule of Values (including separate line items for the Pre-Construction Services Amount, Contractor's Fee, General Conditions Amount, Personnel Amount, and the Construction Contingency), dated _____, _____ pages.

Exhibit 2 Allowance items, dated _____, _____ pages.

Exhibit 3 List of GMP Documents (including list of the GMP Drawings and Specifications, the Prose Statement and Qualifications and Assumptions) dated _____, _____ pages.

Exhibit 4 Construction Schedule, dated _____, _____ pages.

Exhibit 5 Unit Prices, dated _____, _____ pages.

Exhibit 6 List of Alternates (if any), dated _____, _____ pages.

8. The Guaranteed Substantial Completion Date for the Work shall be _____, 201____. The scheduled date for Final Completion for the Project shall be _____, 201____.
9. By execution of this Amendment, Contractor acknowledges that, as of the date of this Amendment, (a) Contractor is not aware of, and has not reserved, any claim of Contractor against City, except as otherwise identified herein, and (b) the Work as shown in the GMP Documents can be constructed within the GMP listed in Section 1 above, subject to the terms of the Contract Documents.
10. Except as specifically amended herein, all of the provisions of the Agreement remain in full force and effect and all terms and conditions of the Agreement shall apply. In the event of an irreconcilable conflict between the terms of the Agreement and those of this Amendment, the terms of this Amendment shall control.

11. Capitalized words and phrases herein shall have the same meanings as are ascribed to such words in the Agreement and/or the General Conditions.

12. This Amendment may be executed by the parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

This Amendment is entered as of the ____ day of _____, 201__.

CITY:

CONTRACTOR

By: _____
John O. Moore
Director of Public Service

By: _____
Name: _____
Its: _____

Approved as to form and correctness:

Eve V. Belfance
Director of Law
City of Akron, Ohio

Exhibit K

Contractor's Proposal Form

[The Proposal Form submitted with Contractor's Proposal will be attached; include the Proposal Qualifications and Assumptions agreed to by City]

PROJECT FORMS & INFORMATION

1. Statement and Certification of Qualifications—SUBMIT
2. Non-Collusion Affidavit—SUBMIT
3. Local EDGE, DBE, MBE, VBE and WBE Company Participation Plan—Part 1 — SUBMIT
4. Local EDGE, DBE, MBE, VBE and WBE Company Participation Plan—Part 2 — SUBMIT
5. Local Hiring Policy Form 1: Local Hiring Workforce Projection—SUBMIT
6. Local Hiring Policy Form 2: Local Hiring Commitment—SUBMIT
7. Local Hiring Policy Form 3: Conditional Waivers—SUBMIT, as needed
8. Local Hiring Policy Form 4: Local Hiring Plan—SUBMIT
9. List of Subcontractors and Suppliers—SUBMIT
10. Independent Contractor Acknowledgement—SUBMIT
11. Certification of Nonsegregated Facilities—SUBMIT
12. Bidder Employment Practices Report—SUBMIT 2 COPIES
13. Labor Standards Interview Form—Information, but required by the selected firm
14. Form of Performance and Payment Bond—Information, to be submitted by selected firm later.
15. Contracts to Require Drug-Free Workplace Program (Ohio Revised Code 153.03)—Information
16. Income Tax Division, Project Subcontractor Report—Information, to be submitted by selected firm later.
17. Special Notices to Property Owners Abutting Project Site—Information. May be necessary to submit later.
18. Special Notices Hazardous and Toxic Substances—Information
19. Special Notices Tree and Lawn Care—Information
20. Instructions for Completing US Department of Labor Payroll Form, WH-347—Information
21. Payroll Form WH-347—Information. May be necessary to submit later.
22. Prevailing Wage, Contractor's Responsibilities—Information
23. Prevailing Wage, Inspector's Responsibilities—Information
24. Prevailing Rates of Wages—Information
25. Sample Certificate of Insurance--Information, to be submitted by selected firm later.
26. Sample Additional Insured Endorsements--Information, to be submitted by selected firm later.
27. Notice of City Holidays—Information

28. Equal Employment Opportunity Clause (Section 34.03 Code of Ordinances, Akron)—Information
29. Water Pollution Control Loan Fund/Water Supply Revolving Loan Account Projects Regulations and Forms—Information
 - a. Contractor Equal Employment Opportunity Certification—SUBMIT
 - b. Certification Regarding Debarment, Suspension, and Other Responsibility Matters w/ Instructions—SUBMIT, as necessary, to update what was included in the Qualification Statement
 - c. Disadvantaged Business Enterprises (DBE) Utilization—Information
 - EPA Form 6100-3 (DBE Subcontractor Performance Form)—SUBMIT
 - EPA Form 6100-4 (DBE Subcontractor Utilization Form)—SUBMIT
 - EPA Form 6100-2 (DBE Subcontractor Participation Form)—Information. To be submitted after subcontractor completes work
 - EPA Form 5700-52A (MBE/WBE Utilization)—Information. To be submitted quarterly by the selected firm.
 - d. Davis Bacon Wage Rate Requirements—Information
 - e. American Iron and Steel Acknowledgement—SUBMIT
 - Memorandum re: Implementation of American Iron and Steel Provisions—Information
 - American Iron & Steel Requirement of the Consolidated Appropriations Act of 2014—Information
 - Decision Memorandum re: DeMinimis Waiver of Section 436 of P.L. 113-76, Consolidated Appropriations Act (CAA) 2014—Information
 - Ohio Water Pollution Control Loan Fund, Use of American Iron & Steel- Di Minimis Final Utilization and Certification Form—Information. May be necessary to submit later.
 - f. Water Pollution Control Loan Fund/Water Supply Revolving Loan Account, Contract Change Order Form and Instructions—Information
 - g. Required Contract Provisions—Information
 - Violating Facilities Clause
 - Requirement for Utilization of Small Businesses in Rural Areas
 - Insurance Provisions
 - Materials Testing
 - Continuous Treatment Provisions
30. Project Labor Agreement and Amendment No. 1 to Project Labor Agreement (concrete) — Information

STATEMENT OF BIDDER'S QUALIFICATIONS

All bidders are required to submit evidence satisfactory to the Director of Public Service that the bidder meets the following requirements:

1. Minimum of three (3) years of experience in successful execution of work of similar magnitude under the current business name entity.
2. Successful completion of at least three (3) projects of similar nature and of comparable complexity.

The Service Director reserves the right to reject any bid which in his opinion fails to meet the above requirements. In the event that the lowest bidder is determined to be not qualified for the work, the Service Director may award the contract to the next lowest bidder or, at his option, reject all bids and re-advertise.

All questions must be answered and the data given must be clear and comprehensive. This statement must be notarized. If necessary, questions may be answered on separate sheets. The Bidder may submit any additional information he desires. Bidder should also complete and attach a key personnel chart similar to the form attached to this Statement.

1. Names of Bidder _____
2. Permanent main office address _____

3. When organized _____
4. _____ Corporation; where incorporated _____
_____ Partnership
_____ Sole Proprietorship
5. How many years have you been engaged in the contracting business under your present firm or trade name? _____
6. Contracts on hand: (Schedule these, showing amount of each contract and the appropriate dates of completion.)

7. General character of work performed by your company _____

8. Have you ever failed to complete any work awarded to you? _____
If so, where and why? _____

9. Have you ever defaulted on a contract? _____
If so, where and why? _____

- _____
- _____
10. Have you ever been assessed liquidated damages? _____
If yes, please list projects and explain circumstances _____
- _____
- _____
11. Have you ever had a contract rescinded? _____
If so, why? _____
12. Have you ever been cited for a prevailing wage violation? _____
If yes, indicate how long ago, and how it was resolved _____
- _____
13. Have you ever paid a fine for OSHA violations? _____
If yes, explain _____
- _____
14. List your major equipment available for this contract _____
- _____
- _____
15. Experience in construction work similar in nature to this project _____
- _____
16. Background and experience of the principal members of your organization, including officers. _____
- _____
- _____
17. Credit available \$ _____
18. Give bank reference _____
19. Upon request, contractor shall fill out a detailed financial statement and furnish any other information that may be required by the City of Akron, Ohio and requested by the Director of Public Service.
20. The undersigned hereby authorizes and requests any person, firm or corporation to furnish any information requested by the City of Akron, Ohio in verification of the recitals comprising this Statement of Bidder's Qualifications.
21. President's Name _____
22. Federal Identification Number _____

State of Ohio _____)

)

County of _____)

_____ Being duly sworn deposes and
says

(Name of Affiant)

that he is _____ of

(Affiant)

_____ and that the answers to
the

(Name of Organization)

foregoing questions and all statements therein contained are true and correct.

(Affiant)

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

Notary Public

My Commission Expires _____

Contractor's Key Personnel and Staff Chart

[Note: To be provided by Contractor and agreed to by City]

1. Project Executive. _____ will be primarily responsible for and will personally supervise the services provided by Contractor hereunder, will give personal attention to the advice and recommendations made to City hereunder and will be available to City at all times that City, in its reasonable judgment, deems necessary or desirable.
2. Senior Project Manager/Director. Contractor shall assign _____ as Senior Project Manager from the commencement of the Work until the Contract Completion Date.
3. Project Engineer. Contractor shall assign _____ as Project Engineer from the commencement of the Work until the Contract Completion Date.
4. General Superintendent. Contractor shall assign _____ as General Superintendent from the commencement of the Work until the Contract Completion Date.
5. Superintendents. Contractor shall assign _____ as the Superintendents from the commencement of the Work until the Contract Completion Date.
6. Shift Foreman. Contractor shall assign _____ as Shift Foreman from the commencement of the Work until the Contract Completion Date.
7. Local Hiring and Diversity Participation Compliance Manager. Contractor shall assign _____ as the Local Hiring and Diversity Participation Compliance Manager from the commencement of the Work until the Contract Completion Date.
8. Health and Safety Officer. Contractor shall assign _____ as the Health and Safety Officer from the commencement of the Work until the Contract Completion Date.
9. Other Personnel. Contractor shall assign the persons listed on the Staff Chart attached to this Exhibit D, who shall be responsible for the job descriptions set forth next to each of their names for the durations set forth next to their names. **[See Attached Staff Chart]**

NON-COLLUSION AFFIDAVIT

This affidavit is to be filled out and executed by the bidder; if the bid is made by a corporation, then by its property authorized agent.

The name of the individual swearing to the affidavit should always appear on the line marked "Name of Affiant."

The Affiant's capacity, when a partner or officer of a corporation, should be inserted on lines marked "Affiant."

The Affiant should sign individual name at end, not partnership nor corporation name, and swear to said affidavit before a notary public, who must attach his seal.

STATE OF _____)
) SS.
COUNTY OF _____)

_____ being duly sworn deposes
(Name of Affiant)

and says that he is _____ of
(Affiant)

_____ resides
(Name of Organization)

at _____

_____ and

that _____
(Give names of all persons, firms, or corporations interested in bid)

_____ are the only persons interested with them in the profits of the herein contained contract; that the said contract is made without any connection or interest in the profits with any other person making any bid or proposal for said work; that the said contract is on their part, in all respects fair, and without collusion or fraud; and also that no member of any Council, head of any department or bureau, or employee therein, or any officer of the City of Akron, is directly or indirectly interested therein. (See following page.)

(Affiant)

Subscribed and sworn this _____ day of _____ 20____

before me _____

(Notary Public)
My Commission Expires _____

In addition to giving the names of persons, firms and corporations interested in the bids, should the contractor desire to sublet any portion his work, he must submit the names of all subcontractors (form provided, see Section 3, Subsection 3), to the City Engineer (Bureau of Engineering, Department of Public Service, the City of Akron) with this proposal at such a time that he is determined to be the successful bidder.

Ordinance No. 616-1970, Section 3, Paragraphs 6 and 7, also requires the contractor shall and cause his subcontractors, if any, to file compliance reports with the City...” and that the contractor shall include the provisions of Paragraphs 1 through 8 of the Equal Opportunity Clause in every subcontract...”

Pursuant to this, every contract executed by the contractor between himself and any subcontractor shall contain, as an integral part, the provisions of Section 3, Paragraphs 1 through 8, of Ordinance No. 616-1970.

The subcontract shall not be executed until the City Engineer has approved the above-mentioned list of subcontractors.

City of Akron

Local EDGE, DBE , MBE, SBE, VBE and WBE Company Participation Plan - Part 1

(Subcontractors/Vendors must be located within the City of Akron Corp Limits to apply to local participation)

Local Project Goals	Total Bid Amount	\$	Percentage of Total Bid					
	15 % EDGE/DBE/MBE/SBE	\$						
	3 % WBE	\$						
Subcontractor/Vendor	Address (within City Corp Limits)	Description of Work	EDGE Amount	DBE Amount	MBE Amount	SBE Amount	VBE Amount	WBE Amount
			Total Amount					
			Percentage of Total Bid					

Attach additional pages as needed.

*Contractor may submit alternates post-bid in accordance with the Contract Documents.

For a current list of qualified local diversity contractors visit the Akron Engineering website at <http://www.akronohio.gov/cms/engineering/main/index.html>
Click on *Local Diversity Contractors* under *Additional Resources* on the right side of the webpage.

City of Akron

Local EDGE, DBE, MBE, SBE, VBE and WBE Company Participation Plan - Part 1

(Subcontractors/Vendors must be located within the City of Akron Corp Limits to apply to local participation)

Local Project Goals	Percentage of							
	Total Bid Amount	\$4,000,000	Total Bid					
	15 % EDGE/DBE/MBE/SBE	\$600,000	15.00%					
3 % WBE	\$140,000	3.50%						
Subcontractor/Vendor	Address (within City Corp Limits)	Description of Work	EDGE Amount	DBE Amount	MBE Amount	SBE Amount	VBE Amount	WBE Amount
Ex. ABC Excavating	12 E. Market St	excavating	\$250,000					
Ex. Fences R Us	34 W. Market St	installing fence						\$140,000
Ex. Hauling	56 S. Main St	trucking		\$150,000				
Ex. Services	78 N. Main St	concrete			\$200,000			
Total Amount			\$250,000	\$150,000	\$200,000	\$0	\$0	\$140,000
Percentage of Total Bid			6.25%	3.75%	5.00%	0.00%	0.00%	3.50%

Attach additional pages as needed.

*Contractor may submit alternates post-bid in accordance with the Contract Documents.

For a current list of qualified local diversity contractors visit the Akron Engineering website at <http://www.akronohio.gov/cms/engineering/main/index.html>

Click on *Local Diversity Contractors* under *Additional Resources* on the right side of the webpage.

EXAMPLE

City of Akron

Local EDGE, DBE, MBE, SBE, VBE and WBE Company Participation Plan - Part 2

Provide a plan for utilizing local EDGE, DBE, MBE, SBE, VBE and WBE certified firms as subcontractors.

Identify contractor activities to *ACHIEVE* the City's Local EDGE, DBE, MBE, SBE, VBE and WBE Goals.

Identify contractor activities to *MONITOR* the City's Local EDGE, DBE, MBE, SBE, VBE and WBE Goals.

FORM 1: LOCAL HIRING WORKFORCE PROJECTION

Contractor: _____ Project _____
 Name: _____

Required Local Hire Percentage for Project: _____%

Are you requesting a bid credit: _____

The Contractor must complete and submit Form 1 with its bid.

Will you be able to meet the mandatory Local Hiring Requirements?

- YES (Please provide information for all trades performing construction work)
 NO (Please complete this Form 1 and Form 3: Conditional Waivers)

INSTRUCTIONS:

1. Please organize the information based on each Trade Craft.
2. If you anticipate utilizing apprentices on this project, please note the requirements for apprentice hours that must be performed by Akron residents.
3. If the Engineer's Estimate for the Project exceeds \$500,000 contractor must fill out Form 2 within 15 days of Notice of Award or, if requesting a bid credit, with its bid
4. You may use additional copies of Form 1 if necessary.

WORKFORCE PROJECTION

Trade Craft		Est. Total Work Hours	Est. Total Local Work Hours	Est. Total Local Work Hours %
	<i>Journey</i>			
	<i>Apprentice</i>			
	<i>Journey</i>			
	<i>Apprentice</i>			
	<i>Journey</i>			
	<i>Apprentice</i>			
	<i>Journey</i>			
	<i>Apprentice</i>			
	<i>Journey</i>			
	<i>Apprentice</i>			
Total	<i>Journey</i>			
	<i>Apprentice</i>			
Total Project				

Name of Authorized Representative Signature Date Phone Email

FORM 1: LOCAL HIRING WORKFORCE PROJECTION

Contractor: _____ Project Name: _____

Required Local Hire Percentage for Project: _____%

Are you requesting a bid credit: _____

The Contractor must complete and submit Form 1 with its bid.

Will you be able to meet the mandatory Local Hiring Requirements?

- YES (Please provide information for all trades performing construction work)
- NO (Please complete this Form 1 and Form 3: Conditional Waivers)

INSTRUCTIONS:

1. Please organize the information based on each Trade Craft.
2. If you anticipate utilizing apprentices on this project, please note the requirements for apprentice hours that must be performed by Akron residents.
3. If the Engineer's Estimate for the Project exceeds \$500,000 contractor must fill out Form 2 within 15 days of Notice of Award or, if requesting a bid credit, with its bid
4. You may use additional copies of Form 1 if necessary.

WORKFORCE PROJECTION

Trade Craft		Est. Total Work Hours	Est. Total Local Work Hours	Est. Total Local Work Hours %
<i>Example: Laborer</i>	Journey	1500	600	40%
	Apprentice	200	100	50%
<i>Example: Electrician</i>	Journey	500	150	30%
	Apprentice	150	50	33%
	Journey			
	Apprentice			
	Journey			
	Apprentice			
	Journey			
	Apprentice			
Total	Journey	2000	750	35%
	Apprentice	350	150	43%
Total Project		2350	900	38%

 Name of Authorized Representative Signature Date Phone Email

FORM 2: LOCAL HIRING COMMITMENT

Contractor: _____ Project Name: _____

If the Engineer's Estimate for this Project exceeds **\$500,000**, then Contractor must submit a Local Hiring Commitment using this Form 2. Contractor must fill out Form 2, for known Subcontractors with its bid. If not submitted with bid, is required prior to award. The Notice to Proceed (NTP) will not be issued until Contractor submits a completed Form 2. Contractor shall be responsible for any delays to the NTP and resulting damages incurred by the City caused by the Contractor's failure to submit a completed Form 2 in a timely manner. The Local Hiring Plan (Forms 1, 2, 3 and 4) must be approved in writing by the City before any Application for Payment can be approved and progress payment paid to Contractor. The approved Local Hiring Plan will be a Contract Document and will be the basis for determining Contractor's and its Subcontractors' compliance with the local hiring requirements. Any approved Conditional Waivers (Form 3) will be incorporated into the approved Local Hiring Plan.

COMPLETE AND SUBMIT A SEPARATE FORM 2 FOR EACH TRADE THAT WILL BE UTILIZED ON THIS PROJECT.

INSTRUCTIONS:

1. Please complete tables below for Contractor and all Subcontractors that will be contributing Project Work Hours to meet the Local Hiring Requirement.
2. If you anticipate utilizing apprentices on this project, please note the requirements for apprentice hours that must be performed by Akron residents.
3. The Contractor and each Subcontractor identified in the Local Hiring Plan must sign this form before it will be considered for approval

List Trade Craft. Add numerical values from Form 1: Local Hiring Workforce Projection and input in the table below.

Trade Craft	Total Journey Work Hours	Total Local Journey Work Hours	Local Journey Work Hours %	Total Apprentice Work Hours	Total Local Apprentice Work Hours	Local Apprentice Work Hours %

List all subcontractors contributing to the project work hours to meet the Local Hiring Requirements for the above Trade Craft.

Contractor and Authorized Representative	Local Journey Hours	Local Apprentice Hours	Total Local Work Hours	Total Work Hours	Percentage of Local Hours	*Contractor Signature

***We the undersigned, have reviewed Form 2 and agree to deliver the hours set forth in this document.**

City Use Only
City Approval <input type="checkbox"/> Yes <input type="checkbox"/> No
Signature and Date: _____

FORM 3: LOCAL HIRING - CONDITIONAL WAIVERS

Contractor: _____ Project Name: _____

Upon approval from the City, Contractors and Subcontractors may use the following mechanisms to receive a Conditional Waiver from the Local Hiring Requirements on a project-specific basis. Conditional Waivers must be approved by the City prior to approval of Contractor's first Application for Payment. The City will require, in its sole discretion, any additional information necessary to grant a waiver. Contractor may use additional copies of this Form 3 if necessary

WAIVER INFORMATION: Please provide information on the waiver you are requesting:						
	Est. Total Work Hours	Required Local Work Hours		Est. Total Local Work Hours	Deficiency	

Please circle the following Conditional Waivers and complete the appropriate boxes for approval:
 o 1. SPONSORING APPRENTICES o 2. CREDIT FOR NON-COVERED PROJECTS

1 SPONSORING APPRENTICES: Will you be able to to sponsor a specified number of new local apprentices in the agreeable trades in approved apprenticeship programs?	<input type="checkbox"/> Yes	<input type="checkbox"/> No				
PLEASE PROVIDE DETAILS:	Est. # of Sponsees	Union (Yes/No)	If Yes, Local #	Est. Start Date	Est. Duration of Working Days	Est. Total Work Hours Performed
Construction Trade		<input type="checkbox"/> Y <input type="checkbox"/> N				
		<input type="checkbox"/> Y <input type="checkbox"/> N				
City Approval: <input type="checkbox"/> YES <input type="checkbox"/> NO				City Signature:		

2 CREDIT for HIRING on NON-COVERED PROJECTS: If your firm cannot meet the mandatory local hiring requirement, will you be requesting credit for hiring Local Residents on Non-covered Projects?	<input type="checkbox"/> Yes	<input type="checkbox"/> No		
PLEASE PROVIDE DETAILS:	Total Work Hours	Total Local Work Hours Performed	Excess Hours Over Required %	Non Covered Project Name
Labor Trade, Position, or Title				
Journey				
Apprentice				
City Approval: <input type="checkbox"/> YES <input type="checkbox"/> No				City Signature:

FORM 4: LOCAL HIRING PLAN

Contractor:

**Project
Name:**

This plan is required at the time of bid.

Provide a plan for meeting the mandatory local hiring requirements with local labor or subcontractors.

Identify CONTRACTOR activities to achieve the City's Local hiring requirements.

Identify CONTRACTOR activities to monitor City's Local Hiring Requirements.

LIST OF SUBCONTRACTORS

Each proposer shall submit the name of all subcontractors (if any) intended to be used under this contract. Name and the phase of work to be accomplished by the subcontractor shall be listed.

Additional sheets may be submitted, supplementing the above information and elaborating on the method used to handle this project.

The Director of Public Service reserves the right of approval for any or all names listed, which approval shall not be withheld unless it is apparent to the Director that said subcontractor(s) is incapable of satisfactory performance.

No changes shall be made without the written approval of the Director of Public Service.

PHASE OF WORK	NAME AND ADDRESS
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NOTE: This list is requested to be submitted at the time of RFP. At the City's discretion, it may be required to be submitted for review as a condition of award of the contract. In all cases, it must be received no later than ten days after notice of award of the contract.

LIST OF SUPPLIERS

Each proposer shall submit the name of all suppliers of materials and supplies intended to be used under this contract. Name and the phase of work to be accomplished by the suppliers shall be listed.

Additional sheets may be submitted, supplementing the above information and elaborating on the method used to handle this project.

The Director of Public Service reserves the right of approval for any or all names listed, which approval shall not be withheld unless it is apparent to the Director that said supplier(s) are incapable of satisfactory performance.

No changes shall be made without the written approval of the Director of Public Service.

PHASE OF WORK

NAME AND ADDRESS

PHASE OF WORK	NAME AND ADDRESS
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CERTIFICATION OF NONSEGREGATED FACILITIES

(Applicable to federally assisted construction contracts and related subcontracts exceeding \$10,000 which are not exempt from the Equal Opportunity clause.)

The federally assisted construction contractor certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments and that he does not permit his employees to perform their services at any location under this control where segregated facilities are maintained. The federally assisted construction contractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work area, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color or national origin, because of habit, local custom or otherwise. The federally assisted construction contractor agrees that (except where he has obtained identical certifications from proposed contractors for specific time periods) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause and that he will retain such certifications in his files.

Signature

Date

Name and Title of Signer (Please Type or Print)

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

**ADDENDUM TO THE
CITY OF AKRON
DEPARTMENT OF PUBLIC SERVICES
BUREAU OF ENGINEERING
CONSTRUCTION AND MATERIAL SPECIFICATIONS
2008 EDITION**

INDEPENDENT CONTRACTOR ACKNOWLEDGMENT

Contractor hereby acknowledges that he or she is an independent contractor engaged for a limited period to complete the above-described job or project.

Contractor further acknowledges that contractor:

- 1, is either an entity recognized by the National Labor Relations Board and having its own collective bargaining agreement; or
2. has performed all necessary job safety analyses of tasks to be performed by contractor's employees, staff, agents, and/or crew; contractor has in place all required written OSHA plans; contractor has conducted all necessary OSHA training; and contractor has furnished, or will furnish, all OSHA-required personal protective equipment.

Contractor further agrees to assume full legal responsibility for any and all actions taken by, or injuries occurring to, contractor's employees, staff, agents, and/or crew; and agrees to indemnify and hold the City of Akron harmless for any safety violations or injuries to persons or property caused by contractor's employees, staff, agents, and/or crew.

Contractor: _____
(Company Name)

Date: _____

By: _____
(Signature)

Date: _____

BIDDER EMPLOYMENT PRACTICES REPORT



OFFICE OF CONTRACT COMPLIANCE

HUMAN & COMMUNITY RELATIONS COMMISSION • CITY OF AKRON
161 South High Street / Akron, Ohio 44308
Suite 202

I. INSTRUCTIONS

- A. EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENT:** This form is designed to provide an evaluation of your policies and practices relating to the extension of equal employment opportunity to all persons without regard to race, religion, color, sex, sexual orientation, gender identity or national origin.

Ordinance, 616-1970, Rev. (Ord. No. 514-2009, § 3, 11-30-09) Sections A thru H of the City of Akron and the rules and regulations pursuant thereto provide for contract compliance inspection of personnel policies and practices related to any contract with the City including contracts for work, labor, services, supplies, equipment, materials, leases, concessions agreements, and permits.

- B. BIDDER PERFORMANCE:** Completion of this Bidder Employment Practices Report is one of the steps which demonstrates compliance with the City's Equal Employment Opportunity Program. Responsibility for demonstrating compliance with this Program by the Contractor and his subcontractors rests with the contractor or subcontractor. Such demonstration is a prerequisite for continued eligibility for bidding on City of Akron contracts.

- C. FILING THIS REPORT:** Return this completed report in DUPLICATE along with other appropriate bid documents to the CONTRACTING CITY AGENCY. Inquires related to this report should be directed to the Contract Compliance Office, 161 South High Street, Suite 202, Akron, OH 44308.

II. BIDDER INFORMATION

1. REPORTING STATUS	
<input type="checkbox"/> a. Prime contractor <input type="checkbox"/> b. Prime subcontractor <input type="checkbox"/> c. Supplier <input type="checkbox"/> d. Other (specify)	
2. NAME, ADDRESS AND TELEPHONE NUMBER OF BIDDER COVERED BY THIS REPORT	
3. NAME, ADDRESS AND TELEPHONE NUMBER OF PRINCIPAL OFFICIAL OR MANAGER OF BIDDER	
4. NAME AND ADDRESS OF PRINCIPAL OFFICE OF BIDDER	
5. CONTRACTING CITY AGENCY (OR AGENCIES)	
6. SIGNATURE AND TITLE OF BIDDER'S AUTHORIZED EQUAL EMPLOYMENT OPPORTUNITY REPRESENTATIVE	DATE

EVALUATION (LEAVE BLANK)

- Compliance
- Non-Compliance

Follow-up_____

III. POLICIES and PRACTICES

The bidder will indicate his willingness or unwillingness to comply with the requirements of the Equal Employment Opportunity Program of the City of Akron by encircling the applicable letter to the left of each item below. The letters are to be interpreted as follows:

- A - This is now a practice of the Company.
- B - The Company will adopt this policy.
- C - The Company cannot or will not adopt this policy. (If "C" is circled, state reason. Use separate sheet if additional space is needed.)

It is understood that the Company's willingness to participate in the Equal Employment Opportunity Program will be evaluated by the Office of Contract Compliance. This evaluation will directly influence our decision on the qualifications of each bidder and is an integral part of your bid.

CIRCLE ONE	ITEMS	STATE REASON IF (C) IS CIRCLED
A B C	1. The Company will adopt a policy of non-discrimination on the basis of race, religion, color, sex, sexual orientation, gender identity or national origin with regard to recruitment, hiring, training, upgrading, promotion and discipline of employees or applicants for employment.	
A B C	2. The Company will assign responsibility to one of its officials to develop procedures which will assure that this policy is understood and carried out by managerial, administrative and supervisory personnel. Official's Name _____ Title _____	
A B C	3. The Company will state its non-discriminatory policy in writing and communicate it to the following: a. All employees c. All relevant employee organizations including labor unions b. All recruitment sources d. All subcontractors	
A B C	4. The Company will use recruitment sources such as employment agencies, unions, and schools which have a policy of referring applicants on a non-discriminatory basis.	
A B C	5. The Company will sponsor or finance educational or training programs for the benefit of employees or prospective employees without regard to race, religion, color, sex, sexual orientation, gender identity or national origin.	
A B C	6. Company recruiters will seek a broad recruitment base in order that a representative cross-section of applications might be obtained; and will refrain from a hiring policy which limits job applicants to persons recommended by company personnel.	
A B C	7. The Company will take steps to integrate any positions, departments, or plant locations which have no minority persons or are almost completely staffed with one particular ethnic or racial group.	
A B C	8. Answer only if you are a "Construction Contractor." In order to achieve an integrated workforce the Company will employ minority workers in each trade.	
A B C	9. The Company will review its qualifications for each job to determine whether such standards eliminate unemployed persons who could, if hired, perform the duties of the job adequately. The following qualifications should be reviewed: a. education b. experience c. tests d. arrest records	
A B C	10. Residence in a particular geographical area will not be a qualifying or disqualifying criterion for employment with the Company.	
A B C	11. The Company will provide that all bargaining agreements with employee organizations, including labor unions, have non-discrimination clauses requiring equal employment opportunity.	

IV. EMPLOYMENT DATA

Please note that these data may be obtained by visual survey or post-employment records. Neither visual surveys nor post-employment records are prohibited by any federal, state or local law. All specified data are required to be filled in by law.

JOB CATEGORIES	ALL EMPLOYEES			MINORITY GROUP EMPLOYEES								
	TOTAL MALE & FEMALE	MALE	FEMALE	MALE				FEMALE				
				African American	Asian American	Native American	Hispanic American	African American	Asian American	Native American	Hispanic American	
Officials, Managers and Supervisors												
Professionals												
Technicians												
Sales Workers												
Office and Clerical												
Craftsmen (Skilled)												
Operatives (Semi-skilled)												
Laborers (Unskilled)												
Service Workers												
Apprentices												
TOTAL												
Total employment from previous report (if any)												

REMARKS

Use this space to give any identification data appearing on last report which differs from that given above, explain major changes in employment, changes in composition of reporting units, and other pertinent information.

The undersigned certifies that he is legally authorized by the bidder to make the statements and representations contained in this report; that he has read all of the foregoing statements and representations and that they are true and correct to the best of his knowledge and belief. The undersigned, understands that if any of the statements and representations are made knowing them to be false or there is a failure to implement any of the stated intentions or objectives, set forth herein, without prior notice to the Office of Contract Compliance, the bidder will be subject to the loss of all future awards.

Firm or Corporate Name _____ Date of Signing _____

Signature _____ Title _____

Signature _____ Title _____

V. ADDITIONAL INFORMATION (Optional)

Describe any other actions taken which show that all employees are recruited, hired, trained, and promoted without regard to their race, religion, color, sex, or national origin. Use separate sheet if additional space is needed.

VI. DESCRIPTION OF OCCUPATIONAL CATEGORIES

Officials, managers and supervisors - Occupations requiring administrative personnel who set broad policies, exercise over-all responsibility for execution of these policies, and direct individual departments or special phases of a firm's operations. Includes: officials, executives, middle management, plant managers, department managers and superintendents, salaried foremen who are members of management, purchasing agents and buyers, and kindred workers.

Professionals - Occupations requiring either college graduation or experience of such kind and amount as to provide a comparable background. Includes: accountants and auditors, airplane pilots and navigators, architects, artists, chemists, designers, editors, engineers, lawyers, librarians, mathematicians, natural scientists, personnel and labor relations workers, physical scientists, physicians, social scientists, teachers, surveyors, and kindred workers.

Technicians - Occupations requiring a combination of basic scientific knowledge and manual skill which can be obtained through about 2 years of post high school education, such as is offered in many technical institutes and junior colleges, or through equivalent on-the-job training. Includes: draftsmen, engineering aids, junior engineers, mathematical aides, nurses, photographers, radio operators, scientific assistants, technical illustrators, technicians (medical, dental, electronic physical sciences), and kindred workers.

Sales workers - Occupations engaging wholly or primarily in direct selling. Includes: advertising agents and salesmen, insurance agents and brokers, real estate agents and brokers, stock and bond salesmen, demonstrators, salesmen and sales clerks, and kindred workers.

Office and Clerical - Includes all clerical-type work regardless of level of difficulty, where the activities are predominantly non-manual though some manual work not directly involved with altering or transporting the products is included. Includes: bookkeepers, cashiers, collectors (bills and accounts), messengers and office boys, office machine operators, shipping and receiving clerks, stenographers, typists and secretaries, telegraph and telephone operators, and kindred workers.

Craftsmen (skilled) - Manual workers of relatively high skill level having a thorough and comprehensive knowledge of the processes involved in their work. Exercise considerable independent judgment and usually receive an extensive period of training. Includes: the building trades hourly paid foremen and leadmen who are not members of management, mechanics and repairmen, skilled machining occupations, compositors and typesetters, electricians, engravers, job setters (metal), motion picture projectionists, pattern and model makers, stationary engineers, tailors and tailoresses, and kindred workers.

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Service workers - Workers in both protective and non-protective service occupations, Includes: attendants (hospital and other institution, professional and personal service), barbers, chairwomen and cleaners, cooks (except household), counter and fountain workers, elevator operators, firemen and fire protection, guards, watchmen and doorkeeper, stewards, janitors, policemen and detectives, porters, waiters and waitresses, and kindred workers.

Apprentices - Persons employed in a program including work training and related instruction to learn a trade or craft which is traditionally considered an apprenticeship, regardless of whether the program is registered with a Federal or State agency.

BIDDER EMPLOYMENT PRACTICES REPORT



OFFICE OF CONTRACT COMPLIANCE

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6. SIGNATURE AND TITLE OF BIDDER'S AUTHORIZED EQUAL EMPLOYMENT OPPORTUNITY REPRESENTATIVE	DATE

EVALUATION (LEAVE BLANK)

- Compliance
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Follow-up_____

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A B C	3. The Company will state its non-discriminatory policy in writing and communicate it to the following: a. All employees c. All relevant employee organizations including labor unions b. All recruitment sources d. All subcontractors	
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A B C	6. Company recruiters will seek a broad recruitment base in order that a representative cross-section of applications might be obtained; and will refrain from a hiring policy which limits job applicants to persons recommended by company personnel.	
A B C	7. The Company will take steps to integrate any positions, departments, or plant locations which have no minority persons or are almost completely staffed with one particular ethnic or racial group.	
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TOTAL												
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The undersigned certifies that he is legally authorized by the bidder to make the statements and representations contained in this report; that he has read all of the foregoing statements and representations and that they are true and correct to the best of his knowledge and belief. The undersigned, understands that if any of the statements and representations are made knowing them to be false or there is a failure to implement any of the stated intentions or objectives, set forth herein, without prior notice to the Office of Contract Compliance, the bidder will be subject to the loss of all future awards.

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Service workers - Workers in both protective and non-protective service occupations, Includes: attendants (hospital and other institution, professional and personal service), barbers, chairwomen and cleaners, cooks (except household), counter and fountain workers, elevator operators, firemen and fire protection, guards, watchmen and doorkeeper, stewards, janitors, policemen and detectives, porters, waiters and waitresses, and kindred workers.

Apprentices - Persons employed in a program including work training and related instruction to learn a trade or craft which is traditionally considered an apprenticeship, regardless of whether the program is registered with a Federal or State agency.



The City of Akron

Contract Labor Compliance Review

EEO/Prevailing Wage Employee Interview Form

Interviewer's Name:	Project Name/Number:
Prime Contractor:	Funding Source:
County:	Date of Interview:

Employee Name: _____ Employer: _____

Employee Address: _____

Employee Job Classification: _____ Journeyman ____ Apprentice ____

Length of time in this classification: _____ Length of time working with this contractor: _____

Hourly pay rate _____ Paid time & ½ for all hrs worked over 40 hrs per/week? Yes ____ No ____

Union/Local # _____ Non-Union _____ If Non-Union are fringe benefits paid? _____

What type of work are you performing today? _____

Do you keep a daily record of the hours and type of work you perform? Yes ____ No ____

Do you keep your paystubs? Yes ____ No ____

Are you asked to perform work outside of your classification? Yes ____ No ____

Are you paid weekly? Yes ____ No ____ Bi-Weekly? Yes ____ No ____ Other? Yes ____ No ____

Method of payment: cash ____ check ____ other ____ Direct Deposit

Has any money ever been deducted from your check which you feel should not have been?

Yes ____ No ____

If yes please explain _____

Has anyone from your company ever asked you to give back part of your paycheck? Yes _____ No _____

If yes please explain _____

Have you ever had a problem with your pay on this project? Yes _____ No _____

If yes please explain _____

Where is the project bulletin board located? _____

Who is the company EEO Officer? _____

Has the company EEO Officer visited this project? Yes _____ No _____

Have you attended an EEO meeting while working on this project? Yes _____ No _____

Was sexual harassment discussed? Yes _____ No _____

When did you attend the meeting? _____

Have you experienced any problems with equal treatment, sexual harassment, etc. while working on this project? Yes _____ No _____

If yes please explain _____

Do you feel that work assignments are made on an equal basis? Yes _____ No _____

If no please explain _____

Have you worked for any other contractors during this construction season? Yes _____ No _____

If yes; who? _____

Have you worked for 2 or more contractors on the same project? Yes _____ No _____

If yes; what contractors? _____

Comments: _____

Recorded by: _____

Date: _____

PERFORMANCE AND PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS:

THAT WE, the undersigned _____ as Principal Contractor, and _____ as Surety are hereby held and firmly bound unto the CITY OF AKRON, OHIO in the penal sum of _____ dollars (\$_____) for payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns.

Signed this _____ day of _____, 20__.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That whereas the above named Principal did on _____, 20__, enter into a contract with THE CITY OF AKRON, OHIO which said contract is made a part of this bond, the same as though set forth herein.

NOW, if the said Principal Contractor shall well and faithfully do and perform the things agreed by them to be done and performed according to the terms of said contract, and to maintain said improvement in accordance with Section 103.05 and 109.10, of the General Specifications, and shall pay all lawful claims of sub-contractors, material men and laborers for labor performed and materials furnished in carrying forward, performing or completing of said contract; we agreeing and assenting that this undertaking shall be for the benefits of any material man or laborer having just claim, as well as for the obligee herein, then this obligation shall be void, otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the surety for any and all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated.

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

Signed, sealed and acknowledged in the presence of

Witness

Witness

Witness

Witness

Contractor

Surety

Ohio Revised Code 153.03

Contracts to require drug-free workplace program.

(A) As used in this section:

(1) "Contracting authority" means any state agency or other state instrumentality that is authorized to award a public improvement contract.

(2) "Bidder" means a person who submits a bid to a contracting authority to perform work under a public improvement contract.

(3) "Contractor" means any person with whom a contracting authority has entered into a public improvement contract to provide labor for a public improvement.

(4) "Subcontractor" means any person who undertakes to provide any part of the labor on the site of a public improvement under a contract with any person other than the contracting authority, including all such persons in any tier.

(5) "Construction manager" means a person with substantial discretion and authority to plan, coordinate, manage, and direct all phases of a project for the construction, demolition, alteration, repair, or reconstruction of any public building, structure, or other improvement.

(6) "Labor" means any activity performed by a person that contributes to the direct installation of a product, component, or system, or that contributes to the direct removal of a product, component, or system.

(7) "Public improvement contract" means any contract that is financed in whole or in part with money appropriated by the general assembly, or that is financed in any manner by a contracting authority, and that is awarded by a contracting authority for the construction, alteration, or repair of any public building, public highway, or other public improvement.

(8) "State agency" means every organized body, office, or agency established by the laws of this state for the exercise of any function of state government.

(B) A contracting authority shall not award a public improvement contract to a bidder unless the contract contains both of the following:

(1) The statements described in division (E) of this section;

(2) Terms that require the contractor to be enrolled in and be in good standing in the drug-free workplace program of the bureau of workers' compensation or a comparable program approved by the bureau that requires an employer to do all of the following:

(a) Develop, implement, and provide to all employees a written substance use policy that conveys full and fair disclosure of the employer's expectations that no employee be at work with alcohol or drugs in the employee's system, and specifies the consequences for violating the policy.

(b) Conduct drug and alcohol tests on employees in accordance with division (B)(2)(c) of this section and under the following conditions:

(i) Prior to an individual's employment or during an employee's probationary period for employment, which shall not exceed one hundred twenty days after the probationary period begins;

(ii) At random intervals while an employee provides labor or onsite supervision of labor for a public improvement contract. The employer shall use the neutral selection procedures required by the United States department of transportation to determine which employees to test and when to test those employees.

(iii) After an accident at the site where labor is being performed pursuant to a public improvement contract. For purposes of this division, "accident" has the meaning established in rules the administrator of workers' compensation adopts pursuant to Chapters 4121. and 4123. of the Revised Code for the bureau's drug-free workplace program, as those rules exist on the effective date of this section.

(iv) When the employer or a construction manager has reasonable suspicion that prior to an accident an employee may be in violation of the employer's written substance use policy. For purposes of this division, "reasonable suspicion" has the meaning established in rules the administrator adopts pursuant to Chapters 4121. and 4123. of the Revised Code for the bureau's drug-free workplace program, as those rules exist on the effective date of this section.

(v) Prior to an employee returning to a work site to provide labor for a public improvement contract after the employee tested positive for drugs or alcohol, and again after the employee returns to that site to provide labor under that contract, as required by either the employer, the construction manager, or conditions in the contract.

(c) Use the following types of tests when conducting a test on an employee under the conditions described in division (B)(2)(b) of this section:

(i) Drug and alcohol testing that uses the federal testing model that the administrator has incorporated into the bureau's drug-free workplace program;

(ii) Testing to determine whether the concentration of alcohol on an employee's breath is equal to or in excess of the level specified in division (A)(1)(d) or (h) of section [4511.19](#) of the Revised Code, which is obtained through an evidentiary breath test conducted by a breath alcohol technician using breath testing equipment that meets standards established by the United States department of transportation, or, if such technician and equipment are unavailable, a blood test may be used to determine whether the concentration of alcohol in an employee's blood is equal to or in excess of the level specified in division (A)(1)(b) or (f) of section [4511.19](#) of the Revised Code.

(d) Require all employees to receive at least one hour of training that increases awareness of and attempts to deter substance abuse and supplies information about employee assistance to deal with substance abuse problems, and require all supervisors to receive one additional hour of training in skill building to teach a supervisor how to observe and document employee behavior and intervene when reasonable suspicion exists of substance use;

(e) Require all supervisors and employees to receive the training described in division (B)(2)(d) of this section before work for a public improvement contract commences or during the term of a public improvement contract;

(f) Require that the training described in division (B)(2)(d) of this section be provided using material prepared by an individual who has credentials or experience in substance abuse training;

(g) Assist employees by providing, at a minimum, a list of community resources from which an employee may obtain help with substance abuse problems, except that this requirement does not preclude an employer from having a policy that allows an employer to terminate an employee's employment the first time the employee tests positive for drugs or alcohol or if an employee refuses to be tested for drugs, alcohol, or both.

(C) Any time the United States department of health and human services changes the federal testing model that the administrator has incorporated into the bureau's drug-free workplace program in a manner that allows additional or new products, protocols, procedures, and standards in the model, the administrator may adopt rules establishing standards to allow employers to use those additional or new products, protocols, procedures, or standards to satisfy the requirements of division (B)(2)(c) of this section, and the bureau may approve an employer's drug-free workplace program that meets the administrator's standards and the other requirements specified in division (B)(2) of this section.

(D) A contracting authority shall ensure that money appropriated by the general assembly for the contracting authority's public improvement contract or, in the case of a state institution of higher education, the institution's financing for the public improvement contract, is not expended unless the contractor for that contract is enrolled in and in good standing in a drug-free workplace program described in division (B) of this section. Prior to awarding a contract to a bidder, a contracting authority shall verify that the bidder is enrolled in and in good standing in such a program.

(E) A contracting authority shall include all of the following statements in the public improvement contract entered into between the contracting authority and a contractor for the public improvement:

(1) "Each contractor shall require all subcontractors with whom the contractor is in contract for the public improvement to be enrolled in and be in good standing in the Bureau of Workers' Compensation's Drug-Free Workplace Program or a comparable program approved by the Bureau that meets the requirements specified in section 153.03 of the Revised Code prior to a subcontractor providing labor at the project site of the public improvement."

(2) "Each subcontractor shall require all lower-tier subcontractors with whom the subcontractor is in contract for the public improvement to be enrolled in and be in good standing in the Bureau of Workers' Compensation's Drug-Free Workplace Program or a comparable program approved by the Bureau that meets the requirements specified in section 153.03 of the Revised Code prior to a lower-tier subcontractor providing labor at the project site of the public improvement."

(3) "Failure of a contractor to require a subcontractor to be enrolled in and be in good standing in the Bureau of Workers' Compensation's Drug-Free Workplace Program or a comparable program approved by the Bureau that meets the requirements specified in section 153.03 of the Revised Code prior to the time that the subcontractor provides labor at the project site will result in the contractor being found in breach of the contract and that breach shall be used in the responsibility analysis of that contractor or the subcontractor who was not enrolled in a program for future contracts with the state for five years after the date of the breach."

(4) "Failure of a subcontractor to require a lower-tier subcontractor to be enrolled in and be in good standing in the Bureau of Workers' Compensation's Drug-Free Workplace Program or a comparable

program approved by the Bureau that meets the requirements specified in section 153.03 of the Revised Code prior to the time that the lower-tier subcontractor provides labor at the project site will result in the subcontractor being found in breach of the contract and that breach shall be used in the responsibility analysis of that subcontractor or the lower-tier subcontractor who was not enrolled in a program for future contracts with the state for five years after the date of the breach."

(F) In the event a construction manager intends and is authorized to provide labor for a public improvement contract, a contracting authority shall verify, prior to awarding a contract for construction management services, that the construction manager was enrolled in and in good standing in a drug-free workplace program described in division (B) of this section prior to entering into the public improvement contract. The contracting authority shall not award a contract for construction manager services to a construction manager if the construction manager is not enrolled in or in good standing in such a program.

Effective Date: 03-30-2007

ADDENDUM

The CONTRACTOR agrees that all city income taxes due or payable under Chapter 104 of the Akron Code of Ordinances shall be withheld by the CONTRACTOR pursuant to Section 104.091 and 104.092 and further agrees to supply the Income Tax Division with a list of its SUBCONTRACTORS' names, addresses, Social Security or Federal ID numbers, and a listing of the service each SUBCONTRACTOR will perform, prior to beginning contract work.

Further, the CONTRACTOR shall abide by all items of provision of Chapter 104 of the Akron Code of Ordinances as if the same be rewritten herein, including but not limited to the following Section 104.088.

SECTION 104.088

An individual, association, C corporation or other entity engaged in the business of construction work and who will perform construction work in the City of Akron shall obtain a tax account number, issued by the Income Tax Division, prior to beginning construction work. The Income Tax Division shall also issue a Certificate of Registration. Failure to possess a valid Certificate shall be cause for suspension of work by the Division of Building Inspection, the Plans and Permits Center, the Engineering Bureau and/or the Income Tax Division prior to the construction work commencing and/or during the performance of the construction work. Proof of possession of a valid Certificate shall be necessary to commence or resume suspended construction work. The Certificate of Registration may be revoked by the Income Tax Division for failure by the contractor to remain current in the filing of required tax documents, for failure to remain current in the required payment of taxes, and for failure to comply with [Section 104.091](#) and [104.092](#) of this chapter. The contractor further agrees to supply the Income Tax Division with a list of its subcontractors' names, addresses, Social Security or Federal ID numbers, and a listing of the service each subcontractor will perform, prior to beginning construction work.

**CITY OF AKRON
INCOME TAX DIVISION**

PROJECT SUBCONTRACTOR REPORT

CONTRACTOR'S NAME:

Contractor's Phone:

C.O.R. #

The CONTRACTOR is required to state in the spaces provided below, a listing of all SUBCONTRACTORS he proposes to use to accomplish the work under this CONTRACT. In addition to name, address, phone and SS# or Fed ID (if known), list the type of work to be performed and amounts to be paid to each SUBCONTRACTOR. If no subcontractors are to be used, write "none" below.

Subcontractor's Name	Address	City	ST	Zip	Phone	Work Performed	Amount	FED ID / SS#

I certify that the information contained on this form is true and complete, to the best of my knowledge.

Signature of Applicant

Date

Business Name & Address (please print)

INCOME TAX ORDINANCE (Amended by Ordinance No. 360-2015) **104.087 - Contractors to supply list to the income tax division.** Every contract on behalf of the City for works or improvements of the City shall contain the following provisions:

The contractor further agrees that all City income taxes due or payable under Chapter 104 of the Akron Code of Ordinances shall be withheld by the contractor pursuant to Section 104.091 and 104.092 and further agrees to supply the Income Tax division with a list of its subcontractors' names, addresses, Social Security or Federal ID numbers, and a listing of the service each subcontractor will perform, prior to beginning contract work.

SPECIAL NOTICE

THE CONTRACTOR SHALL SEND A LETTER TO ALL THE RESIDENTS AND/OR OWNERS OF PROPERTY ABUTTING THIS IMPROVEMENT AT LEAST 48 HOURS PRIOR TO STARTING WORK. A draft of the letter shall be submitted at the pre-construction meeting for approval by the City. An example of what the letter should contain is outlined below.

Dear Resident:

This letter contains important information about the construction project on your street. Please keep this letter for future reference.

A contract has been awarded to our firm to improve _____ (name of the project) _____. This construction will start on or about _____, and is scheduled to be completed by _____. Dates may change due to unforeseen circumstances.
TENTATIVE SCHEDULE

<u>Street</u>	<u>Limits</u>	<u>Start Date</u>	<u>Remarks</u> (type of work, etc.)

A project of this nature needs the cooperation of many agencies, including all the utility companies. It may be necessary to interrupt your utility services, including street lights, temporarily during construction, but we assure you that we will work to keep those interruptions to a minimum and make every effort to restore services as soon as possible. Street light interruption may last weeks.

Progress usually brings inconvenience. Detours will be posted. For your safety, we will maintain signs, barricades, and lights around all work areas. Please keep off the work areas and do not disturb any of the various types of warning devices around the project.

Driveway access and street access will be limited at times. Whenever it becomes necessary to close your street to all traffic, you will be required to make arrangements to park your cars on other streets. Handicapped persons will be assisted on and off the site, when requested.

The safety of you, your family and the construction workers is of utmost concern to us. Please drive slowly through construction areas. If the street is closed to all traffic, do not drive around the barricades to get access to your street. Driving on a closed street is against the law and will surely jeopardize the safety of everyone and may very well damage your vehicle.

Your lawn and landscaping may be disturbed during construction. Both will be restored when the weather is appropriate for lawn restoration.

Please note that a one-year warranty will be in effect following completion of the project. Unresolved issues or problems must be brought to our attention before the one-year warranty expires.

The City representative on this project will be _____ (his/her name) _____. Should you have any questions or comments involving this project, please contact _____ Mr./Ms. (_____) _____ at the field office (area code/phone no. and location, if known), or the City of Akron, Bureau of Engineering Construction Division Office at 330-375-2355.

In case of an emergency or problems before or after regular working hours (8 a.m. to 4:30 p.m.), please call the Contractors representative, _____ (name) _____ at _____ (area code/phone no.) _____ office, or _____ (area code/phone no.) _____ home.

Sincerely,

(Name)

(Title)

- | | | | |
|----|----------------------------|----------------------|--------------------|
| c: | Fire Chief | Public Works Manager | Street Lighting |
| | Police Chief | City Engineer | FirstEnergy |
| | Water Distribution Manager | Construction Manager | Dominion East Ohio |
| | Traffic Engineer | Councilperson | Time Warner Cable |
| | | | AT&T |

SPECIAL NOTICE:

Hazardous and Toxic Substances

The Akron City Council has enacted Ordinance No. 771-1984 concerning "Hazardous and Toxic Substances". It is a condition of this contract and shall be a condition of each subcontract entered into pursuant to this contract, that the contractor and any subcontractors comply with applicable sections and/or conditions of Ordinance No. 771-1984. These requirements include, but are not limited to, complying with employee's "Right to Know" provisions, the providing of adequate safety and protective equipment and proper training in the use and handling of hazardous or toxic substances.

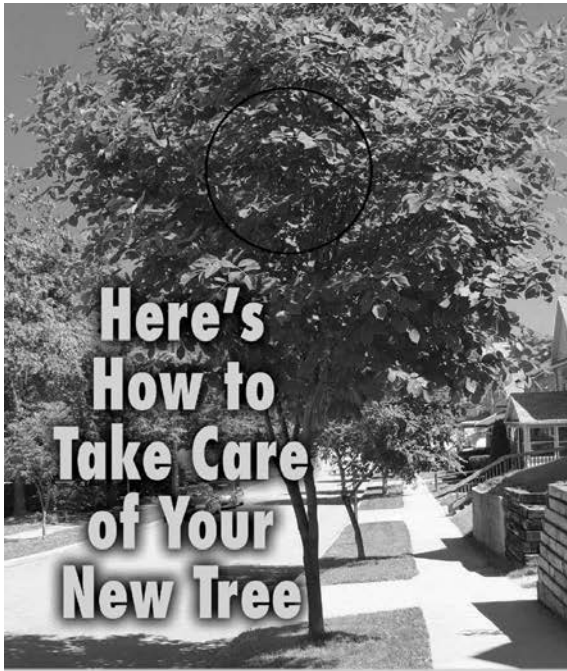
The Contractor shall submit at the pre-construction meeting the Material Safety Data Sheet (Form OSHA-20) for any and all hazardous chemicals which are anticipated to be utilized in the pursuit of this work.

Contractors having specific questions concerning these requirements should contact the Bureau of Engineering, Construction Division at (330) 375-2740. Contractors are cautioned to allow ample time for response to questions, prior to bidding or other deadlines.

SPECIAL NOTICE

Tree and Lawn Care

The City also requires a door hanger to be delivered by the contractor to all residents and/or owners of property abutting this improvement. The door hangers will be provided by the City. This door hanger shall be delivered within 24 hours after sub-final acceptance of the lawn strip by the City of Akron.



Here's How to Take Care of Your New Tree

Watering Each newly-planted tree should receive 10 gallons of water per week, applied slowly, especially during the months of June, July and August.

Mulching Shredded bark mulch should be reapplied every spring or as needed. At no point should the mulch be greater than 3 inches in depth. A "saucer" of mulch is to extend ideally to the drip edge of the tree branches, or at a minimum of a 3-foot diameter circle. **WARNING:** Mulch should never touch the bark of the tree. Maintain a 3 inch space, free from mulch, around the trunk of the tree.

Pruning Your newly-planted tree will be pruned by Parks Maintenance every 5 years. Under no circumstances shall a homeowner prune a City tree. If pruning is needed, please call 311 to have Parks Maintenance perform this task.

For further assistance please contact the City Arborist/Horticulturist at 330-375-2373

Your new tree is a:

- Maple
- Oak
- Honeylocust
- Linden
- Hackberry
- Pear
- Ginkgo
- Flowering Crabapple
- Other: _____



Here's How to Take Care of Your New Grass

Watering Water the newly-planted turf area for 20 to 30 minutes, twice a week. To maintain health and vigor, turf requires 1 inch of water per week during the growing season, early April to late October, whether by rainfall or supplemental watering.

Mowing Mow to a height of 3 inches whenever turf becomes 3.5 to 4 inches high. This task should be performed with sharpened mower blades for best results. Do not mow if the new turf is below 3 inches.

Fertilizing A fertilization program should result in a thicker and healthier lawn. Materials and expanded programs including crabgrass and broadleaf weed control, pest control, and more are available at local garden centers, retailers or lawn care companies. Follow the manufacturers' recommendations as listed on the bag.

For further assistance please contact the City Arborist/Horticulturist at 330-375-2373



United States Department of Labor

Wage and Hour Division

Wage and Hour Division (WHD)

Instructions For Completing Payroll Form, WH-347

- [WH-347](#) (PDF)

OMB Control No. 1235-0008, Expires 04/30/2021.

General: Form WH-347 has been made available for the convenience of contractors and subcontractors required by their Federal or Federally-aided construction-type contracts and subcontracts to submit weekly payrolls. Properly filled out, this form will satisfy the requirements of Regulations, Parts 3 and 5 (29 C.F.R., Subtitle A), as to payrolls submitted in connection with contracts subject to the Davis-Bacon and related Acts.

While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(a). The Copeland Act (40 U.S.C. § 3145) requires contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) Regulations at 29 C.F.R. § 5.5(a)(3)(ii) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

Under the Davis-Bacon and related Acts, the contractor is required to pay not less than prevailing wage, including fringe benefits, as predetermined by the Department of Labor. The contractor's obligation to pay fringe benefits may be met either by payment of the fringe benefits to bona fide benefit plans, funds or programs or by making payments to the covered workers (laborers and mechanics) as cash in lieu of fringe benefits.

This payroll provides for the contractor to show on the face of the payroll all monies to each worker, whether as basic rates or as cash in lieu of fringe benefits, and provides for the contractor's representation in the statement of compliance on the payroll (as shown on page 2) that he/she is paying for fringe benefits required by the contract and not paid as cash in lieu of fringe benefits. Detailed instructions concerning the preparation of the payroll follow:

Contractor or Subcontractor: Fill in your firm's name and check appropriate box.

Address: Fill in your firm's address.

Payroll No.: Beginning with the number "1", list the payroll number for the submission.

For Week Ending: List the workweek ending date.

Project and Location: Self-explanatory.

Project or Contract No.: Self-explanatory.

Column 1 - Name and Individual Identifying Number of Worker: Enter each worker's full name and an individual identifying number (e.g., last four digits of worker's social security number) on each weekly payroll submitted.

Column 2 - No. of Withholding Exemptions: This column is merely inserted for the employer's convenience and is not a requirement of Regulations, Part 3 and 5.

Column 3 - Work Classifications: List classification descriptive of work actually performed by each laborer or mechanic. Consult classification and minimum wage schedule set forth in contract specifications. If additional classifications are deemed necessary, see Contracting Officer or Agency representative. An individual may be shown as having worked in more than one classification provided an accurate breakdown or hours worked in each classification is maintained and shown on the submitted payroll by use of separate entries.

Column 4 - Hours worked: List the day and date and straight time and overtime hours worked in the applicable boxes. On all contracts subject to the Contract Work Hours Standard Act, enter hours worked in excess of 40 hours a week as "overtime".

Column 5 - Total: Self-explanatory

Column 6 - Rate of Pay (Including Fringe Benefits): In the "straight time" box for each worker, list the actual hourly rate paid for straight time worked, plus cash paid in lieu of fringe benefits paid. When recording the straight time hourly rate, any cash paid in lieu of fringe benefits may be shown separately from the basic rate. For example, "\$12.25/.40" would reflect a \$12.25 base hourly rate plus \$0.40 for fringe benefits. This is of assistance in correctly computing overtime. See "Fringe Benefits" below. When overtime is worked, show the overtime hourly rate paid plus any cash in lieu of fringe benefits paid in the "overtime" box for each worker; otherwise, you may skip this box. See "Fringe Benefits" below. Payment of not less than time and one-half the basic or regular rate paid is required for overtime under the Contract Work Hours Standard Act of 1962 if the prime contract exceeds \$100,000. In addition to paying no less than the predetermined rate for the classification which an individual works, the contractor must pay amounts predetermined as fringe benefits in the wage decision made part of the contract to approved fringe benefit plans, funds or programs or shall pay as cash in lieu of fringe benefits. See "FRINGE BENEFITS" below.

Column 7 - Gross Amount Earned: Enter gross amount earned on this project. If part of a worker's weekly wage was earned on projects other than the project described on this payroll, enter in column 7 first the amount earned on the Federal or Federally assisted project and then the gross amount earned during the week on all projects, thus "\$163.00/\$420.00" would reflect the earnings of a worker who earned \$163.00 on a Federally assisted construction project during a week in which \$420.00 was earned on all work.

Column 8 - Deductions: Five columns are provided for showing deductions made. If more than five deduction are involved, use the first four columns and show the balance deductions under "Other" column; show actual total under "Total Deductions" column; and in the attachment to the payroll describe the deduction(s) contained in the "Other" column. All deductions must be in accordance with the provisions of the Copeland Act Regulations, 29 C.F.R., Part 3. If an individual worked on other jobs in addition to this project, show actual deductions from his/her weekly gross wage, and indicate that deductions are based on his gross wages.

Column 9 - Net Wages Paid for Week: Self-explanatory.

Totals - Space has been left at the bottom of the columns so that totals may be shown if the contractor so desires.

Statement Required by Regulations, Parts 3 and 5: While the "statement of compliance" need not be notarized, the statement (on page 2 of the payroll form) is subject to the penalties provided by 18 U.S.C. § 1001, namely, a fine, possible imprisonment of not more than 5 years, or both. Accordingly, the party signing this statement should have knowledge of the facts represented as true.

Items 1and 2: Space has been provided between items (1) and (2) of the statement for describing any deductions made. If all deductions made are adequately described in the "Deductions" column above, state "See Deductions column in this payroll." See "FRINGE BENEFITS" below for instructions concerning filling out paragraph 4 of the statement.

Item 4 FRINGE BENEFITS - Contractors who pay all required fringe benefits: If paying all fringe benefits to approved plans, funds, or programs in amounts not less than were determined in the applicable wage decision of the Secretary of Labor, show the basic cash hourly rate and overtime rate paid to each worker on the face of the payroll and check paragraph 4(a) of the statement on page 2 of the WH-347 payroll form to indicate the payment. Note any exceptions in section 4(c).

Contractors who pay no fringe benefits: If not paying all fringe benefits to approved plans, funds, or programs in amounts of at least those that were determined in the applicable wage decision of the Secretary of Labor, pay any remaining fringe benefit amount to each laborer and mechanic and insert in the "straight time" of the "Rate of Pay" column of the payroll an amount not less than the predetermined rate for each classification plus the amount of fringe benefits determined for each classification in the application wage decision. Inasmuch as it is not necessary to pay time and a half on cash paid in lieu of fringe benefits, the overtime rate shall be not less than the sum of the basic predetermined rate, plus the half time premium on basic or regular rate, plus the required cash in lieu of fringe benefits at the straight time rate. In addition, check paragraph 4(b) of the statement on page 2 the payroll form to indicate the payment of fringe benefits in cash directly to the workers. Note any exceptions in section 4(c).

Use of Section 4(c), Exceptions

Any contractor who is making payment to approved plans, funds, or programs in amounts less than the wage determination requires is obliged to pay the deficiency directly to the covered worker as cash in lieu of fringe benefits. Enter any exceptions to section 4(a) or 4(b) in section 4(c). Enter in the Exception column the craft, and enter in the Explanation column the hourly amount paid each worker as cash in lieu of fringe benefits and the hourly amount paid to plans, funds, or programs as fringe benefits. The contractor must pay an amount not less than the predetermined rate plus cash in lieu of fringe benefits as shown in section 4(c) to each such individual for all hours worked (unless otherwise provided by applicable wage determination) on the Federal or Federally assisted project. Enter the rate paid and amount of cash paid in lieu of fringe benefits per hour in column 6 on the payroll. See paragraph on "Contractors who pay no fringe benefits" for computation of overtime rate.

Public Burden Statement: We estimate that it will take an average of 55 minutes to complete this collection of information, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection of information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, ESA, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Note: In order to view, fill out, and print PDF forms, you need Adobe® Acrobat® Reader® version 5 or later, which you may download for free at www.adobe.com/products/acrobat/readstep2.html.

>

Date _____

I, _____
(Name of Signatory Party) (Title)

do hereby state:

(1) That I pay or supervise the payment of the persons employed by

_____ on the
(Contractor or Subcontractor)

_____ ; that during the payroll period commencing on the
(Building or Work)

_____ day of _____, _____, and ending the _____ day of _____, _____,
all persons employed on said project have been paid the full weekly wages earned, that no rebates have
been or will be made either directly or indirectly to or on behalf of said

_____ from the full
(Contractor or Subcontractor)

weekly wages earned by any person and that no deductions have been made either directly or indirectly
from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part
3 (29 C.F.R. Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948,
63 Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. § 3145), and described below:

(2) That any payrolls otherwise under this contract required to be submitted for the above period are
correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the
applicable wage rates contained in any wage determination incorporated into the contract; that the classifications
set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship
program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and
Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered
with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

— in addition to the basic hourly wage rates paid to each laborer or mechanic listed in
the above referenced payroll, payments of fringe benefits as listed in the contract
have been or will be made to appropriate programs for the benefit of such employees,
except as noted in section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

— Each laborer or mechanic listed in the above referenced payroll has been paid,
as indicated on the payroll, an amount not less than the sum of the applicable
basic hourly wage rate plus the amount of the required fringe benefits as listed
in the contract, except as noted in section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION

REMARKS:

NAME AND TITLE	SIGNATURE
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THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR
SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE
31 OF THE UNITED STATES CODE.

PREVAILING WAGE - CONTRACTOR'S RESPONSIBILITIES

1. Keep the following records available for inspection for one year following the completion of the project. Owners/partners and all salaried personnel need to be shown on certified payrolls when they perform actual physical work on the job; also need to show that they received proper prevailing rates of wages for the type of work each performed. Contractors are required to submit payrolls for all subcontractors including owner/operators of trucks or equipment.
 - A. Time records.
 - B. Payroll records including canceled checks.
 - C. Fringe benefit records including canceled checks.
2. Prevailing Wage Determination must be posted on the project site.
3. Supply the Inspector with dates of the life of the contract and a listing of all subcontractors, including the name, address, and telephone number of each.
4. Supply each employee not covered by a collective bargaining agreement or understanding between employers and bona fide organization of labor with written notification of his assigned job classification, hourly prevailing wage rate and fringe payments, and the identity of the Inspector for the project.
5. Supply all subcontractors, within seven days and by certified mail, with any changes in the prevailing wage rates issued during the life of the project. Send a copy of the notice and list of current subcontractors to the City of Akron, Bureau of Engineering.
6. Out-of-state contractors must submit to the Ohio Secretary of State the full name and address of their statutory agent in Ohio.
7. Submit certified payrolls starting no later than two (2) weeks after the initial pay period. Insure all payrolls include the following:
 - A. Employee's full name, address, and social security number.
 - B. Work classification.
 1. Be specific when listing laborers and operators.
 2. Show level/year for all apprentices.
 - C. Hours worked on the project.
 1. As of May 1, 1984, overtime is to be paid at not less than time and one-half for all hours worked in excess of forty (40) hours per week.

- D. Hourly rate of pay.
 - 1. Actual hourly rate paid employee for the time worked. Overtime hourly rate of not less than time and one-half the basic or regular rate paid is required under Chapter 4115. In addition to paying not less than the predetermined rate for the classification in which the employee works, the amounts predetermined as fringe benefits in the wage determination issued for the project, shall also be paid. (Sample calculation: \$23.40 [base rate] x 1½ = \$35.10 + \$6.60 [fringe payments] = \$41.70.) Fringe payments must be entered in appropriate blocks on payroll forms when such fringes are paid to approved plans, funds, etc.
- E. List all fringe benefits (if any) and amount per hour for each.
 - 1. Hourly amount is to be based on 2080 hours per year.
- F. Gross pay for the pay period.
- G. Total deductions.
- H. Net pay for the pay period.

8. Submit a copy of apprenticeship agreement for each apprentice to the Inspector with payrolls.

9. Submit final affidavits for contractor and all subcontractors. Send to:

City of Akron
Bureau of Engineering, Construction Division
166 South High Street, Room 701
Akron, OH 44308-1652
(330) 375-2355

Inspector

Telephone Number

"A change in the Ohio Prevailing Wage Law requires that all contractors and subcontractors be notified, within seven days, of a change in prevailing wage rates and requires the contractors to make the necessary adjustments in the prevailing wage rates."

"In order to comply with the requirement, the City will send to you copies of the changes when received from the Ohio Bureau of Employment Services, Wage and Hour Division. You must immediately send to your subcontractors, by registered mail, copies of the changes and send to the City copies of your notification to the subcontractors, along with a list of your current subcontractors. This must be done each time you receive notification of changes in the prevailing wages."

"Send this information to the Bureau of Engineering, Administrative Services Division, 166 South High Street, Room 701, Akron, OH 44308-1652."

PREVAILING WAGE - INSPECTOR'S RESPONSIBILITIES

1. Obtain dates during the life of the project when employees will be paid and a list of his subcontractors to include name, address, and telephone number of each.
2. Monitor Payrolls - Contractor and Subcontractors
 - A. Make sure that all information on payrolls is complete. (See Item 7 - Contractor's Responsibilities.)
 - B. Compare hourly rates and fringes with the Prevailing Wage Determination and Prevailing Wage Changes.
 - C. Conduct field interviews of randomly selected employees of every contractor/subcontractor working on the project each month.
 - D. Obtain a copy of apprenticeship agreement for each apprentice and submit with payrolls. (See Item 8 - Contractor's Responsibilities.)
 - E. Report any discrepancies to the Prevailing Wage Coordinator.
3. Verify that a current schedule of prevailing wages is posted and that workers are performing the duties prescribed by the job classification.

REQUIRED CONTRACT PROVISIONS FOR FEDERAL-AID CONSTRUCTION CONTRACTS AND PREVAILING RATES OF WAGES

The wage rates for this project were determined by the Secretary of Labor in accordance with Federal-Aid requirements.

Contractors shall use only the classifications and wage rates set forth in the United States Department of Labor (USDOL) wage decision found at website noted below on certified payrolls. Additionally, please note that the wage modification in effect at the time of the project sale date, shall be used by all contractors.

<http://www.wdol.gov/dba.aspx#0>

or

<http://www.access.gpo.gov/davisbacon/>



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME:	
	PHONE (A/C, No, Ext):	FAX (A/C, No):
E-MAIL ADDRESS:		
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURED	INSURER A :	
	INSURER B :	
	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y / N If yes, describe under DESCRIPTION OF OPERATIONS below N / A						WC STATU-TORY LIMITS OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

CERTIFICATE HOLDER	CANCELLATION
	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART.

SCHEDULE

Name of Person or Organization:

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule as an insured but only with respect to liability arising out of your operations or premises owned by or rented to you.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR
CONTRACTORS – SCHEDULED PERSON OR
ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization:

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

A. **Section II – Who Is An Insured** is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of your ongoing operations performed for that insured.

B. With respect to the insurance afforded to these additional insureds, the following exclusion is added:

2. Exclusions

This insurance does not apply to "bodily injury" or "property damage" occurring after:

- (1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the site of the covered operations has been completed; or
- (2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 37 10 01

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR
CONTRACTORS – COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization:
Location And Description of Completed Operations:
Additional Premium:

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

Section II – Who Is An Insured is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" at the location designated and described in the schedule of this endorsement performed for that insured and included in the "products-completed operations hazard".

CITY HOLIDAYS

NOTICE TO CONTRACTOR

No work will be permitted on Sundays and holidays except as authorized or directed by the City of Akron or CMT. Following is a list of holidays observed by the City of Akron:

2018

New Year's Day	Monday, January 1
Martin Luther King, Jr. Day	Monday, January 15
Presidents Day	Monday, February 19
Memorial Day	Monday, May 28
Independence Day	Wednesday, July 4
Labor Day	Monday, September 3
Columbus Day	Monday, October 8
Veterans Day	Sunday, November 11
Veterans Day (observed)	Monday, November 12
Thanksgiving Day	Thursday, November 22
Day after Thanksgiving	Friday, November 23
Christmas Day	Tuesday, December 25

2019

New Year's Day	Tuesday, January 1
Martin Luther King, Jr. Day	Monday, January 21
Presidents Day	Monday, February 18
Memorial Day	Monday, May 27
Independence Day	Thursday, July 4
Labor Day	Monday, September 2
Columbus Day	Monday, October 14
Veterans Day	Monday, November 11
Thanksgiving Day	Thursday, November 28
Day after Thanksgiving	Friday, November 29
Christmas Day	Wednesday, December 25

2020

New Year's Day	Wednesday, January 1
Martin Luther King, Jr. Day	Monday, January 20
Presidents Day	Monday, February 17
Memorial Day	Monday, May 25
Independence Day (observed)	Friday, July 3
Independence Day	Saturday, July 4
Labor Day	Monday, September 7
Columbus Day	Monday, October 12
Veterans Day	Wednesday, November 11
Thanksgiving Day	Thursday, November 26
Day after Thanksgiving	Friday, November 27
Christmas Day	Friday, December 25

CONTRACTOR WILL BE NOTIFIED OF ANY CHANGES IN THE OBSERVANCES OF THESE HOLIDAYS.

34.03 - Equal employment opportunity clause.

All public contracts hereinafter entered into by the city shall incorporate an equal employment opportunity clause which shall read as follows:

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

- A. The contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, gender identity or national origin. The contractor shall take affirmative action to insure that applicants are employed and that employees are treated during employment, without regard to their race, religion, color, sex, sexual orientation, gender identity or national origin. As used herein, the word "treated" means and includes, without limitation, the following: recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; demoted; downgraded; transferred; laid off; and terminated. The contractor agrees to post and shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officers setting forth the provisions of this nondiscrimination clause.
- B. The contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, sexual orientation, gender identity or national origin.
- C. The contractor shall send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or worker's representative of the contractor's commitments under the equal employment opportunity clause of the city and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. The contractor shall furnish all information and reports required by the Human Relations Commission or its representative, pursuant to this chapter, and shall permit access to his books, records and accounts by the contracting agency and by the Contract Compliance Officer for purposes of investigation to ascertain compliance with the program.
- E. The contractor shall take such action with respect to any subcontractor as the city may direct as a means of enforcing the provisions of this section, including penalties and sanctions for noncompliance. However, in the event the contractor becomes involved in or is threatened with litigation as the result of such direction by the city, the city will enter into such litigation as is necessary to protect the interests of the city and to effectuate the city's equal employment opportunity program and, in the case of contracts receiving federal assistance, the contractor or the city may request the United States to enter into such litigation to protect the interests of the United States.
- F. The contractor shall file compliance reports with the city in the form and to the extent prescribed by the Commission or its representative and cause his subcontractors, if any, to do the same. Compliance reports filed at such times as directed shall contain information as to the employment practices, policies, programs and statistics of the contractor and his subcontractors.
- G. The contractor shall include the provisions of this section in every subcontract or purchase order so that such provisions will be binding on each subcontractor or vendor.
- H. Refusal by the contractor or subcontractor to comply with any portion of this program as herein stated and described will subject the offending party to any or all of the following penalties:
 1. Withholding of all future payments under the involved public contract to the contractor in violation until it is determined that the contractor or subcontractor is in compliance with the provisions of the contract;

2. Refusal of all future bids for any public contract with the city or any of its departments or divisions until such time as the contractor or subcontractor demonstrates that he has established and shall carry out the policies of the program as herein outlined;
3. Cancellation of the public contract and declaration of forfeiture of the performance bond;
4. In cases in which there is substantial or material violation or the threat of substantial or material violation of the compliance procedure or as may be provided for by contract, appropriate proceedings may be brought to enforce those provisions, including the enjoining, within applicable laws, of contractors, subcontractors, or other organizations, individuals, or groups who prevent directly or indirectly, or seek to prevent, directly or indirectly, compliance with the policy as herein outlined.

The words "gender identity" within this Chapter 34 shall not apply to or be contained in public contracts for the provision of services to minor children under the age of eighteen.

The words "sexual orientation" and "gender identity" within this Chapter 34 shall not apply to or be contained in public contracts with religious organizations.

(Ord. 616-1970)

(Ord. No. 514-2009, § 3, 11-30-09)

Contract Document Provisions

The following contract requirements and forms are to be included in the construction contract documents. Completed copies of the forms are to be submitted to Ohio EPA within one week after bids are received, or sooner dependent on your individual project schedule. Bid packages for WPCLF projects should be submitted to DEFA in the central office while bid packages for WSRLA projects should be submitted to the appropriate DDAGW district office.

[Equal Employment Opportunity \(EEO\) Requirements](#)

The Contractor's EEO Certification Form must be (1) included in the contract documents and (2) referenced in the Instructions to Bidders, informing bidders that the form must be completed and submitted with their bid.

NOTE: If the loan applicant has its own EEO requirements, local procedures and forms may be substituted for the EPA form.

[Debarment](#)

The Certification Regarding Debarment, Suspension, and Other Responsibility Matters must be (1) included in the contract documents and (2) referenced in the Instructions to Bidders, informing bidders that the form must be completed and submitted with their bid.

[Disadvantaged Business Enterprises \(DBE\) Utilization](#)

The DBE Specification language and instructions to the bidders and Forms 6100-3, 6100-4 and 6100-2 must be (1) included in the contract documents and (2) referenced in the Instructions to Bidders, informing bidders that the forms must be completed and submitted with their bid.

NOTE: If the loan applicant has its own DBE requirements or if other funding programs with potentially competing DBE requirements are participating in the project funding, please contact Ohio EPA – DEFA for specific instructions regarding the DBE requirements.

[Davis-Bacon wage rate requirements](#)

The contract documents must include language that requires contractors and subcontractors to pay wages at rates not less than those prevailing on similar projects within the area as determined by the US Secretary of Labor. In addition, the loan recipient will be required to conduct wage interviews and monitor payroll for compliance.

[American Iron and Steel requirements](#)

All treatment works projects funded by a WPCLF assistance agreement and all public water system projects funded by a WSRLA assistance agreement are required to comply with American Iron and Steel (AIS) requirements. The acknowledgement form must be included in the contract documents. The acknowledgement form should be signed by the contractor and submitted with the final bid package. It is recommended that the AIS guidance document and questions and answers document be included in the contract documents.

The following contract requirements are to be included in the construction contract documents, but are not required to be submitted to Ohio EPA for contract endorsement.

Violating Facilities Clause

Language prohibiting this use of equipment or services from anyone on the EPA List of Violating Facilities must be included in the contract documents.

Small Businesses in Rural Areas (SBRA)

Language encouraging the participation of small businesses in rural areas should be included in the contract documents.

Insurance Provisions

Section 3.5 of the WPCLF/WSRLA Loan Agreement contains specific requirements regarding insurance for all contractors and all subcontractors for the life of the contract. These insurance requirements must be reflected in the contract documents. Adjust the language as needed to meet the specifics of the construction project while still meeting the provisions of the Loan Agreement.

Materials Testing

In addition to the details included with specific equipment testing in the specifications, there should be an overall statement regarding testing for the project. Adjust the language as needed to meet the specifics of the construction project.

Continuous Treatment Provisions

It is important that construction activities not result in any temporary violations of Drinking Water or NPDES permit requirements (for permitted facilities). Construction activities should interrupt wastewater service to the individual resident as little as possible. For drinking water projects, it is important that construction activities not result in any disruption of service. The example language is intended for construction work occurring at an existing drinking water plant or a WWTP and must be adjusted to meet the specifics of the construction project.

WPCLF/WSRLA Change Order Form

All change orders for the construction project must be executed on the WPCLF/WSRLA change order form. The form must be (1) included in the contract documents and (2) the instructions referenced in the Contract Documents.

The following contract requirements are provided in Ohio Revised Code (ORC). Some loan applicants have local requirements that supersede ORC provisions for competitive bidding, and these local requirements can be applied instead of ORC, except for those requirements specified in the WPCLF/WSRLA loan agreements.

Bid Guarantee

The requirements for a bid guarantee (which can be a bond or a certified check, cashier's check, or letter of credit) are covered in ORC 153.54.

Payment and Performance Bonds

The requirements for a Payment and Performance Bond are covered in ORC 153.54 and Section 3.4 of the WPCLF/WSRLA Loan Agreements.

Payment Retention

The requirement for payment retainage is provided in ORC 153.12. Details on how the escrow account that holds the retainage are provided in ORC 153.13. Further details on how and when to pay for materials delivered and installed are provided in ORC 153.14.

Completion Time

The contract documents must state the length of the contract time per ORC 153.19. The dates for Initiation of Operation and Project Completion are specified in the WPCLF/WSRLA Loan Agreements, and need to coincide with the specified contract time.

The following are contract provisions to consider, but are not required. The language provided for each are samples only and must be adjusted to reflect the specifics of the project and local needs.

[Local Protest Procedure](#)

Some statement as to when a valid protest must be filed, in what form it must be filed and who it must be filed with should be included. ORC 153.12 has some default procedures for handling disputes. If the owner wants more control than provided in ORC, a procedure needs to be spelled out in the Contract Documents.

[Basis and Method for Award](#)

The contract documents should include some language that clearly states what the Owner will consider when determining the successful bidder and to provide a clear basis for the Owner when they have a need to reject the low bidder and go with a different bidder.

[Payment Methods](#)

To minimize uncertainty and arguments that can slow down the progress of construction it is useful to provide language stating how and when the Contractor will get paid. In addition to ORC and other local requirements, the involvement of public funding Agencies such as the WPCLF, WSRLA, Ohio Public Works Commission and Community Development Block Grant impact the process and timing for payments.

Contract Documents Review

Whenever possible, all of the provisions listed above must be included in the contract documents for the project prior to advertisement for bids. Ohio EPA's review for these contract provisions will occur as part of our normal detail plans and specifications review. The bidding documents are to be submitted to Ohio EPA for review regardless of whether a Permit to Install or a Plan Approval is required for the project.

After bidding has started:

In those cases when WPCLF or WSRLA funding is being requested after advertisement for bids has started, add all missing contract provisions, forms, and requirements via addendum.

After bids have been opened but before contracts have been signed:

If the bid advertisement period is over and bids have been opened, but the construction contract have not been signed yet, provide a draft contract change order which would be used to incorporate all missing contract provisions, forms, and requirements into the contract. This should be done in consultation with local legal council to address any potential bid protest concerns.

Construction contracts have already been signed:

If the construction contract has already been signed, a contract change order must be executed incorporating all missing contract provisions, forms, and requirements into the contract.

Regulations and Forms To Be Included with Contract Documents

A [Contract Documents Review checklist](#) is provided here to help ensure that all requirements are included and to help expedite Ohio EPA's review of your documents.

Bid Package Submittals

Certain documents must be submitted to Ohio EPA within one week after bids are received, or sooner dependent on your individual project schedule. Please [look here for a complete list](#) of the required submittals.

NOTE: THE CONTRACT LANGUAGE SAMPLES PROVIDED HEREIN ARE EXAMPLES OF WHAT COULD BE INCLUDED IN ALL CONTRACTS THAT USE WPCLF OR WSRLA FUNDS. OHIO EPA MAKES NO CLAIMS REGARDING THE LEGALITY OF THESE CLAUSES WITH RESPECT TO STATE OR LOCAL LAW. IT IS IMPERATIVE THAT ANY PARTY INSERTING THESE CLAUSES INTO A CONTRACT VERIFY THAT THEY ARE LEGAL AND ENFORCEABLE ACCORDING TO STATE AND LOCAL LAWS, REGULATIONS, AND ORDINANCES.

Contractor Equal Employment Opportunity Certification

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

1. The undersigned will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The undersigned will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The undersigned agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this equal opportunity (federally assisted construction) clause.
2. The undersigned will, in all solicitations or advertisements for employees placed by or on behalf of the undersigned, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
3. The undersigned will send to each labor union or representative of workers, with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the undersigned's commitment under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The undersigned will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. The undersigned will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and relevant orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the administering agency of the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
6. In the event of the undersigned's non-compliance with the equal opportunity (federally assisted construction) clause of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part, and the undersigned may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rules, regulations, or order of the Secretary of Labor, or as provided by law.
7. The undersigned will include this equal opportunity (federally assisted construction) clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provision will be binding upon each subcontract or vendor. The undersigned will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for non compliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor, as a result of such direction by the administering agency the undersigned may request the United States to enter into such litigation to protect the interest of the United States.

(Signature)

(Date)

(Name and Title of Signer, Please type)

(Firm Name)

Certification Regarding Debarment, Suspension, and Other Responsibility Matters
INSTRUCTIONS

Under Executive Order 12549 an individual or organization debarred or excluded from participation in Federal assistance or benefit programs may not receive any assistance award under a Federal program or a subagreement thereunder for \$25,000 or more.

Accordingly, each prospective recipient of an EPA grant, loan, or cooperative agreement and any contract or subagreement participant thereunder must complete the attached certification provide an explanation why they cannot. For further details, see the regulation 40 CFR 32.510, Participants' responsibilities.

Go to www.epls.gov to access the Excluded Parties List System (EPLS). The EPLS includes information regarding entities debarred, suspended, proposed for debarment, excluded or disqualified under the nonprocurement common rule, or otherwise declared ineligible from receiving Federal contracts, certain subcontracts, and certain Federal assistance and benefits. This information may include names, addresses, DUNS numbers, Social Security Numbers, Employer Identification Numbers or other Taxpayer Identification Numbers, if available and deemed appropriate and permissible to publish by the agency taking the action.

Where To Submit

The prospective EPA grant, loan, or cooperative agreement recipient must return the signed certification or explanation with its application to Ohio EPA.

A prospective prime contractor must submit a complete certification or explanation to the individual or organization awarding the contract.

Each prospective subcontractor must submit a complete certification or explanation to the prime contractor for the project.

Applicants may reproduce these materials as needed and provide them to their prospective prime contractor, who, in turn, may reproduce and provide them to prospective subcontractors.

Additional copies / assistance may be requested from:

Ohio EPA
Division of Environmental and Financial Assistance
P.O. Box 1049
Columbus, Ohio 43216-1049
(614) 644-2798
www.epa.state.oh.us/defa/

Certification Regarding Debarment, Suspension, and Other Responsibility Matters

The prospective participant certifies to the best of its knowledge and belief that it and its principals:

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

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

Type Name & Title of Authorized Representative

Signature of Authorized Representative

Date

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

Disadvantaged Business Enterprises (DBE) Utilization

(Required Contract Provision)

USEPA has a program to encourage the participation of disadvantaged businesses in the construction activities funded by the Clean Water and Drinking Water SRF's. "DBE" is an all inclusive term that includes Minority Business Enterprises (MBE), Women Business Enterprises (WBE), Small Business Enterprises (SBE), Small Business in Rural Areas (SBRA), HUBZone Small Business, Labor Surplus Area Firms (LSAF), and other entities defined as socially and/or economically disadvantaged. While the WPCLF and WSRLA strongly encourage participation by all disadvantaged groups, specific participation goals are negotiated with USEPA only for Minority Business Enterprises and Women's Business Enterprises.

Goals

As a condition of receiving capitalization grants from U.S. EPA for the Water Pollution Control Loan Fund (WPCLF) and the Water Supply Revolving Loan Account (WSRLA), the Ohio EPA negotiates "fair share" Disadvantaged Business Enterprises (DBE) objectives with U.S. EPA. The current negotiated goals for construction related activities are 1.2% of all contracts to MBE's and 1.8% of all contracts to WBE's.

DBE Certification

Under the DBE program, qualified DBE's are those that have been certified as an MBE or WBE. Certifications can be obtained from a federal agency such as the Small Business Administration or the Department of Transportation or by an approved State agency. The Unified Certification Program (UCP) administered by the Ohio Department of Transportation (ODOT) can provide the necessary DBE certifications. Information on the UCP can be found at www.ohioucp.org as well as the ODOT website www.dot.state.oh.us/divisions/equalopportunity/pages/dbe.aspx. Applications for certification by EPA can be found on EPA's Small Business Programs website at www.epa.gov/osbp under the Disadvantaged Business Enterprise Program link. Any questions regarding EPA's certification process should be directed to Teree Henderson of EPA at 202-566-2222.

DBE Qualifications

To qualify for MBE certification, businesses must be 51 percent owned and controlled by a U.S. citizen and Ohio resident belonging to an African American, Native American, Hispanic, or Asian American ethnic group. In addition, the business must be in operation for at least one year prior to submitting an application. For DBE status, a business must be at least 51 percent owned by a socially and economically disadvantaged person who participates in the daily operations of the business. This person must be a woman or of African-American, Hispanic, Native American, Asian American ethnicity.

Program Requirements

To comply with DBE program requirements the WPCLF/WSRLA loan recipient must do the following:

1. Create and maintain a bidder's list (see description below)

2. Include contract conditions applicable to the DBE program in all procurement contracts entered into by the Borrower for all WPCLF and WSRLA projects. These conditions are listed below.
3. Follow, document, and maintain documentation of good faith efforts on the part of prime contractors to ensure that Disadvantaged Business Enterprises (DBEs) have the opportunity to participate in the project.
4. Review the Form 6100-3 and 6100-4 submittals provided by bidders on the project for completeness and obtain any additional information necessary to verify the certification status of all proposed subcontractors.
5. Obtain documentation of the good faith efforts of the prime contractor if the prime contractor does not meet the MBE or WBE goal.
6. Obtain a written confirmation from any prime contractor states that they will not meet the MBE and WBE goals because they will not be entering into any agreements for goods or services with any company, firm, joint venture, or individual.
7. Submit the following to the Ohio EPA/DEFA as part of the bid package upon which the WPCLF/WSRLA loan amount is determined:
 - Form 6100-3 from each subcontractor
 - Form 6100-4 from each prime contractor
 - a copy of the Good Faith Efforts documentation from any prime contractors that will not meet the MBE and WBE goals,
 - if any of the prime contractors will not meet the MBE and WBE goals because they will not be entering into any agreements for goods or services with any company, firm, joint venture, or individual, a copy of the written confirmation from that prime contractor
8. Report MBE/WBE accomplishments on Form 5700-52A annually (within 15 days after October 1st).

NOTE: It is up to the WPCLF/WSRLA loan recipient whether or not to require completion and submission of Forms 6100-3 and 6100-4 from all bidders with the bid proposal or to accept completion and submission from the successful bidder(s) only at some time after bids are received. Regardless of whether the forms are completed and submitted with the bids or at some later time once the successful bidders are identified, completed forms are to be submitted to Ohio EPA with the bid package.

To comply with DBE program requirements all prime contractors must do the following:

1. Follow, document, and maintain documentation of their good faith efforts.
2. Complete and submit **Form 6100-4 DBE Subcontractor Utilization Summary** as part of the bid proposal package to the loan recipient.
3. Have its Disadvantaged Business Enterprise subcontractors complete **Form 6100-3 DBE Subcontractor Proposed Performance Form** and submit those as part of the bid proposal package to the loan recipient.
4. Provide **Form 6100-2 DBE Subcontractor Actual Participation Form** to all of its Disadvantaged Business Enterprise subcontractors for completion at the end of the work.
5. During construction, provide the data necessary so that the loan recipient can report MBE/WBE accomplishments on Form 5700-52A annually (within 15 days after October 1st).

Bidders List

The Borrower must create, maintain, and use a bidders list for purposes of soliciting both MBE/WBEs and non-MBE/WBEs during procurement of construction, equipment, supplies, and services. This list shall include:

1. Entity's name with point of contact;
2. Entity's mailing address, telephone number, and e-mail address;
3. The procurement on which the entity bid or quoted, and when; and
4. Entity's status as an MBE/WBE or non-MBE/WBE.

Borrowers that receive less than \$250,000 or less in any one fiscal year can be exempt from maintaining a Bidders List.

The Bidders List shall be maintained until the project period has expired and the Borrower is no longer receiving EPA funding. The Bidders List must include all firms that bid on the prime contracts, or bid or gave a quote on subcontracts, including both MBE/WBEs and non-MBE/WBEs.

Required Contract Conditions

The DBE Specification language and instructions to the bidders and Forms 6100-2, 6100-3 and 6100-4 must be included in the contract documents and referenced in the Instructions to Bidders, informing bidders that the forms must be completed and submitted with their bid for all WPCLF and WSRLA projects:

1. The prime contractor must pay its subcontractor for satisfactory performance no more than 30 days from the prime contractor's receipt of payment from the owner.
2. The prime contractor must notify the owner in writing prior to the termination of any Disadvantage Business Enterprise subcontractor for convenience by the prime contractor.
3. If a Disadvantage Business Enterprise contractor fails to complete work under the subcontract for any reason, the prime contractor must employ the six Good Faith Efforts (listed below) if soliciting a replacement contractor.
4. The prime contractor must employ the six Good Faith Efforts even if the prime contractor has achieved its fair share objectives.
5. An owner must ensure that each procurement contract it awards contains the following terms and conditions:

The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.

Good Faith Efforts

Borrowers and their prime contractors must follow, document, and maintain documentation of their good faith efforts as listed below to ensure that Disadvantaged Business Enterprises (DBEs) have the opportunity to participate in the project by increasing DBE awareness of procurement efforts and outreach.

1. Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities; including DBEs on solicitation lists and soliciting them whenever they are potential sources.
2. Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitation for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
3. Consider in the contracting process whether firms competing for large contracts could be subcontracted with DBEs. This will include dividing total requirements when economically feasible into smaller tasks or quantities to permit participation by DBEs in the competitive process.
4. Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
5. Use the services and assistance of the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce.
6. If the prime contractor awards subcontracts, require the prime contractor to take the steps in numbers 1 through 5 above.

DBE Forms

Form 6100-3 – Each prime contractor must have its DBE subcontractors complete **Form 6100-3 DBE Subcontractor Proposed Performance Form**. This form gives the DBE subcontractor the opportunity to report the scope and cost of the subcontract and it should be forwarded to the Prime Contractor along with the DBE's quote. Each subcontractor completes one Form 6100-3. The Borrower must submit all Form 6100-3 forms to the Ohio EPA/DEFA as part of the bid package upon which the WPCLF/WSRLA loan amount is determined.

Form 6100-4 – Each prime contractor must complete and submit **Form 6100-4 DBE Subcontractor Utilization Summary** as part of the prime contractor's bid proposal package to the Borrower. This form summarizes the Prime Contractor's intended use of identified DBE(s) and the estimated dollar amount of each subcontract. Only one Form 6100-4 form is required from each Prime Contractor. The Borrower must submit this form to the Ohio EPA/DEFA as part of the bid package upon which the WPCLF/WSRLA loan amount is determined.

Form 6100-2 - The prime contractor must provide **Form 6100-2 DBE Subcontractor Actual Participation Form** to all of its Disadvantaged Business Enterprise subcontractors.

This form gives the DBE subcontractor the opportunity to describe the work the DBE received from the Prime Contractor, how much the DBE was paid and any other concerns the DBE might have. Disadvantaged Business Enterprise subcontractors must send completed Form 6100-2 directly to the Region 5 DBE Coordinator:

Adrienne M. Callahan, Region 5 MBE/WBE Coordinator
USEPA, Acquisition and Assistance Branch
77 West Jackson Boulevard (MC-10J)
Chicago, IL 60604

This form is completed after the work by the subcontractor is done, and is NOT submitted with the bid package to Ohio EPA.

Reporting During Construction – Form 5700-52A

The purpose of MBE/WBE reporting is to monitor the grant recipient's accomplishments in utilizing MBEs and WBEs; and adherence to the good faith efforts (i.e., outreach to MBEs, WBEs, and other DBEs); and progress in achieving MBE and WBE Goals. During the progress of the construction project, the loan recipient must complete & submit Form 5700-52A annually (**within 15 days after October 1st**). If there were no MBEs or WBEs utilized, or no procurement expenditures of any kind were made during the reporting period, a "negative report" is still required.

Reports are to be sent to:

Becky McKinney Ohio EPA – DEFA
P.O. Box 1049
Columbus, OH 43216-1049
E-mail address: Rebecca.McKinney@epa.ohio.gov
Phone: (614) 644-3636
Fax: (614) 644-3687

**Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Performance Form**

This form is intended to capture the DBE¹ subcontractor's² description of work to be performed and the price of the work submitted to the prime contractor. An EPA Financial Assistance Agreement Recipient must require its prime contractor to have its DBE subcontractors complete this form and include all completed forms in the prime contractors bid or proposal package.

Subcontractor Name		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Prime Contractor Name		Issuing/Funding Entity:	

Contract Item Number	Description of Work Submitted to the Prime Contractor Involving Construction, Services, Equipment or Supplies	Price of Work Submitted to the Prime Contractor
DBE Certified By: <input type="radio"/> DOT <input type="radio"/> SBA		Meets/ exceeds EPA certification standards?
<input type="radio"/> Other: _____		<input type="radio"/> YES <input type="radio"/> NO <input type="radio"/> Unknown

¹ A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

² Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

**Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Performance Form**

I certify under penalty of perjury that the forgoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. I am aware of that in the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302 (c).

Prime Contractor Signature	Print Name
Title	Date

Subcontractor Signature	Print Name
Title	Date

**Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Utilization Form**

This form is intended to capture the prime contractor's actual and/or anticipated use of identified certified DBE¹ subcontractors² and the estimated dollar amount of each subcontract. An EPA Financial Assistance Agreement Recipient must require its prime contractors to complete this form and include it in the bid or proposal package. Prime contractors should also maintain a copy of this form on file.

Prime Contractor Name		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Issuing/Funding Entity:			

I have identified potential DBE certified subcontractors	___YES	___NO	
If yes, please complete the table below. If no, please explain:			
Subcontractor Name/ Company Name	Company Address/ Phone/ Email	Est. Dollar Amt.	Currently DBE Certified?
	Continue on back if needed		

¹ A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

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**Disadvantaged Business Enterprise (DBE) Program
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Prime Contractor Signature	Print Name
Title	Date

**Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Participation Form**

An EPA Financial Assistance Agreement Recipient must require its prime contractors to provide this form to its DBE subcontractors. This form gives a DBE¹ subcontractor² the opportunity to describe work received and/or report any concerns regarding the EPA-funded project (e.g., in areas such as termination by prime contractor, late payments, etc.). The DBE subcontractor can, as an option, complete and submit this form to the EPA DBE Coordinator at any time during the project period of performance.

Subcontractor Name		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Prime Contractor Name		Issuing/Funding Entity:	

Contract Item Number	Description of Work Received from the Prime Contractor Involving Construction, Services , Equipment or Supplies	Amount Received by Prime Contractor

¹ A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

² Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

U.S. ENVIRONMENTAL PROTECTION AGENCY MBE/WBE UTILIZATION UNDER FEDERAL GRANTS AND COOPERATIVE AGREEMENTS

PART I. (Reports are required even if no procurements are made during the reporting period.)

1A. FEDERAL FISCAL YEAR (Oct. 1-Sep 30) 20_____	1B. REPORTING PERIOD (Check ALL appropriate boxes) <input type="checkbox"/> 1 st (Oct-Dec) <input type="checkbox"/> 2 nd (Jan-Mar) <input type="checkbox"/> 3 rd (Apr-Jun) <input type="checkbox"/> 4 th (Jul-Sep) <input type="checkbox"/> Semi-Annual (Oct-Mar) <input checked="" type="checkbox"/> Semi-Annual (Apr-Sep) <input type="checkbox"/> Annual <input type="checkbox"/> Check if this is the last report for the project (Project completed).																				
1C. REVISION OF A PRIOR REPORT? Y or N Year: _____ Quarter: _____	BRIEFLY DESCRIBE THE REVISIONS YOU ARE MAKING:																				
2A. EPA FINANCIAL ASSISTANCE OFFICE ADDRESS (ATTN: DBE Coordinator)	3A. RECIPIENT NAME AND ADDRESS																				
2B. EPA DBE COORDINATOR Name: E-mail:	2C. PHONE: Fax:	3B. RECIPIENT REPORTING CONTACT: Name: E-mail:	3C. PHONE: Fax:																		
4A. FINANCIAL ASSISTANCE AGREEMENT ID NUMBER (SRF State Recipients, refer to Instructions for Completion of blocks 4A, 5A and 5C.)	4B. FEDERAL FINANCIAL ASSISTANCE PROGRAM TITLE or CFDA NUMBER:																				
5A. TOTAL ASSISTANCE AGREEMENT AMOUNT (SRF State Recipients, refer to Instructions for Completion of blocks 4A, 5A and 5C.) EPA Share: \$ _____ Recipient Share: \$ _____	5B. If NO procurement and NO accomplishments were made this reporting period (by the recipients, sub-recipients, loan recipients, and prime contractors), CHECK and SKIP to Block No. 7. (<u>Procurements</u> are all expenditures through contract, order, purchase, lease or barter of supplies, equipment, construction, or services needed to complete Federal assistance programs. <u>Accomplishments</u> , in this context, are procurements made with MBEs and/or WBEs. <input type="checkbox"/>																				
5C. Total Procurements This Reporting Period (Only include amount not reported in any prior reporting period) Total Procurement Amount \$ _____ (Include total dollar values awarded by recipient, sub-recipients and SRF loan recipients, including MBE/WBE expenditures.)																					
5D. Were sub-awards issued under this assistance agreement? Yes No Were contracts issued under this assistance agreement? Yes No																					
5E. MBE/WBE Accomplishments This Reporting Period Actual MBE/WBE Procurement Accomplished: (Include total dollar values awarded by recipient, sub-recipients, SRF loan recipients and Prime Contractors.)																					
<table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;"></th> <th style="width: 20%; text-align: center;"><u>Construction</u></th> <th style="width: 20%; text-align: center;"><u>Equipment</u></th> <th style="width: 20%; text-align: center;"><u>Services</u></th> <th style="width: 20%; text-align: center;"><u>Supplies</u></th> <th style="width: 10%; text-align: center;"><u>Total</u></th> </tr> </thead> <tbody> <tr> <td>\$MBE:</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> <tr> <td>\$WBE:</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> </tbody> </table>					<u>Construction</u>	<u>Equipment</u>	<u>Services</u>	<u>Supplies</u>	<u>Total</u>	\$MBE:	_____	_____	_____	_____	_____	\$WBE:	_____	_____	_____	_____	_____
	<u>Construction</u>	<u>Equipment</u>	<u>Services</u>	<u>Supplies</u>	<u>Total</u>																
\$MBE:	_____	_____	_____	_____	_____																
\$WBE:	_____	_____	_____	_____	_____																
6. COMMENTS: (If no MBE/WBE procurements were accomplished during the reporting period, please explain what steps you are taking to achieve the MBE/WBE Program requirements specified in the terms and conditions of the Assistance Agreement.)																					
7. NAME OF RECIPIENT'S AUTHORIZED REPRESENTATIVE	TITLE																				
8. SIGNATURE OF RECIPIENT'S AUTHORIZED REPRESENTATIVE	DATE																				

PART II.

MBE/WBE PROCUREMENTS MADE DURING REPORTING PERIOD

EPA Financial Assistance Agreement Number: _____

1. Procurement Made By			2. Business Enterprise		3. \$ Value of Procurement	4. Date of Procurement MM/DD/YY	5. Type of Product or Services ^A (Enter Code)	6. Name/Address/Phone Number of MBE/WBE Contractor or Vendor
Recipient	Sub-Recipient and/or SRF Loan Recipient	Prime	Minority	Women				

Type of product or service codes:

1 = Construction

2 = Supplies

3 = Services

4 = Equipment

Note: Refer to Terms and conditions of your Assistance Agreement to determine the frequency of reporting. Recipients are required to submit MBE/WBE reports to EPA beginning with the Federal fiscal year quarter the recipients receive the award, continuing until the project is completed.

Davis-Bacon Wage Rate Requirements

(required contract provision)

Background and Applicability

On October 30, 2009, P.L. 111-88, "Making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes," was enacted. This law provides appropriations for both the Clean Water State Revolving Fund (CWSRF) and the Drinking Water State Revolving Fund (DWSRF) for Fiscal Year 2010, while adding new requirements to these already existing programs. One new requirement requires the application of Davis-Bacon Act requirements.

Application of the Davis-Bacon Act requirements extend not only to assistance agreements funded with Fiscal Year 2010 appropriations, but to all assistance agreements executed on or after October 30, 2009, whether the source of the funding is prior year's appropriations, state match, bond proceeds, interest earnings, principal repayments, or any other source of funding so long as the project is financed by an SRF assistance agreement. If a project began construction prior to October 30, 2009, but is financed or refinanced through an assistance agreement executed on or after October 30, 2009, Davis-Bacon Act requirements will apply to all construction that occurs on or after October 30, 2009, through completion of construction.

Ohio EPA Responsibilities

With respect to the Water Pollution Control Loan Fund (WPCLF) and Water Supply Revolving Loan Account (WSRLA) revolving funds, EPA provides capitalization grants to each State which in turn provides funding assistance to eligible recipients within the State. Typically, the assistance recipients are municipal or other local governmental entities that manage the funds. Occasionally, the assistance recipients may be a private for profit or not for profit entity. Although EPA and the State are responsible for ensuring assistance recipients incorporate the wage rate requirements set forth herein as part of contracts for WPCLF and WSRLA funding, the assistance recipient has the primary responsibility to maintain payroll records and for compliance with Davis-Bacon Act requirements as described below.

Municipal Or Other Local Governmental Entities Recipient's Responsibilities

The following is intended to help assistance recipients understand and meet their obligations related to Davis-Bacon (DB). Each assistance recipients should, however, review the contract/subcontract requirements that are set forth later in this document for a more full understanding of DB obligations.

Prior to advertising for bids:

- > Obtain the wage determination for the locality in which a covered activity subject to DB will take place from the Department of Labor (DOL) at www.wdol.gov.
- > Incorporate these wage determinations into the request for bids.
- > Include the required contract provisions (see below) into the contract documents.
- > Require prime contracts to include provisions that subcontractors follow the wage determination incorporated into the prime contract.

During the advertisement period:

- > Monitor www.wdol.gov on a weekly basis to ensure that the wage determination contained in the request for bids remains current.
- > If DOL modifies the DB wage determination more than 10 days prior to the bid opening, issue an addendum reflecting the modification.
- > If DOL modifies or supersedes the DB wage determination less than 10 days prior to bid opening and you cannot issue an addendum for the change, you must request a finding from Ohio EPA that there is not reasonable time to notify interested contractors of the modification of the wage determination. The Ohio EPA will give you a report of its findings.

After opening bids:

- > If the contract(s) aren't awarded within 90 days of the bid opening you must monitor www.wdol.gov on a weekly basis to ensure that wage determinations used in the bids remain current.
- > If the contract(s) aren't awarded within 90 days of the bid opening, any modifications or supersedes that DOL makes to the wage determination must be incorporated into the contract unless (1) you request an extension from Ohio EPA AND (2) Ohio EPA obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv).

After contracts are signed and during construction:

- > 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.
- > DOL may issue a revised wage determination applicable to one or all of your contracts after the award of the contract or execution of the change order which incorporated DB requirements into the contract if DOL determines that you have failed to incorporate a wage determination or have used a wage determination that clearly does not apply to the contract. If this occurs, you shall either terminate the contract or change order and rebid the contract OR incorporate DOL's wage determination retroactive to the beginning of the contract by change order. The contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.
- > 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. You must use Standard Form 1445 or equivalent documentation to memorialize the interviews.
- > Establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, you must:
 - conduct all interviews in confidence.
 - conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract.
 - conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB.
 - immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements.
- > Periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. You must:
 - establish and follow a spot check schedule based on your assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract.
 - 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 at a minimum.
 - 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.

- during the examinations, verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

> 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 DOL 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.

> Immediately report potential violations of the DB prevailing wage requirements to Andrew Lausted at EPA Region V at 312-886-0189 and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/esa/contacts/whd/america2.htm>.

If contracts have already been signed and DB requirements need to be incorporated:

> If contracts have already been signed prior to WPCLF/WSRLA funding being provided, you must issue a change order, task order, work assignment or similar legally binding instrument and incorporate the appropriate DOL wage determination from www.wdol.gov as well as the required contract provisions into the contract(s).

> Initiate the contractor and subcontractor review and wage interview requirements as described above and provided in the **Contract And Subcontract Provisions**.

**Private For Profit Or Not For Profit (Non-Governmental) Entities
Recipient's Responsibilities**

The requirements, responsibilities and contract provisions for Private For Profit or Not For Profit Entities (Non-Governmental Entities) is exactly the same as for Municipal Or Other Local Governmental Entities EXCEPT for the following:

Prior to advertising for bids:

> Obtain the proposed wage determinations for specific localities from www.wdol.gov.

> Submit the wage determination to Ohio EPA for approval prior to inserting the wage determination into the solicitation unless subsequently directed otherwise by Ohio EPA.

Contract And Subcontract Provisions For Contracts In Excess Of \$2,000

The following language must be included 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 with WPCLF or WSRLA funds and which is subject to the labor standards provisions of any of the acts listed in §5.1:

NOTE: Modify the first sentence to include the name of the WPCLF/WSRLA funding recipient prior to including these provisions in the contract documents.

Wage Rate Requirements

As used in these provisions "subrecipient" means _____ (fill in WPCLF/WSRLA funding recipient name here).

(a) The following applies to 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.

(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.wdol.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 EPA award official shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

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

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

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

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the subrecipient(s) 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 subrecipient(s) to the State award official. The State award official will transmit the report, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department

of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the 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 questions, including the views of all interested parties and the recommendation of the State award official, 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 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 subgrant 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/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 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.

Contract Provision For Contracts In Excess Of \$100,000 And Subject To The Overtime Provisions Of The Contract Work Hours And Safety Standards Act

The following language must be included 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 provisions are to be included in addition to the provisions for contracts in excess of \$2,000. As used in these paragraphs, the terms laborers and mechanics include watchmen and guards.

(b) Contract Work Hours and Safety Standards Act. The following applies to 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. As used in these paragraphs, 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 (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 (b)(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 (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.

Contract Provision For Contracts In Excess Of \$100,000 Subject ONLY To The Contract Work Hours And Safety Standards Act

In addition to the provisions for contracts in excess of \$2,000, for 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, you must insert clauses requiring:

(c) The following applies to 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 contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

The records shall be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Ohio EPA, EPA and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

AMERICAN IRON AND STEEL ACKNOWLEDGEMENT

The Contractor acknowledges to and for the benefit of the City of _____ (“Purchaser”) and the State of Ohio (the “State”) that it understands the goods and services under this Agreement are being funded with monies made available by the Clean Water State Revolving Fund and/or Drinking Water State Revolving Fund that have statutory requirements commonly known as “American Iron and Steel;” that requires all of the iron and steel products used in the project to be produced in the United States (“American Iron and Steel Requirement”) including iron and steel products provided by the Contactor 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.

Signature

Date

Name and Title of Authorized Signatory, Please Print or Type

Bidder’s Firm

Check here if the WPCLF or WSRLA applicant will be requesting an individual waiver for non- American made iron and steel products. Please note that the waiver box does not need to be marked for nationwide waivers.



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

MAR 20 2014

OFFICE OF WATER

MEMORANDUM

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

FROM: f (Andrew D. Sawyers, Director
v) Office of Wastewater Management (4201M)
Peter C. Grevatt, Director
Office of Ground Water and Drinking Water (4601M)

TO: Water Management Division Directors
Regions I - X

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

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

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

Implementation

The Act states:

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

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

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

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

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

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

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

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

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

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

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

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

Project Coverage

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9) What about refinancing?

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

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

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

Covered Iron and Steel Products

11) What is an iron or steel product?

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

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

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

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

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

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

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

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

15) What is the definition of steel?

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

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

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

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

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

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

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

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

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

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

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

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

20) What is ‘structural steel’?

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

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

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

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

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

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

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

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

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

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

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

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

Compliance

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Waiver Process

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

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

Definitions

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

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

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

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

Step-By-Step Waiver Process

Application by Assistance Recipient

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

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

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

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

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

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

Evaluation by EPA

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

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

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

Public Interest Waivers

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

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

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

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

Attachments

Appendix 1: Information Checklist for Waiver Request

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

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

Appendix 2: HQ Review Checklist for Waiver Request

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

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

Review Items	Yes	No	N/A	Comments
<p>Cost Waiver Requests</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 Waiver Requests</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? Examples include: <ul style="list-style-type: none"> – Multiple waiver requests for the materials described in this waiver request, for comparable projects in the same State – Multiple waiver requests for the materials described in this waiver request, for comparable projects in other States – Correspondence with construction trade associations indicating the non-availability of the materials • Are the available domestic materials indicated in the bid documents of inadequate quality compared those required by the project plans, specifications, and/or permits? 				

Appendix 3: Example Loan Agreement Language

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

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

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

Appendix 4: Sample Construction Contract Language

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

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

Appendix 5: Sample Certifications

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

Date

Company Name

Company Address

City, State Zip

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

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

Item, Products and/or Materials:

1. XXXX
2. XXXX
3. XXXX

Such process took place at the following location:

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

Signed by company representative

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

Date

Company Name

Company Address City,

State Zip

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

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

Item, Products and/or Materials:

1. XXXX
2. XXXX
3. XXXX

Such process took place at the following location:

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

Signed by company representative

**American Iron & Steel (AIS) Requirement of the Consolidated Appropriations Act of 2014
(Public Law 113-76)**

Q&A Part 2

PRODUCT QUESTIONS

1. Q: Do all fasteners qualify for de minimis exemption?

A: No. There is no broad exemption for fasteners from the American Iron and Steel (AIS) requirements. Significant fasteners used in SRF projects are not subject to the de minimis waiver for projects and must comply with the AIS requirements. Significant fasteners include fasteners produced to industry standards (e.g., ASTM standards) and/or project specifications, special ordered or those of high value. When bulk purchase of unknown-origin fasteners that are of incidental use and small value are used on a project, they may fall under the national de minimis waiver for projects. The list of potential items could be varied, such as big-box/hardware-store-variety screws, nails, and staples. The key characteristics of the items that may qualify for the de minimis waiver would be items that are incidental to the project purpose (such as drywall screws) and not significant in value or purpose (such as common nails or brads). See the following: http://water.epa.gov/grants_funding/upload/Deminimis-Waiver-04-15-14.pdf.

EPA also clarifies that minor components of two listed products – valves and hydrants -- may not need to meet the AIS requirements if the minor components compromise a very small quantity of minor, low-cost fasteners that are of unknown origin. See EPA's questions and answers on the subject at the following: http://water.epa.gov/grants_funding/upload/AIS-QandA-Part-1-Valves-and-Hydrants-final.pdf.

2. Q: Does PCCP pipe have to be domestically produced?

A: Yes. Pre-stressed concrete cylinder pipe (PCCP) or other similar concrete cylinder pipes would be comparable to pre-cast concrete which is specifically listed in the Consolidated Appropriations Act of 2014 as a product subject to the AIS requirement.

3. Q: If the iron or steel is made from recycled metals will the vendor/supplier have to provide a certification document certifying that the recycled metals are domestically produced?

A: No. Recycled source materials used in the production of iron and steel products do not have to come from the U.S. Iron or steel scrap, for instance, are considered raw materials that may come from anywhere. While certification is not required for the raw material, EPA does recommend that additional final processing of iron and steel be certified to have occurred in the U.S.

4. Q: Do tanks used for filtration systems, if delivered to the construction site separately and then filled with filtration media onsite, have to be domestically produced?

A: No. Tanks that are specifically designed to be filters, or as parts of a filtration system, do not have to be domestically produced because these parts are no longer simply tanks, even if the filter media has not been installed and will be installed at the project site, as is customary to do for shipping purposes. These parts have only one purpose which is to be housing for filters and cannot be used in another fashion.

5. Q: Can a recipient use non-domestic flanged pipe?

A: No. While the Consolidated Appropriations Act of 2014 does not specifically mention flanged pipe, since it does mention both pipe and flanges, both products would need to be domestically produced. Therefore, flanged pipe would also need to be domestically produced.

6. Q: Can a recipient use non-domestic couplings, expansion joints, and other similar pipe connectors?

A: No. These products would be considered specialty fittings, due to their additional functionality, but still categorized under the larger “fitting” categorization. Fittings are defined as a material that joins pipes together or connects to a pipe (AWWA, The Drinking Water Dictionary, 2000). Therefore, these products must comply with the AIS requirements and be produced domestically.

7. Q: Can a recipient use non-domestic service saddles and tapping sleeves?

A: No. These products are necessary for pipe repair, to tap a water main, or to install a service or house connection. Therefore, they are included under the larger “pipe restraint” category which is a specifically identified product subject to the domestic preference in the Consolidated Appropriations Act of 2014.

8. Q: The AIS guidance does not appear to cover reused items (i.e., existing pipe fittings, used storage tanks, reusing existing valves). How should reused items be addressed?

A: The AIS guidance does not address reuse of items. Reuse of items that would otherwise be covered by AIS is acceptable provided that the item(s) was originally purchased prior to January 17, 2014, the reused item(s) is not substantially altered from original form/function, and any restoration work that may be required does not include the replacement or addition of foreign iron or steel replacement parts. EPA recommends keeping a log of these reused items by including them on the assistance recipient’s de minimis list, and stating therein that these items are reused products. The donation of new items (such as a manufacturer waiving cost for certain delivered items because of concerns regarding the origin of a new product) is not, however, considered reuse.

9. Q: What does “time needed” mean in the AIS guidance, in reference to the definition of “Reasonably Available Quantity”?

A: For considering whether a product would meet reasonably available quantity, “time needed” is based on the construction schedule. If the item is delayed and there is substantial impact on the overall construction schedule, this would not be according to the “time needed.”

10. Q: If a product is not specifically included on the list of AIS covered products, must it comply with AIS?

A: Possibly. The AIS requirements include a list of specifically covered products, one of which is construction materials, a broad category of potential products. For construction materials, EPA’s AIS guidance includes a set of example items that it considers construction materials composed primarily of iron and steel and covered by the Act. This example list in the guidance is not an all-inclusive list of potential construction materials. However, the guidance also includes a list of items that EPA specifically does not consider construction materials, generally those of electrical or complex-mechanical nature. If a product is similar to the ones in the non-construction material list (and it is also not specifically listed by the Act), it is not a construction material. For all other items specifically included in the Act, coverage is generally self-evident.

11. Q: If a listed iron and steel product is used as a part for an assembled product that is non-domestic, do the AIS requirements apply?

A: AIS requirements only apply to the final product as delivered to the work site and incorporated into the project. Other assemblies, such as a pumping assembly or a reverse osmosis package plant, are distinct products not listed and do not need to be made in the U.S. or composed of all U.S. parts. Therefore, for the case of a non-covered product used in a larger non-domestic assembly, the components, even if specifically listed in the Consolidated Appropriations Act, do not have to be domestically produced.

12. Q: Is cast iron excluded from the AIS requirements?

A: No. Cast iron products that fall under the definition of iron and steel products must comply with the AIS requirements.

13. Q: The guidance states that “construction materials” do not include mechanical equipment, but then identifies ductwork as a construction material. Please clarify.

A: Ductwork is not mechanical equipment, therefore it is considered a “construction material” and must comply with the AIS requirements.

14. Q: Do “meters” mentioned in EPA’s guidance as non-construction materials include both flow meters and water meters?

A: Yes. “Meters” includes any type of meter, including: flow meters, wholesale meters, and water meters/service connections.

15. Q: Must coiled steel be domestic?

A: Yes. Coiled steel is an intermediate product used in the production of steel pipe and must come from a U.S. source or subject to a waiver in order to comply with the AIS requirements.

16. Q: Are pig iron, direct reduced iron (DRI), and ingot considered raw materials?

A: No. These are considered intermediate products used in the production of iron or steel and must come from a U.S. source or subject to a waiver in order to comply with the AIS requirements.

17. Q: Can assistance recipients rely on a marking that reads, “Made in the USA,” as evidence that all processes took place in the U.S.?

A: No. This designation is not consistent with our requirements that all manufacturing processes of iron and steel products must take place in the U.S.

18. Q: When determining what constitutes a product made “primarily” of iron or steel, who makes this determination?

A: The manufacturer will show if its product qualifies as primarily made of iron or steel. The recipient should expect the manufacturer to provide documentation/ certification that its product is AIS compliant.

19. Q: Do aerators need to be produced domestically in order to comply with AIS?

A: No. Aerators, similar to pumps, are mechanical equipment that do not need to meet the AIS requirements. “Blowers/aeration equipment, compressors” are listed in EPA’s guidance as non-construction materials.

20. Q: Are Sluice and Slide Gates considered valves?

A: No. Valves are products that are generally encased / enclosed with a body, bonnet, and stem. Examples include enclosed butterfly, ball, globe, piston, check, wedge, and gate valves. Furthermore, “gates” (meaning sluice, slide or weir gates) are listed in EPA’s guidance as non-construction materials.

AIS PROCESS QUESTIONS

21. Q: Will notices of waiver applications be published in the federal register?

A: No. Applications for waivers will be published on EPA’s website (http://water.epa.gov/grants_funding/aisrequirement.cfm). EPA will provide 15 days for open public comment, as noted on the website.

22. Q: Will states be collecting the step certification paper trail, as presented in the AIS guidance?

A. No. Assistance recipients must maintain documentation of compliance with AIS. EPA recommends use of the step certification process. This process is a best practice and traces all manufacturing of iron and steel products to the U.S. If the process is used, the state does not have to collect the documentation. The documents must be kept by the assistance recipient and reviewed by the state during project reviews.

23. Q: Why is it considered a best practice for states to conduct site visits, when it is the assistance recipient's responsibility to meet the AIS requirements?

A: It is both the assistance recipient's and the state's responsibility to ensure compliance with the AIS requirements. The state is the recipient of a federal grant and must comply with all grant conditions, including a condition requiring that the AIS requirements be adhered to. Therefore, it is recommended that states conduct site visits of projects during construction and review documentation demonstrating the assistance recipient's proof of compliance.

24. Q: Please further define the state's role in the waiver process.

A: The state's role in the waiver process is to review any waiver requests submitted to the state in order to ensure that all necessary information has been provided by the assistance recipient prior to forwarding the request to EPA. If a state finds the request lacking, the state should work with the assistance recipient to help obtain complete information.

25. Q: How much time does EPA have to evaluate the waiver during the evaluation step?

A: At a minimum, EPA is required to provide 15 days for open public comment. There is no specific deadline or time limit for EPA to review waiver requests. Each waiver request will come with its own specific details and circumstances and may require a different amount of time for review and analysis. For example, public interest waivers in general may take longer to review than availability waivers which are typically more straightforward. However, EPA understands that construction may be delayed while waiting for a waiver and will make every effort to review and issue decisions on waiver requests in a timely manner.

PROJECT QUESTIONS

26. Q: What if a project is funded by another funding entity (i.e., United States Department of Agriculture – Rural Development) where AIS is not required and begins construction after January 17, 2014 but then applies to the SRF to refinance the project? Are they ineligible?

A: The project is not ineligible. AIS requirements will apply to any construction that occurs after the assistance agreement is signed, through the end of construction. If construction is complete, there is no retroactive application of the AIS requirements.

27. Q: If the assistance recipient can demonstrate through market research that the AIS requirement will exceed the 25 percent cost threshold, is the entire project exempt from the AIS requirement?

A: If the waiver application shows that the inclusion of American iron and steel products causes the entire cost of the project to increase by more the 25 percent, a waiver may be granted for the entirety of the project.

28. Q: Can the recipient use non-SRF funds to pay for the non-compliant item.

A: No. It is not an acceptable to use non-SRF funds to pay for a non-compliant item. The Consolidated Appropriations Act of 2014 requires that all iron and steel products, no matter the source of funding, must be made in the U.S. if SRF funds are used in the project.

29. Q: What constitutes “satisfactory quality” as defined in the AIS guidance, in reference to the availability waiver process.

A: “Satisfactory quality” means the product meets the project design specifications. A waiver may be granted if a recipient determines that the project plans and design would be compromised because there are no American made products available that meet the project design specifications.

30. Q: The guidance states that the AIS requirement applies to any project “funded in whole or in part” by an SRF. Where is this in the Act?

A: The Act states that, “None of the funds made available by a ... [State SRF program] ... 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.” This sentence clearly states that no SRF program may use its funds for a project unless all of the iron and steel products used in the project are made in the U.S. This is true even if only \$1 of SRF funding is used in the project.

31. Q: There is always an expectation on the part of an assistance recipient that the construction phase of a planning and/or design only loan will be funded through the SRF. If the original planning and/or design only loan was executed prior to a January 17, 2014, does this mean the entire project will be exempt from the AIS requirement?

A: If the original loan includes construction, and was executed prior to January 17, 2014, then the AIS provision does not apply to the project. If the original loan was only for planning and/or design, then a written commitment or documented “expectation” is needed to show exemption from the

requirements. Appearance on a priority list in an Intended Use Plan along with written reasonable assurance from the state that the recipient will receive SRF funding for project construction could provide sufficient evidence of “expectation of funding”.

32. Q: What if there has been a change order or redesign requiring new plans and specifications to be approved and they were approved after January 17, 2014: does the project now have to comply with AIS?

A: In most cases, no. Change orders are typically small enough changes that the original plan and specification date will still hold true. For example, if a pipe alignment has to be changed for a block or two due to unforeseen conditions, but new plans and specifications had to be submitted for this section of the project, then that could be considered a minor change. However, if there has been a major redesign, perhaps the whole project had to be redesigned starting from scratch, then the new plans and specification approval date would apply.

33. Q: What if the bids on a project with plans and specifications approved before January 17, 2014 but the loan is signed after January 17, 2014 come in low, and there is significant funding remaining in the loan agreement, so the community designs a second project with the remaining funds: does that project have to comply with the AIS requirements?

A: If the second project is closely related in purpose, place and time to the first project, then the second project would be exempt from the AIS requirements. It is the assistance recipient’s responsibility (with state oversight) to show that a project is closely related, or not, in purpose, place and time.

34. Q: What if the assistance agreement was signed after January 17, 2014, state approval of plans for the first phase of the project was in place prior to January 17, 2014, but state approval of the plans for the second phase of the project was received after January 17, 2014?

A: In such a case, the AIS provision would not apply to the first phase of the project. If the second phase of the project is considered the same project as the first phase, due to its close relation in purpose, place and time, the entire project may be exempt. It is the assistance recipient’s responsibility (with state oversight) to show that phases of a project is closely related, or not, in purpose, place and time.

35. Q: Do products purchased through procurement-only contracts have to be comply with AIS?

A: Yes. For projects funded by SRF, the products procured under any form of contract must comply with AIS. A procurement-only contract generally involves the bulk purchase of common items (such as pipe, concrete, and/or pumps) of independent timing from a set of planned projects. If products which are purchased through a procurement-only contract are being installed under another contract, the procurement-only contract would probably not be considered a separate project in purpose, place and time; and therefore, would have to comply with the AIS requirements.

March 2015

American Iron & Steel Requirement for the Clean Water and Drinking Water State Revolving Funds

Q&A Part 3

*For CWSRF and DWSRF: On **January 17, 2014**, Public Law 113-76, the "Consolidated Appropriations Act, 2014," was enacted and included an American Iron and Steel requirement for the Clean Water and Drinking Water State Revolving Fund programs through the end of fiscal year 2014. Since then, the AIS requirement has continued for both programs, but through different statutes, with a few changes as described in the questions and answers provided below.*

*For CWSRF: On **June 10, 2014**, the Water Resources Reform and Development Act amended the Clean Water Act to include permanent requirements for the use of AIS products in CWSRF assistance agreements. Section 608 of the CWA now contains requirements for AIS that repeat those of the Consolidated Appropriations Act, 2014. All CWSRF assistance agreements must comply with Section 608 of the CWA for implementation of the permanent AIS requirement.*

*For DWSRF: On **December 16, 2014**, the President signed Public Law 113- 235, the "Consolidated and Further Continuing Appropriations Act, 2015," which provides fiscal year 2015 full-year appropriations through September 30, 2015. This law continues the requirement for the use of AIS products in DWSRF assistance agreements through September 30, 2015.*

CWSRF PROGRAM

- 1. Q: The Water Resources Reform and Development Act amended the Clean Water Act to include permanent requirements for the use of AIS for CWSRF funded assistance agreements. Does the CWA include an exemption for plans and specifications approved prior to the enactment of the legislation similar to the exemption included in the Consolidated Appropriations Act (CAA) 2014?**

A: Yes. The WRRDA amendment to the CWA, which included AIS requirements, included a similar exemption as the CAA 2014. For any CWSRF assistance agreement signed on or after October 1, 2014, if the plans and specifications were approved prior to June 10, 2014 (the enactment of WRRDA), then the project is exempt from AIS requirements. For assistance agreements signed prior to October 1, 2014, the previous dates in the CAA 2014 apply (see March 20, 2014, AIS guidance document).

If a project does not require approved engineering plans and specifications, the bid advertisement date will count in lieu of the plans and specifications approval date for purposes of this exemption in Section 608 (f).

The following table summarizes AIS exemptions based on the plans and specifications approval date for CWSRF funded projects.

CWSRF AIS Project Exemption Based on Plans and Specifications Approval Date		
<u>Assistance Agreement Signed:</u>	<u>Exempt from AIS if Plans and Specifications Were Approved Before:</u>	<u>Basis for Exemption:</u>
1/17/2014 through 9/30/2014	4/15/2014	<ul style="list-style-type: none"> • Consolidated Appropriations Act 2014 • National waiver signed 4/15/2014*
On or after 10/1/2014	6/10/2014	<ul style="list-style-type: none"> • Clean Water Act Section 608

** To be covered by the national waiver, the plans and specifications had to be submitted to the state prior to 1/17/2014*

2. Q: Does the AIS requirement apply to refinanced CWSRF projects?

A: Yes, in some cases. If a project began construction, financed from a non-CWSRF source prior to June 10, 2014, but is refinanced through a CWSRF assistance agreement executed on or after October 1, 2014, AIS requirements will apply to all construction that occurs on or after June 10, 2014, through completion of construction, unless engineering plans and specifications were approved by the responsible state agency prior to June 10, 2014. For CWSRF projects funded on or after October 1, 2014, there is no retroactive application of the AIS requirements where a refinancing occurs for a project that has completed construction prior to June 10, 2014.

DWSRF PROGRAM

3. Q: The Consolidated and Further Continuing Appropriations Act 2015 continues the AIS requirements for DWSRF funded assistance agreements. Does the Act include an exemption for plans and specifications approved prior to the enactment of the legislation, similar to the exemption included in the Consolidated Appropriations Act (CAA) 2014?

A: Yes. The Consolidated and Further Continuing Appropriations Act 2015 includes a similar exemption as the CAA 2014. For any assistance agreement signed on or after December 16, 2014 (the enactment of the Act), if the plans and specifications were approved prior to December 16, 2014, then the project is exempt from the AIS requirements. For assistance agreements signed prior to December 16, 2014, the previous dates in the CAA 2014 apply (see March 20, 2014 AIS guidance document).

If a project does not require approved engineering plans and specifications, the bid advertisement date will count in lieu of the plans and specifications approval date for purposes of the exemption in Section 424(f).

4. Q: Do DWSRF assistance agreements signed during the time period between September 30, 2014, and December 16, 2014, still have to comply with the AIS requirements?

A: Yes. The Continuing Appropriations Resolution 2015 was signed on September 19, 2014, which extended funding for the DWSRF with the same conditions that were made applicable by the language in the Fiscal Year 2014 appropriations, including the requirement for the use of American Iron and Steel products in projects receiving financial assistance from the DWSRF. Therefore, all assistance agreements starting October 1, 2014, through the enactment of the Consolidated and Further Continuing Appropriations Act 2015 (signed December 16, 2014), must include the AIS requirements. However, if the plans and specifications for any of these projects were approved prior to April 15, 2014 (the date the national waiver was signed), then the project is exempt from the AIS requirements.

The following table summarizes AIS exemptions based on the plans and specifications approval date for DWSRF funded projects.

DWSRF AIS Project Exemption Based on Plans and Specifications Approval Date		
<u>Assistance Agreement Signed:</u>	<u>Exempt from AIS if Plans and Specifications Were Approved Before:</u>	<u>Basis for Exemption:</u>
1/17/2014 through 9/30/2014	4/15/2014	<ul style="list-style-type: none"> • Consolidated Appropriations Act 2014 • National waiver signed 4/15/2014*
10/1/2014 through 12/15/2014	4/15/2014	<ul style="list-style-type: none"> • Continuing Appropriations Resolution 2015 (continued CAA 2014 requirements)** • National waiver signed 4/15/2014*
12/16/2014 through 9/30/2015	12/16/2014	<ul style="list-style-type: none"> • Consolidated and Further Continuing Appropriations Act 2015

* To be covered by the national waiver, the plans and specifications had to be submitted to the state prior to 1/17/2014

** Following the first continuing resolution, there were two additional CRs to fill the gap between 12/11/2014 and 12/16/2014

5. Q: Does the AIS requirement apply to refinanced DWSRF projects?

A: Yes, in some cases. If a project began construction, financed from a non-DWSRF source prior to December 16, 2014, but is refinanced through a DWSRF assistance agreement executed on or after December 16, 2014, AIS requirements will apply to all construction that occurs on or after December 16, 2014, through completion of construction, unless engineering plans and

specifications were approved by the responsible state agency prior to December 16, 2014. For DWSRF projects funded on or after December 16, 2014, there is no retroactive application of the AIS requirements where a refinancing occurs for a project that has completed construction prior to December 16, 2014.

BOTH CWSRF AND DWSRF PROGRAMS

6. **Q: If a coating is applied to the external surface of a domestic iron or steel component, and the application takes place outside of the United States, would the product be compliant under the AIS requirements?**

A: Yes. The product would still be considered a compliant product under AIS requirements. Any coating processes that are applied to the external surface of iron and steel components that would otherwise be AIS compliant would not disqualify the product from meeting the AIS requirements regardless of where the coating processes occur, provided that final assembly of the product occurs in the United States.

The exemption above only applies to coatings on the *external surface* of iron and steel components. It does not apply to coatings or linings on internal surfaces of iron and steel products, such as the lining of lined pipes. All manufacturing processes for lined pipes, including the application of pipe lining, must occur in the United States for the product to be compliant with AIS requirements.



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

OFFICE OF WAIVER

DECISION MEMORANDUM

SUBJECT: De Minimis Waiver of Section 436 of P.L. 113-76, Consolidated Appropriations Act (CAA), 2014

FROM: Nancy K. Stoner
Acting Assistant Administrator

The EPA is hereby granting a nationwide waiver pursuant to the "American Iron and Steel (AIS)" requirements of P.L. 113-76, Consolidated Appropriations Act, 2014 (Act), section 436 under the authority of Section 436(b)(1) (public interest waiver) for de minimis incidental components of eligible water infrastructure projects. This action permits the use of products when they occur in de minimis incidental components of such projects funded by the Act that may otherwise be prohibited under section 436(a). Funds used for such de minimis incidental components cumulatively may comprise no more than a total of 5 percent of the total cost of the materials used in and incorporated into a project; the cost of an individual item may not exceed 1 percent of the total cost of the materials used in and incorporated into a project.

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 specific domestic iron and steel products that are produced in the United States 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, unless the agency determines it necessary to waive this requirement based on findings set forth in Section 436(b). The Act states, "[the requirements] shall not apply in any case or category of cases in which the Administrator of the Environmental Protection Agency...finds that- (1) applying subsection (a) would be inconsistent with the public interest" 436(b)(1).

In implementing section 436 of the Act, the EPA must ensure that the section's requirements are applied consistent with congressional intent in adopting this section and in the broader context of the purposes, objectives, and other provisions applicable to projects funded under the SRF. Water infrastructure projects typically contain a relatively small number of high-cost components incorporated into the project. In bid solicitations for a project, these high-cost components are generally described in detail via project specific technical specifications. For these major components, utility owners and their contractors are generally familiar with the conditions of availability, the potential alternatives for each detailed specification, the approximate cost, and the country of manufacture of the available components.

Every water infrastructure project also involves the use of thousands of miscellaneous, generally low-cost components that are essential for, but incidental to, the construction and are incorporated into the physical structure of the project. For many of these incidental components, the country of manufacture and the availability of alternatives is not always readily or reasonably identifiable prior to procurement in the normal course of business; for other incidental components, the country of manufacture may be known but the miscellaneous character in conjunction with the low cost, individually and (in total) as typically procured in bulk, mark them as properly incidental. Examples of incidental components could include small washers, screws, fasteners (i.e., nuts and bolts), miscellaneous wire, corner bead, ancillary tube, etc. Examples of items that are clearly not incidental include significant process fittings (i.e., tees, elbows, flanges, and brackets), distribution system fittings and valves, force main valves, pipes for sewer collection and/or water distribution, treatment and storage tanks, large structural support structures, etc.

The EPA undertook multiple inquiries to identify the approximate scope of de minimis incidental components within water infrastructure projects during the implementation of the American Reinvestment and Recovery Act (ARRA) and its requirements (Buy American provisions, specifically). The inquiries and research conducted in 2009 applies suitably for the case today. In 2009, the EPA consulted informally with many major associations representing equipment manufacturers and suppliers, construction contractors, consulting engineers, and water and wastewater utilities, and performed targeted interviews with several well-established water infrastructure contractors and firms who work in a variety of project sizes, and regional and demographic settings to ask the following questions:

- What percentage of total project costs were consumables or incidental costs?
- What percentage of materials costs were consumables or incidental costs?
- Did these percentages vary by type of project (drinking water vs. wastewater treatment plant vs. pipe)?

The responses were consistent across the variety of settings and project types, and indicated that the percentage of total costs for drinking water or wastewater infrastructure projects represented by these incidental components is generally not in excess of 5 percent of the total cost of the materials used in and incorporated into a project. In drafting this waiver, the EPA has considered the de minimis proportion of project costs generally represented by each individual type of these incidental components within the many types of such components comprising those percentages, the fact that these types of incidental components are obtained by contractors in many different ways from many different sources, and the disproportionate cost and delay that would be imposed on projects if the EPA did not issue this waiver.

Assistance recipients who wish to use this waiver should in consultation with their contractors determine the items to be covered by this waiver and must retain relevant documentation (i.e., invoices) as to those items in their project files.

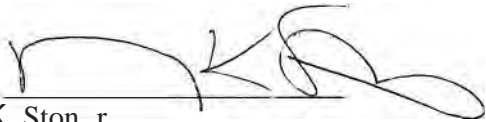
If you have any questions concerning the contents of this memorandum, please contact Timothy Connor, Chemical Engineer, Municipal Support Division, at connor.timothy@epa.gov or (202) 566-1059 or Kirsten Anderer, Environmental Engineer, Drinking Water Protection Division, at anderer.kirsten@epa.gov or (202) 564-3134.

A?R t5 2014

Issued on: _____

Approved by: _____

Nancy K. Stoner
Acting Assistant Administrator



State of Ohio
WATER POLLUTION CONTROL LOAN FUND (WPCLF/SRF)

CONTRACT CHANGE ORDER

RECIPIENT _____ CHANGE ORDER NBR _____

LOAN NUMBER _____ CONTRACT _____

OWDA PROJECT No. _____ DATE _____

Description of Change:

RECOMMENDED BY: _____ DATE: _____
(Engineer)

APPROVED BY: _____ DATE: _____
(Recipient)

ACCEPTED BY: _____ DATE: _____
(Contractor)

(Company)

Original Contract Amt	_____
Previous Changes (+ / --)	_____
This Change (+ / --)	_____
Adjusted Contract Amt	_____

OWDA APPROVAL
The above proposal is hereby accepted and I recommend that it be approved and made a part of the contract noted above. The approval does not constitute an increase in the total loan amount, but represents approval for the work.

Ohio EPA Acceptance _____ Chief Engineer _____

Date _____ Date _____

CHANGE ORDER INSTRUCTIONS:

All Change Orders for this work, regardless of costs and whether Water Pollution Control Loan Fund (WPCLF) or Water Supply Revolving Loan Account (WSRLA) funding will be used to finance the changes, must be submitted to Ohio EPA for review.

Changes Requiring Prior Approval

Any change which substantially modifies the Project Facilities as specified in the Ohio EPA approved Facilities Plan and Final Permit to Install or Final Plan Approval (when applicable) or alters the direct or indirect impact of the Project Facilities upon the environment must be incorporated into a Change Order. One copy of the Change Order prior to execution is to be submitted to Ohio EPA for review and prior approval of the acceptability of the change. "Prior to execution" means before the Change Order is signed by the Owner.

Ohio EPA will review the Change Order and inform the Owner of the technical, environmental and operational acceptability of the change, and give the Owner permission to proceed with the proposed work.

All Other Changes

Change Orders not requiring prior approval as described above must be submitted to Ohio EPA within one (1) month of the time at which they are approved by the Owner. Change Orders for WPCLF projects should be submitted to the Division of Environmental and Financial Assistance (DEFA) while Change Orders for WSRLA projects should be submitted to the Division of Drinking and Ground Water (DDAGW) in central office.

Change Order Approval Process

After the Change Order is executed, one (1) copy of the Change Order, including the supporting documentation, is to be sent to Ohio EPA for final review. The WPCLF/WSRLA Change Order forms must have original signatures.

Communities have the option to submit hard copies of the project Change Orders via mail to Ohio EPA or to send PDF Change Order forms and supporting documentation electronically. With either hard copy or electronic submittals, the WPCLF Change Orders should be submitted to DEFA and WSRLA Change Orders should be submitted to DDAGW - Central Office.

The dedicated e-mail address for the electronic submittal of WPCLF Change Orders is EPAWPCLFCO@epa.ohio.gov.

The dedicated e-mail address for the electronic submittal of WSRLA Change Orders is EPAWSRLACO@epa.ohio.gov.

After the Change Order is accepted and eligible costs determined, Ohio EPA will issue a letter informing the Owner and authorizing OWDA to disburse funds from Project Contingency for the work. The OEPA letter will be sent electronically. OWDA will return a PDF of the WPCLF/WSRLA Change Order form which will be signed by all parties including Ohio EPA and OWDA.

Please notify Ohio EPA if the community prefers a hard copy of change order approval documentation and then Ohio EPA and OWDA will send hard copies of approval documentation through the mail.

Payments for Change Order Work

The Owner is precluded from submitting to the OWDA payment requests for Eligible Project Costs associated with the Change Orders until such time as the Ohio EPA's approval of the Change Orders has been obtained.

Violating Facilities Clause
(Required Contract Provision)

Language prohibiting this use of equipment or services from anyone on the EPA List of Violating Facilities must be included in the contract documents.

Violating Facilities:

The Contractor agrees to comply with all applicable standards, orders or requirements under Section 306 of the Clean Air Act, 42 USC 1857 (h), Section 508 of the Clean Water Act, 33 USC 1368, Executive Order 11738, and EPA regulations, 40 CFR Part 32, which prohibits the use under non-exempt Federal contracts, grants, or loans of facilities included on the EPA List of Violating Facilities.

NOTE: THE CONTRACT LANGUAGE SAMPLES PROVIDED HEREIN ARE EXAMPLES OF WHAT COULD BE INCLUDED IN ALL CONTRACTS THAT USE WPCLF OR WSRLA FUNDS. OHIO EPA MAKES NO CLAIMS REGARDING THE LEGALITY OF THESE CLAUSES WITH RESPECT TO STATE OR LOCAL LAW. IT IS IMPERATIVE THAT ANY PARTY INSERTING THESE CLAUSES INTO A CONTRACT VERIFY THAT THEY ARE LEGAL AND ENFORCEABLE ACCORDING TO STATE AND LOCAL LAWS, REGULATIONS, AND ORDINANCES.

Requirement For Utilization Of Small Businesses In Rural Areas (SBRA)

(Required Contract Provision)

The following policy should be added to the “Instructions to Bidders” section and referenced in the Table of Contents for the contract documents:

This procurement is subject to the EPA policy of encouraging the participation of small businesses in rural areas. It is EPA policy that recipients of EPA financial assistance awards utilize the services of small businesses in rural areas (SBRAs), to the maximum extent practicable. The objective is to assure that such small business entities are afforded the maximum practicable opportunity to participate as subcontractors, suppliers and otherwise in EPA-awarded financial assistance programs. This policy applies to all contracts and subcontracts for supplies, construction, and services under EPA grants or cooperative agreements. Small purchases are also subject to this policy.

If possible, also add the following language to the “Advertisement for Bids”:

This procurement is subject to the EPA policy of encouraging the participation of small business in rural areas (SBRAs).

NOTE: THE CONTRACT LANGUAGE SAMPLES PROVIDED HEREIN ARE EXAMPLES OF WHAT COULD BE INCLUDED IN ALL CONTRACTS THAT USE WPCLF OR WSRLA FUNDS. OHIO EPA MAKES NO CLAIMS REGARDING THE LEGALITY OF THESE CLAUSES WITH RESPECT TO STATE OR LOCAL LAW. IT IS IMPERATIVE THAT ANY PARTY INSERTING THESE CLAUSES INTO A CONTRACT VERIFY THAT THEY ARE LEGAL AND ENFORCEABLE ACCORDING TO STATE AND LOCAL LAWS, REGULATIONS, AND ORDINANCES.

Insurance Provisions
(Required Contract Provision)

Section 3.5 of the WPCLF/WSRLA Loan Agreement contains specific requirements regarding insurance for all contractors and all subcontractors for the life of the contract. These insurance requirements must be reflected in the contract documents. Adjust the following language as needed to meet the specifics of the construction project and local requirements while still meeting the provisions of the Loan Agreement.

The Contractor shall, at his expense, furnish and maintain insurance in the form and amounts specified in subparagraphs 1 through 7 inclusive, of this section. Policies shall be with acceptable insurance companies authorized to do business in the State of Ohio.

The Contractor shall not commence Work nor shall he permit any of his Sub-contractors to commence Work until the insurance policies specified hereinafter, or otherwise required, have been submitted to, and approved by the Owner. Such insurance policies shall be kept in force until the Contractor receives final payment.

Insurance shall be endorsed so that it cannot be changed or canceled in less than ten (10) days after receipt by the Contractor and the Owner of written notice of such proposed action from the Insurer.

The insurance specified in Subparagraphs 1, 2, 3 and 4 shall be written under the comprehensive general form of liability insurance contracts.

The Contractor shall furnish three (3) certificates or, whenever specifically requested by the Owner, three (3) certified copies of the insurance policies themselves and a receipt evidencing full payment of the premiums.

In addition to the insurance described hereinafter, the Contractor shall secure and maintain such other insurance as may be designated elsewhere in the Contract document.

If the Contractor is required to repair or perform Work after the completion of the Work involved under this Contract or obtain new policies in accordance with the requirements in this section.

1. *Builders Risk*: In addition to such fire and other physical damage insurance as the Contractor elects to carry for his own protection, he shall also secure and maintain in the name of the Owner, the government agency sponsoring the Project, Subcontractors, the Consulting Engineer and any other parties having an interest in the Project, as named insured as their interest may appear; a builders' risk policy for fire, extended coverage, vandalism and malicious mischief in the amount of one hundred (100) percent of the value of the complete parts of the Project and Materials in storage, except that such coverage shall not be required in connection with sewer, water main or paving construction. Pump or lift station construction shall not be considered sewer or water main construction for purposes of this paragraph.

2. *Workers Compensation*: The Contractor shall provide Workers Compensation Insurance for all employees engaged in Work who may come within the protection of the workers compensation law, and, where applicable, employer's General Liability Insurances for employees not so protected and shall require all Subcontractors to provide corresponding insurance.

NOTE: THE CONTRACT LANGUAGE SAMPLES PROVIDED HEREIN ARE EXAMPLES OF WHAT COULD BE INCLUDED IN ALL CONTRACTS THAT USE WPCLF OR WSRLA FUNDS. OHIO EPA MAKES NO CLAIMS REGARDING THE LEGALITY OF THESE CLAUSES WITH RESPECT TO STATE OR LOCAL LAW. IT IS IMPERATIVE THAT ANY PARTY INSERTING THESE CLAUSES INTO A CONTRACT VERIFY THAT THEY ARE LEGAL AND ENFORCEABLE ACCORDING TO STATE AND LOCAL LAWS, REGULATIONS, AND ORDINANCES.

The Contractor shall indemnify the Owner and the Consulting Engineer against any and all liabilities, cost and expenses due to accidents or other occurrences covered by the workers compensation law.

3. *Contractor's Motor Vehicle Bodily Injury and Property Damage Liability Insurance:* Insurance to cover liability arising from the use and operation of motor vehicles in connection with the performance of the Contract (as customarily defined in liability insurance policies), whether they be owned, hired or non-owned by the Contractor, as follows:

- a. Bodily Injury Liability: \$500,000 for each person; limit of \$1,000,000 for each occurrence.
- b. Property Damage Liability: \$500,000 for each occurrence.

4. *Contractor's Public Liability and Property Damage Liability Insurance:* Contractor's Public Liability Insurance providing a limit of not less than \$500,000 for all damages arising out of bodily injuries, including accidental death to one person, and a total limit of \$1,000,000 for all damages arising out of bodily injuries, including accidental death, to two or more persons in any one occurrence. Contractor's Property Damage Liability Insurance providing for a limit on not less than \$500,000 for all damages to or destruction of property.

Coverage under this policy shall include, to the limits indicated above, the collapse or damage to any structure, building or its contents, public or private utility, or pavement during construction and for two (2) years thereafter.

Whenever Work under the Contract is to be done in the vicinity of existing underground utilities or structures, coverage under the policy shall also include, to the limits indicated, all damages to said underground utilities or structures during construction and for a period of two (2) years thereafter. Whenever Work under the Contract is to be done by blasting, coverage under the policy shall also include, to the limits indicated above, all damages of any kind whatsoever caused by blasting.

5. *Contractor's Protective Public Liability and Property Damage Liability Insurance:* Contractor's Protective Public Liability and Property Damage Liability Insurance for operations performed by Subcontractors providing for coverage and limits corresponding to those described in subparagraph 4.

6. *Owner's Protective Public Liability and Property Damage Liability Insurance:* Regular Owner's Protective Public Liability and Property Damage Liability Insurance for operations performed by the Contractor or any Sub-contractor providing for coverage and limits corresponding to those described in subparagraph 4.

This policy shall be written in the name of the Owner as a separate policy from those specified elsewhere herein.

7. *Railroad Protective Liability Insurance:* In any of the Work under this Contract is on railroad R/W, the Contractor shall at its sole cost and expense, procure and provide, for and in behalf of each railroad company. Protective Liability Insurance (AARAASHO form) with minimum limits per occurrence of not less than \$2,000,000 for bodily injury, death and/or property damage, subject to an aggregate limit of \$6,000,000 per annum. The policy shall name each railroad company as the insured and be issued to the Contractor. Each railroad company shall be provided with a copy of each policy of insurance prior to commencement of any work.

NOTE: THE CONTRACT LANGUAGE SAMPLES PROVIDED HEREIN ARE EXAMPLES OF WHAT COULD BE INCLUDED IN ALL CONTRACTS THAT USE WPCLF OR WSRLA FUNDS. OHIO EPA MAKES NO CLAIMS REGARDING THE LEGALITY OF THESE CLAUSES WITH RESPECT TO STATE OR LOCAL LAW. IT IS IMPERATIVE THAT ANY PARTY INSERTING THESE CLAUSES INTO A CONTRACT VERIFY THAT THEY ARE LEGAL AND ENFORCEABLE ACCORDING TO STATE AND LOCAL LAWS, REGULATIONS, AND ORDINANCES.

Materials Testing
(Required Contract Provision)

In addition to the details included with specific equipment testing in the specifications, include an overall statement regarding testing for the project. Adjust the following language as needed to meet the specifics of the construction project

Testing Services

1. Contractor shall appoint, employ, and pay for specified services of an independent firm to perform testing.
2. The independent firm will perform tests and other services specified in individual specification sections and as required by the Architect/Engineer.
3. Testing and source quality control may occur on or off the project site. Perform offsite testing as required by the Architect/Engineer or the Owner.
4. Reports will be submitted by the independent firm to the Architect/Engineer and Contractor, indicating observations and results of tests and indicating compliance or non-compliance with Contract Documents.
5. Cooperate with independent firm; furnish samples of materials, design mix, equipment, tools, storage, safe access, and assistance by incidental labor as requested.
 - a. Notify Architect/Engineer and independent firm 24 hours prior to expected time for operations requiring services.
 - b. Make arrangements with independent firm and pay for additional samples and tests required for Contractor's use.
6. Testing does not relieve Contractor to perform Work to contract requirements.
7. Re-testing required because of non-conformance to specified requirements shall be performed by the same independent firm on instructions by the Architect/Engineer. Payment for re-testing will be charged to the Contractor by deducting testing charges from the Contract Sum/Price.

NOTE: THE CONTRACT LANGUAGE SAMPLES PROVIDED HEREIN ARE EXAMPLES OF WHAT COULD BE INCLUDED IN ALL CONTRACTS THAT USE WPCLF OR WSRLA FUNDS. OHIO EPA MAKES NO CLAIMS REGARDING THE LEGALITY OF THESE CLAUSES WITH RESPECT TO STATE OR LOCAL LAW. IT IS IMPERATIVE THAT ANY PARTY INSERTING THESE CLAUSES INTO A CONTRACT VERIFY THAT THEY ARE LEGAL AND ENFORCEABLE ACCORDING TO STATE AND LOCAL LAWS, REGULATIONS, AND ORDINANCES.

Continuous Treatment Provisions

(Required Contract
Provision)

It is important that construction activities not result in any temporary violations of NPDES permit requirements (for permitted facilities) and construction activities should interrupt wastewater service to the individual resident as little as possible. For drinking water projects, it is important that construction activities not result in any disruption of service. Any disruption of service must be immediately reported to the Ohio EPA, Drinking Water Section of the appropriate district office.

The following example language is a sample of what might be appropriate for construction work occurring at an existing wastewater treatment plant. The language actually incorporated into the contract documents must be adjusted to meet the specifics of the construction project.

Continuous Treatment (wastewater projects)

Federal regulations prohibit by-passing of any sewage during construction operations. The Contractor will be responsible for providing any required temporary pumping facilities piping, etc., necessary to complete the project without any plant by-passing and continuous treatment must be provided at the same level during construction as existed prior to construction.

Unless otherwise previously or subsequently specified, the Contractor shall procure and pay for all permits, licenses, and approvals necessary for the execution of his Contract.

The Contractor shall comply with all laws, ordinances, rules, orders, and regulations relating to the performance of the work required to complete their Contract.

The following example language is a sample of what might be appropriate for construction work occurring at an existing drinking water treatment plant. The language actually incorporated into the contract documents must be adjusted to meet the specifics of the construction project.

Continuous Treatment (drinking water projects)

The Contractor will be responsible for obtaining approval from Ohio EPA for use of temporary pumping facilities, piping and other items in order to complete the project without any plant by-passing. Continuous treatment must be provided at the same level during construction as existed prior to construction.

Unless otherwise previously or subsequently specified, the Contractor shall procure and

pay for all permits, licenses, and approvals necessary for the execution of his Contract.

The Contractor shall comply with all laws, ordinances, rules, orders, and regulations relating to the performance of the work required to complete their Contract.

NOTE: THE CONTRACT LANGUAGE SAMPLES PROVIDED HEREIN ARE EXAMPLES OF WHAT COULD BE INCLUDED IN ALL CONTRACTS THAT USE WPCLF OR WSRLA FUNDS. OHIO EPA MAKES NO CLAIMS REGARDING THE LEGALITY OF THESE CLAUSES WITH RESPECT TO STATE OR LOCAL LAW. IT IS IMPERATIVE THAT ANY PARTY INSERTING THESE CLAUSES INTO A CONTRACT VERIFY THAT THEY ARE LEGAL AND ENFORCEABLE ACCORDING TO STATE AND LOCAL LAWS, REGULATIONS, AND ORDINANCES.

**AMENDMENT NO. 1 TO
PROJECT LABOR AGREEMENT**

WHEREAS, the City of Akron, Ohio ("City") and the Tri-County Building and Construction Trades Council ("Council") are parties to a Project Labor Agreement dated July 1, 2014 ("PLA") that governs construction work and services on the City's Combined Sewer Overflow Control Program ("CSO"), as amended; and

WHEREAS, the City and the Council are authorized to amend the PLA pursuant to Section 21 of the PLA; and

WHEREAS, the City and the Council have determined that it is necessary and appropriate to amend Sections 2(a) and 2(f) of the PLA;

NOW, THEREFORE, Section 2(a) shall be amended as follows:

On-site construction work shall include:

- (1) demolition, excavation, and other site preparation work;
- (2) the off-site prefabrication of any building materials, systems, signage, displays and/or components traditionally performed on site;
- (3) the transportation off-site of only demolition and excavation materials.

Section 2(f)(6) shall be amended as follows:

This Agreement does not apply to the following:

- (6) The delivery to or from the Project of any material by any means, except for:
 - (A) **site-based pouring of concrete, which does not include on-site mixing of concrete, the use of additives, testing of concrete, the washing out of the concrete truck or the securing of the chutes on the truck following the pour; or**
 - (B) the transportation off-site of only demolition and excavation materials;

All other provisions of the PLA are hereby reaffirmed.

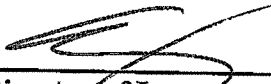
This Amendment No. 1 was executed by the City and the Council on the 30th day of May, 2017 and shall be effective the 30th of May, 2017.

FOR THE CITY OF AKRON, OHIO:

By: _____

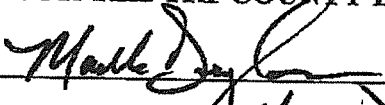
Name and Title DANIEL HARRIGAN MAYOR Date 5-30-17

Approved as to form and correctness:



Director of Law *BDB*
City of Akron, Ohio

FOR THE TRI-COUNTY BUILDING & CONSTRUCTION TRADES COUNCIL

By:  _____

Name and Title *Mack Douglas - President* Date *5/25/17*

PROJECT LABOR AGREEMENT

This Agreement is entered into as of July 1, 2014 (the "Effective Date") between the City of Akron, Ohio, a charter municipal corporation (the "City") and the Tri-County Building & Construction Trades Council ("Council"), and the affiliated unions listed on Exhibit A ("Unions") (the City, the Council, the Unions and all Signatory Contractors, as defined in this Agreement, are referred to collectively as the "Parties"), with respect to the construction of facilities to improve the City's wastewater collection system and Water Reclamation Facility as set forth in the City's Combined Sewer Overflow Control Program, as amended from time to time, which includes, but is not limited to projects to comply with the Consent Decree entered in Case No. 5:098-cv-00272 pending in the United States District Court for the Northern District of Ohio, Eastern Division ("Consent Decree"), and administered by the City (a list of the Projects in effect on the date of this Agreement is attached hereto and incorporated herein as Exhibit B), all of which improvements are referred to in this Agreement as the "Project."

The term "Contractor" includes all construction contractors and subcontractors of whatever tier engaged in construction work within the scope of this Agreement, except for those contractors and subcontractors specifically excluded from this Agreement. When specific reference to the Construction Manager alone is intended, the term "CM" is used. When specific reference to the Engineer alone is intended, the term "Engineer" is used. The terms "material supplier," "vendor," and "manufacturer" refer to entities engaged in product manufacture or sub-assembly related activities that are traditionally performed offsite. Material suppliers, vendors, and manufacturers are not required to be signatories to this Agreement. The Engineer, CM or others providing professional services to the Project are also not required to be signatories to this Agreement.

The Agreement is made available, and fully applies to any successful bidder, awarded a contract for construction work on the Project by the City. Each Contractor awarded a contract for construction work on the Project shall become a signatory to this Agreement as a condition of contract award and as provided in this Agreement and the bidding documents, without regard to whether the successful bidder performs work at other sites on either a union or non-union basis and without regard to whether employees of such bidder are or are not members of any union.

This Agreement will be applicable to the Unions and all Signatory Contractors performing construction work on the Project. The Unions and all Signatory Contractors agree to abide by the terms and conditions contained in this Agreement. Nothing in this Agreement shall limit the selection or utilization of Contractors to perform construction work on the Project. All Contractors, however, must become signatories to and shall be bound by the terms and conditions of this Agreement. This Agreement, in conjunction with any and all national, area, or local collective bargaining agreements represent the complete understanding of the Parties with respect to the practices and requirements stated herein as these relate to the Project. Any conflict between this Agreement and any national, area, or local collective bargaining agreements will be resolved in accordance with Section 2(b).

Section 1. Purpose

The Parties acknowledge that the construction of the Project is important to the public health, safety and welfare of the residents of the City of Akron, Ohio, and will enhance the local community. The Parties recognize time is of the essence in the timely completion of the Project without interruption, disruption or delay. This Agreement is intended to promote efficiency of construction of the Project by facilitating communication, promoting harmony among the work forces, the Unions and the Contractors, providing education and partnerships among all Parties to identify and resolve issues, to enhance understanding and compliance with labor-related policies and regulations, and to provide for peaceful settlement of labor disputes and grievances without strikes or lockouts, thereby promoting the public interest in assuring the timely and economical completion of the Project in strict compliance with the milestone(s) and completion dates set forth in the Consent Decree to prevent economic harm to the City in the form of substantial liquidated damages for delay and continued environmental damage caused by sewer overflows the Projects are intended to correct and minimize.

The Contractors and Unions agree that the timely construction of this Project requires substantial numbers of employees from construction and supporting crafts who possess skills and qualifications that are vital to its completion. The Contractors and Unions will work together to furnish skilled, efficient craft-workers for the construction of the Project.

To maintain a spirit of harmony, labor-management peace, and stability during the term of this Agreement and to avoid workplace disruptions that may be caused by union and nonunion workers employed on the same jobsite, the Parties agree to abide by the terms and conditions in this Agreement, and to establish effective and binding methods for the settlement of all misunderstandings, disputes or grievances which may arise.

Further, the Parties have mutually established and stabilized wages, hours and working conditions for the craft-workers on this Project to facilitate close cooperation between the City and each Contractor, the Council, and the Unions to the end that a satisfactory, continuous and harmonious relationship will exist between the Parties to this Agreement.

Therefore, in recognition of the special needs of this Project and to maintain a spirit of harmony, labor-management peace, and stability during the term of this Agreement, the Parties have established effective and binding methods for the settlement of all misunderstandings, disputes or grievances regarding labor issues that may arise. Further, the Contractors agree not to engage in any lockout, and the Unions agree not to engage in any strike, slow-down, or interruption or other disruption of or interference with the work covered by this Agreement.

Section 2. Scope of Agreement

- (a) This Agreement applies and is limited to the recognized and accepted historical definition of on-site construction work performed by Contractors (including pre-operational testing, check-out and start up performed by on-site Contractors), including, but not limited to, the construction of permanent facilities or structures; demolition activities to facilitate construction of new permanent facilities; demolition of abandoned facilities; repair or

modification of existing structures and facilities; and transportation and distribution of construction materials and equipment by Contractors inside the site for each improvement included in the Project under the direction of and performed by the Contractors on or after the Effective Date.

On-site construction work shall include:

- (1) demolition, excavation, and other site preparation work;
- (2) the off-site prefabrication of any building materials, systems, signage, displays and/or components traditionally performed on site;
- (3) the transportation to the site of ready mix concrete; and
- (4) only the transportation off-site of demolition and excavation materials.

Any off-site prefabrication of any building materials, systems and/or components traditionally performed on-site shall be performed by the appropriate Contractors under the terms of this Agreement.

Generally, the scope of the Project includes construction of the improvements identified in the Combined Sewer Overflow Control Program prepared by the City, and as may be modified during the course of the Project.

- (b) It is agreed that the City shall require all Contractors, except those specifically excluded by the Agreement, of whatever tier, that are awarded contracts for construction work covered by this Agreement, to become a signatory to this Agreement by executing a Letter of Assent in the form attached to this Agreement as Attachment A prior to commencing work. It is further agreed that the terms and conditions of this Agreement supersede and override terms and conditions of any and all other national, area, or local collective bargaining agreements, except for all work performed under the NTL Articles of Agreement, the National Stack/Chimney Agreement, the National Cooling Tower Agreement, all instrument calibration work and loop checking shall be performed under the terms of the UA/IBEW Joint National Agreement for Instrument and Control Systems Technicians, and the National Agreement of the International Union of Elevator Constructors, with the exception of Sections 11 through 13 of this Agreement, which shall apply to such work. It is understood that by virtue of having become bound to this Agreement, the Contractors will not be obligated to sign any other local, area, or national agreement. In the event there is a discrepancy between national, area or local collective bargaining agreements, the City, in consultation with the Union, Engineer and CM shall determine which agreement will prevail based on the best interests of the timely completion of the Project.
- (c) Nothing contained herein shall be construed to prohibit, restrict or interfere with the performance of any other operation, work, or function that may occur at the site of any improvements included in the Project or be associated with the development of the Project. This Agreement is meant to supplement, and not to contravene or supersede, any provision of Ohio Law or the General Conditions for contracts implemented by the City.

This Agreement shall only be binding on Parties and any joint ventures in which a Party participates, but does not apply to their parents, affiliates or subsidiaries.

The Union signatories to this Agreement agree that they will not support, in any manner, any request to use non-signatory unions on the Project site except for work performed by members of the American Federation of State, County and Municipal Employees, Local 1360 that is being self-performed by the City and those contractors specifically excluded by this Agreement.

- (d) Except as restricted by Ohio law, the City has the absolute right to select any qualified bidder for the award of contracts on this Project without reference to the existence or non-existence of any agreements between such bidder and any other party to become a party to and comply with this Agreement, should it be designated the successful bidder.

This Agreement will be included in all invitations to bid or solicitations for proposals from contractors or subcontractors for work on the Project that are issued on and after the Effective Date.

The City, at its sole option, may terminate, delay and/or suspend any and all portions of construction work at any time. Further, the City may prohibit some or all of the construction work on certain days or during certain hours of the day to

- (1) accommodate ongoing City operations;
- (2) to mitigate the effect of the ongoing construction work on the businesses and residents in the neighborhood of the Project site; or
- (3) to require such other operational or schedule changes that it may deem necessary.

The City may at any time, and at its sole discretion, determine to build segments of the Project that are not currently proposed, or to modify or to build any one or more of the particular segments proposed to be covered. Such new segments, or modifications of present segments, shall be subject to this Agreement.

Nothing contained herein shall be construed to prohibit or restrict the City or its employees from performing work not covered by this Agreement at any site included in the Project or self-performing any construction work that, if bid, would have been covered by this Agreement. Any work to be self-performed by the City will be identified as such in the bid documents. As areas and systems of the Project are inspected and construction tested by consultants retained by the City or Contractors and accepted by the City or its successors or assigns, the Agreement will not have further force or effect on such areas, except when a Contractor is directed by the CM, Engineer, or City to engage in repairs, modifications, check-out, and warranty functions required by its contract with the City. The City may in its sole discretion, terminate, delay and/or suspend any or all portions of the Project at any time.

- (e) This Agreement shall be limited to the construction work within the scope of this Agreement, as it may be amended from time to time. Nothing contained herein shall be construed to prohibit, restrict, or interfere with the performance of any other operation, work or function, which may be performed or contracted for by the City for its own account on its property or in and around the Project construction site.
- (f) This Agreement does not apply to the following:
- (1) Work performed by non-manual or professional employees, including, but not limited to, the Engineer, maintenance plan advisors, commissioning agents, geotechnical consultants, superintendents, supervisors, engineers, field engineers, surveyors, quality assurance and quality inspectors, technicians, office workers, messengers, warehouse employees, guards, medical personnel, emergency vehicle operators, and employees similarly classified;
 - (2) All work by employees of the City involved in general maintenance, emergency repair, any cleaning operation, and/or any work of an emergency nature as determined solely by the City and other City operations and activities including all equipment and machinery owned or controlled and operated by the City;
 - (3) Work performed by technicians at the discretion of the Contractor and work performed under subcontracts that the City designates as being for
 - (A) technically unique services or skills; or
 - (B) specialized work which cannot be readily and timely performed by the Unions.

The City shall timely notify the Unions of this determination prior to bid, which determination shall be subject to the provisions of Section 12.

- (4) The installation of specialized equipment, or the inspection or testing of equipment before, during or after installation, using a vendor of the City's choice, personnel of the City, or manufacturer's personnel as may be deemed necessary. Appropriate crafts will perform work under each such vendor's supervision;
- (5) Work by employees of a manufacturer or vendor necessary to maintain such manufacturer's or vendor's warranty or guarantee. Upon the determination by the City that such a situation exists, the Contractor will determine if specific tasks can be performed by covered employees;
- (6) The delivery to or from the Project of any material by any means, except for:
 - (A) delivery of only ready-mix concrete; or
 - (B) the transportation off-site of only demolition and excavation materials;

- (7) Work by employees that is ancillary to the Project and construction work performed by third parties such as electric utilities, water utilities, gas utilities, telephone companies and railroads, but only up to a pre-determined demarcation point in the Project;
 - (8) Contractors and subcontractors performing work completed under IUC or federal pricing systems and/or unit pricing;
 - (9) Controls and systems installed on-site by vendors or manufacturers, including start-up assistance; and
 - (10) Work that is not within the recognized jurisdiction of the Unions.
 - (11) Work that is self-performed by the City using its employees.
- (g) The liability of any Contractor and the liability of the separate Unions under this Agreement shall be several and not joint. The Unions agree that this Agreement does not have the effect of creating any joint employer status between or among the City, Engineer, CM, Unions or Contractor.

Section 3. Union Recognition and Employment

- (a) The Contractors recognize the Unions as the sole and exclusive bargaining representatives of all craft employees within their respective jurisdictions working on the Project within the scope of this Agreement.

All employees shall be required to be members in good standing with the referring union or to comply with the union security provisions on or before the eighth day of continuous or cumulative employment on the Project for the period during which they are performing Project work. This shall include rendering payment of the applicable monthly dues and fees uniformly required for union membership in the Union that is signatory to this Agreement, to the extent such payments are consistent with federal law.

- (b) The Contractors agree to recognize and be bound by the legal referral facilities maintained by the Unions and shall notify the appropriate Union either in writing or by telephone when workers are required.

Selection of applicants for referral to jobs shall not be based on, or in any way affected by, union membership, bylaws, rules, regulations, constitutional provisions, or any other aspect or obligation of union membership, policies or requirements. There shall be no discrimination against any employee or applicant for employment because of his or her membership or non-membership in the Union or based upon race, creed, color, sex, age or national origin of such employee or applicant. The CM or City has the right to reject an employee for poor past performance.

In the event the referral facilities maintained by the Unions are unable to fill the requisition of the Contractors for employees within a forty-eight (48) hour period after such requisition is made (Saturdays, Sundays, and holidays excluded), applicants for such requisition may be employed from any source.

In the event that a signatory Union does not have a job referral system as set forth in this Article, the Contractor shall give the Union equal opportunity to refer applicants. The Contractor shall notify the Union of employees hired from any source other than referral by the Union.

- (c) In cases of employment positions requiring special skills or qualifications, or if it is necessary that Akron residents be referred in order to comply with the hiring goals in this Agreement, the Contractor shall notify the Union of such fact, and the Union will use its best efforts to meet those hiring goals and as such, may refer any applicant to satisfy such request. The Contractors shall be the sole judge of all applicants' qualifications.
- (d) The Unions shall be the primary source of all craft labor employed on the Project. The Parties recognize the City's interest in providing opportunities to participate on the Project to enterprises that may not have previously had a relationship with the Unions signatory to this Agreement. Therefore, in the event that a Contractor has its own core workforce, the Contractor may request by name, and the Union will honor, referral of persons who applied to the Union for Project work and who demonstrate all of the following qualifications:
 - (1) Possesses any license required by state for federal law for the project to be performed;
 - (2) Has worked a total of at least 2,000 hours in the construction craft during the prior three years;
 - (3) Has been on the Contractor's active payroll for at least 1,000 hours in the calendar year immediately prior to the award of the Contract; and
 - (4) Has the ability to perform safely the basic functions of the applicable trade.
- (e) There will be a 30-day waiting period prior to employment eligibility on the project for employees who voluntarily quit their employment on the Project and a 90-day waiting period prior to employment eligibility for employees discharged for cause or for safety reasons on the Project. The City, CM and/or Contractor may bar any person from employment on the Project either permanently or for an indefinite time for just cause.
- (f) An employee or applicant required to satisfactorily demonstrate his or her ability to perform certain tasks through an examination or test, shall be paid by the Contractor for the time required to take the exam or test, provided the employee or applicant successfully passes the exam or test.
- (g) During any temporary reduction in manpower and crafts, or the number of working hours per shift, shifts per working day, working days per week, the amount of equipment requiring an operator or any combination of the foregoing ("Reduction in Force"),

Contractors have the right to retain employees of their choice without regard to any other criteria, except for Union Stewards (as defined hereinafter) and personnel operating special equipment who have historically been guaranteed 40 hours in accordance with the applicable collective bargaining agreement, as long as they have the work skills to perform the duties required. The Union Steward shall not be discharged without prior consultation with the appropriate craft and shall be for just cause.

Section 4 Management's Rights

- (a) The Contractors retain all rights and exclusive authority for the management of its workforce for all work performed under this Agreement that is not expressly excluded or limited by this Agreement, including but not limited to the rights and authority to:
 - (1) Plan, direct and control the execution and assignment of all construction work specified for the Project.
 - (2) Decide the number and types of employees required to perform the construction work safely and efficiently. Determine the size of crews and the number of foremen and general foremen needed. It is understood that in the selection of such employees, the Contractor will give first consideration to the qualified city residents available in the local area. Foremen and/or General Foremen shall take orders from supervisors designated by the Contractor. Foremen and/or General Foremen will not absent themselves from the area where their crews are working unless their presence is required elsewhere, and shall be held responsible for all work performed by employees under their supervision. The Contractor may require Foremen to be working employees. Only the Contractor superintendent has the authority to approve the release of the Foreman and/or General Foreman from the area where their crews are working.
 - (3) Hire and lay off employees as the Contractor feels appropriate to meet work scope requirements and retain necessary skills and trained resources. Each Contractor may transfer employees from job to job on the Project without limitation or restriction, and from shift to shift without-notice.
 - (4) Determine work methods and procedures per the applicable Collective Bargaining Agreements.
 - (5) Discharge, suspend, or discipline employees for proper cause.
- (b) Contractors shall have the right to provide supervisory employees. Supervisory employees will not be allowed to perform duties covered under the scope of the appropriate collective bargaining agreement. All other employees will be referred from the respective union halls.

The Contractor has the right to determine the competency of all employees and the right to determine the number and classifications of employees required. The Contractor shall also have the right to reject any applicant referred by the Unions.

- (c) The Contractor's office at the Project site will be considered the place of hire, and when the applicant referred for employment is accepted by the Contractor will be considered the time of hire.
- (d) No rules, customs or practices shall be permitted or observed that limit or restrict production or the working efforts of employees. The Contractors shall utilize the most efficient method or techniques of construction, tools, or other labor savings devices necessary to accomplish the scope of work and pursuant to their individual contract and project specifications. There shall be no limitations upon the choice of materials or design, nor on production by workers or restrictions on the full use of tools or equipment except as limited by the individual contracts and project specifications. There shall be no restrictions, other than as may be required by safety regulations, on the number of employees assigned to any crew or to any service provided by a Contractor to perform the specified work.

Section 5. Union Representation and Stewards

Authorized representatives of the Union shall have access to the Project, provided that they do not interfere with the work of the employees and further provided that those representatives fully comply with the posted visitor, security and safety rules and other applicable rules and regulations. This section is not intended to interfere with the Unions' right to administer this Agreement.

Each Union shall have the right to appoint a working steward for each shift (a "Steward") who will be paid a journeyman rate of pay. Stewards shall not perform any supervisory functions and will be permitted reasonable amount of time to fulfill their duties. In addition to his work as an employee, the Steward shall have the right to receive, but not solicit, complaints or grievances and to discuss and assist in the adjustment of the same with the employee's appropriate supervisor. Each Steward shall be concerned with the employees of the Steward's Contractor and if applicable, subcontractors, and not with employees of other Contractors.

The Steward shall not leave the work area without first notifying and obtaining permission from his Foreman as to the reason for leaving the work area and the estimated time to be gone. Permission to leave the work area may be delayed in the event of an emergency or if it would cause interruption of work which cannot be immediately interrupted. The Contractor's Superintendent has final authority over granting the Steward permission to leave the work area if the Steward's absence from the work area is detrimental to the progress of the work or safety of the project site. Stewards shall be the last employee of each craft's workforce to be laid-off provided they could perform the construction work provided by the Contractor. Except in cases of discipline and or discharge, the Union shall be given prior notification of any such lay-off or termination.

The working Steward shall not be entitled to any preferential treatment by the Contractor and will be subject to discipline to the same extent as other employees.

If the City's employees are performing work for the Project or at the Project site that is not subject to this Agreement in close proximity to the construction activities, the Unions agree that Union representatives, Stewards, and individual workmen will not interfere in any manner with the City's personnel or with the work being performed by the City's personnel.

Section 6. Non-Discrimination

It is agreed that equal employment opportunity shall be afforded to all qualified persons without regard to disabling conditions related to the successful accomplishment of the job for which employed, age, race, creed, color, sex, veteran status or national origin. This shall be applicable to all matters relating to hiring, training, promotion, transfer or termination of employees. The applicable provisions of Section 34.03 of the Code of Ordinances of the City of Akron are incorporated as if fully rewritten herein.

All descriptive words such as journeyman, craftsman and all other personal nouns or pronouns that may be referenced in this Agreement refer to both the male and female gender.

Employees covered by this Agreement shall utilize the Grievance Procedure set forth in Section 12 for the resolution of alleged discrimination complaints, allegations and all employee concerns.

Section 7. Local Hiring and Workforce Participation Plan

Each signatory Union and Contractor shall abide by the following Local Hiring and Workforce Participation Plan for the Project (the "Policy").

(a) Definitions

"Apprentice" any worker who is indentured in a bona fide apprenticeship training program registered with, and subject to regulation by, the U.S. Department of Labor and the Ohio State Apprenticeship Council.

"Covered Project" means a public work or improvement or part thereof that is part of the City's Combined Sewer Overflow Control Program with estimated cost in excess of \$100,000.

"Non-covered Project" means any construction projects that are not Covered Projects.

"Local Resident" means an individual who is a resident, as defined by Chapter 99 of the Code of Ordinances of the City of Akron at least seven days prior to commencing work on the project.

"Project Work Hours" means the total work hours worked on a construction contract by all apprentices and journey-level workers, whether those workers are employed by the Contractor or any Subcontractor.

(b) Local Hiring Requirements

- (1) For all contracts for Covered Projects the mandatory participation level in terms of Project Work Hours to be performed by Local Residents is:
 - (A) 30% for advertised bids from January 1, 2014 through December 31, 2014¹;
 - (B) 35% for advertised bids from January 1, 2015 through December 31, 2015;
 - (C) 40% for advertised bids from January 1, 2016 through December 31, 2016;
 - (D) 45% for advertised bids from January 1, 2017 through December 31, 2017; and
 - (E) 50% for advertised bids starting January 1, 2018.

Contractor shall submit its Local Workforce Hiring Projection by including Form 1 with its bid documents.

- (2) For Covered Projects estimated to cost more than \$500,000, Contractors shall, within 15 days of the Notice of Award, prepare and submit to the City for approval a Local Hiring Plan for the Project using the forms provided by the City. The approved Local Hiring Plan will be incorporated into the contract and will serve as the basis for determining a Contractors and its Subcontractors compliance with Section 7(b).
 - (A) The City will not issue a Notice to Proceed (NTP) until Contractor submits the Local Hiring Plan. Contractor shall be fully responsible for any delays in issuing the NTP and associated damages incurred by the City caused by Contractor's failure to timely submit a Local Hiring Plan.
 - (B) The Local Hiring Plan must be reviewed and approved in writing by the City before any application for payment can be approved and progress payment paid to Contractor.
 - (C) Refer to Form 2 for more information regarding the Local Hiring Plan.
 - (D) If Contractor elects to request a bid credit under Section 7(d) the Local Hiring Plan form must be submitted along with the bid.

¹ In order to comply with federal legal requirements, Project Work Hours performed by residents of states other than Ohio cannot be considered in calculation of the number of Project Work Hours to which the local hiring requirements apply. Contractors and Subcontractors shall report to the number of Project Work Hours performed by residents of states other than Ohio.

- (3) Prior to commencement of construction on Covered Projects subject to the Local Hiring Plan requirement summarized above, Contractor and its Subcontractors identified in the Local Hiring Plan as contributing toward the mandatory local hiring requirement shall attend a preconstruction or other Local Hire meeting convened by City staff. Representatives from Contractor and the Subcontractors who attend the pre-construction or other Local Hire meeting must have hiring authority.
- (4) The Policy does not limit Contractor's or its Subcontractors' ability to assess qualifications of prospective workers, and to make final hiring and retention decisions. No provision of the Policy shall be interpreted so as to require a Contractor or Subcontractor to employ a worker not qualified for the position in question, or to employ any particular worker.
- (5) On a monthly basis, Contractor will provide to the Construction Management Team ("CMT") along with its application for payment a list of local subcontractors employed and the amounts of those local subcontractor contracts and well as a list of any local vendors or suppliers and the amounts of those contracts.
- (6) In accordance with Section 99.09 of the Code of Ordinances of the City of Akron, Contractor will provide to the City's Income Tax Division with a list of its subcontractor's names, addresses, social security or federal identification numbers, and a listing of the services that each subcontractor will perform prior to commencing Work.
- (7) Nothing in this Local Hiring Policy shall be construed to permit or require Contractor to prefer or discriminate on the basis of membership in a protected class.
- (8) Under no conditions shall a Local Resident hired under this Local Hiring Policy be considered an employee of the City of Akron.
- (9) Contractor is required by this Policy to use good faith efforts to employ minorities and females to supply services in connection with the Project and to otherwise achieve the goals of this Policy.

(d) Bid Credit

In determining the lowest and best responsible bid, a bidder shall receive a bid credit for determination of the lowest bid equal to (1) the number of Project Work Hours to be performed by Local Residents that exceeds the mandatory participation level multiplied by (2) \$20. The bidder must include, with its bid, a request to receive this bid credit, along with a detailed Local Hiring Plan that will allow the City to evaluate the request. In addition, the bidder will provide any additional information that the City deems necessary

to evaluate the request. The total bid credit shall not exceed the lesser of (A) 2.5% of the bid; or (B) \$250,000 for projects estimated by the City to cost less than or equal to \$25,000,000 or \$500,000 for projects estimated by the City to cost more than \$25,000,000.

If a bidder is determined to be the low bidder based on obtaining the bid credit and subsequently awarded the Contract as the lowest and best responsible bidder, the City shall retain an amount from the Contract Sum to assist with enforcement of this Local Hiring Policy. In addition to any retainage provided for elsewhere in the Contract Documents, the City shall retain the difference between the lowest bid, after application of the bid credit, and the next highest bid. If the bidder fails to meet the requirements of its Local Hiring Plan, then, in addition to the other penalties provided for in the Local Hiring Policy the bidder will forfeit the amount retained under this provision. No waivers granted under Section 7(E) may be used to determine compliance with a Local Hiring Plan submitted to obtain a bid credit

(e) Conditional Waivers

If, subject to verification by the City, Contractor or a Subcontractor has complied with the requirements of the Policy and a Local Resident is not available, thus demonstrating the high impracticality of complying with the applicable local hiring requirement, Contractor or the Subcontractor may request the following compliance mechanisms to receive a conditional waiver from the City, in its sole discretion, from the local hiring requirements on a project-specific basis:

- (1) Credit for Hiring on Non-Covered Projects: Contractor and its Subcontractors may accumulate credit hours for hiring Local Residents on Non-Covered Projects within the City that have been completed within the last 12 months and apply those credit hours to contracts for Covered Projects to meet the mandatory local hiring requirement. Contractor must submit documentation satisfactory to the City, in its sole discretion of its hiring of Local Residents on Non-Covered Projects. For hours performed by Local Residents on Non-Covered Projects, the hours shall be credited toward the local hiring requirement for this Contract provided that:
 - (A) the Local Residents are paid the prevailing wages for work on the Non-Covered Projects; and
 - (B) for Non-Covered Projects located in the City, the number of hours to be credited is the number of hours worked by Local Residents on Non-Covered Projects that exceeds the effective Local Hiring requirement if the Non-Covered Project had been a Covered Project.
- (2) Sponsoring Apprentices: Contractor or a Subcontractor may agree to sponsor a specified number of Local Residents as new Apprentices in trades in which noncompliance is likely and retain those Apprentices for the period of

Contractor's or a Subcontractor's work on the Project. The City will verify that the new Apprentices are registered and Active apprentices.

(f) Enforcement and Record Keeping

- (1) Contractors shall ensure that Subcontractors of all tiers comply with applicable requirements of the Local Hiring and Workforce Participation Plan. Contractors shall submit certified payrolls to the City.
- (2) Contractors and each Subcontractor shall keep, or cause to be kept certified payroll and basic records, including time cards, tax forms, and superintendent and foreman daily logs, for all workers within each trade performing work on the Project as required by the Local Hiring and Workforce Participation Plan.

Such records shall include the name, address and social security number of each worker who worked on the covered project, his or her classification, a general description of the work each worker performed each day, the apprentice or journey- level status of each worker, daily and weekly number of hours worked, the self-identified race, gender, and ethnicity of each worker, whether or not the worker was a local resident, copies of the items used to verify residency, and the referral source or method through which the Contractors or Subcontractors hired or retained that worker for work on the Covered Project.

- (3) Contractors and Subcontractors may verify that a worker is a Local Resident by following obtaining two forms of identification, including, but not limited to a utility bill, rental agreement, driver's license, State of Ohio Identification Card, receipt of property tax or voter registration card. The City may ask for additional information and documentation showing residence.
- (4) All records described in Section 7(d) shall at all times be open to inspection and examination by the duly authorized officers and agents of the City.

(g) Monitoring.

The City may, in its sole discretion, monitor and investigate compliance of Contractor working on the Project with requirements of this Policy. Contractor and all Subcontractors shall allow representatives of the City, in the performance of their duties, to engage in random inspections of the Site at such times as the City desires in its sole discretion. During such inspections, Contractor and all Subcontractors shall also allow representatives of the City to have access to employees of Contractor and Subcontractors and the records required to be maintained under the Policy.

(h) Noncompliance and Penalties.

Failure to follow the requirements of this Local Hiring Policy will cause damage to the City, including undermining the employment rates and economic condition of the City. Good faith efforts on the part of Contractor or Subcontractor to provide employment to

Local Residents will be considered by the City prior to imposing a penalty for non-compliance with this Local Hiring Policy. However, it is not the intent of the City to permit good faith efforts to comply with this Policy to be a basis for avoiding the actual, verified achievement of the requirements contained in the Local Hiring Policy. As such, the City has the right to seek, for violations of this Policy, all of the consequences imposed by or described in this Policy, the Contract or by law, including, but not limited to, the authority to assess penalties as described below.

Any Contractor or Subcontractor who fails to satisfy the local hiring requirements of this Policy applicable to Project Work Hours performed by Local Residents (including the failure to meet the requirements contained in a Local Hiring Plan proposed by Contractor to receive the bid credit described above) shall forfeit, and in the case of any Subcontractor so failing, the Contractor and Subcontractor shall jointly and severally forfeit, to the City an amount equal to the journeyman or apprentice prevailing wage, as applicable, for the primary trade used by the Contractor or Subcontractor on the Project for each hour by which the Contractor or Subcontractor fell short of the local hiring requirement (including the failure to meet the requirements contained in a Local Hiring Plan proposed by Contractor to receive the bid credit described above).

It is the duty of the CMT when certifying any Application for Payment to deduct any penalties due to a violation of the Policy prior to issuing a Certificate of Payment. Deductions will only be made following an investigation by the CMT and notice to the Contractor or subcontractor identifying the grounds for forfeiture. The Contractor or Subcontractor may follow the procedure outlined in the specifications for the Project if it disagrees with the determination. Penalties may be deducted from any Progress Payment, the Sub-Final Payment, the Final Payment, or the additional retainage, if any, held by the City in accordance with Section 7(d).

The assessment of penalties shall not preclude the City from exercising any other rights or remedies to which it is entitled. In addition, the City may use failure to meet this Policy in determining if a Contractor or Subcontractor is the lowest and best responsible bidder in any future City projects.

- (i) Each signatory Union and Contractor shall assign a Project Representative who will coordinate implementation and enforcement of, and compliance with, the Local Hiring and Workforce Participation Plan. Contractors shall provide to the City or its designee with certified monthly payroll reports and any other documentation necessary to verify compliance with the obligations set forth in this Section 7. City or its designee will audit and report to Contractors their compliance with the obligations set forth in this Section 7.
- (j) The entire Local Hiring and Workforce Participation Plan must be included in the bidding documents and must be incorporated into each contract for any improvement that is part of the Project.

Section 8. Apprentices

The Parties recognize the need to maintain continuing support of apprenticeship programs designed to develop adequate numbers of competent workers in the construction industry and to enable workers to enter the labor pool fully qualified to earn a living wage on construction jobs. The Unions agree to support and enable such programs and to supply labor for each craft to provide training and job opportunities to these new entrants to the work force and to achieve compliance with the Local Hiring and Workforce Participation Plan. The Contractors will employ apprentices in their respective crafts to perform work within their capabilities and customarily performed by the craft in which they are employed.

Section 9. Wages, Work Days, Holidays and Overtime

- (a) All persons employed by Contractors for work within the scope of this Agreement shall receive the wages and benefits established under the respective trade's collective bargaining agreement and shall work under all of the other terms and conditions of employment provided for in this Agreement. No other classifications, wage rates, fringes, or conditions apply to work under this Agreement. No premium pay, other than overtime and shift differential, is recognized under this Agreement.

The Contractor agrees that it will, when so requested by the Union, deduct from the pay of each employee who is a member of the Union, or has made application to become a member of the Union, all deductions such as working dues, Building Trades Council dues, assessments or any other fees, dues or check offs so designated by the employee from that employee's gross wages. These deductions shall be deducted upon presentation of a proper legal payroll deduction authorization signed by said employee requesting such deduction, and remitted monthly as directed by the employee and the Union. This section shall be applied in compliance with the National Labor Relations Act ("NLRA") and other applicable laws and the Unions agree that the Contractor will suffer no loss because of any deduction from an employee's pay pursuant to this section and that the Unions will accept any liability that may accrue.

- (b) The standard workday shall consist of eight hours of work scheduled between 6:00 AM and 5:30 PM with one half hour designated as an unpaid period for lunch. Forty hours per week shall constitute a regular week's work. The workweek shall be five days of work, will start on Monday, and will conclude on Sunday. Nothing herein shall be construed as guaranteeing any employees eight hours of work per day, or 40 hours of work per week. The Contractor has the sole authority to make shift and overtime assignments to employees as deemed necessary to efficiently perform work activities. Refusal by an employee to work an assigned shift or hours of work may be grounds for termination. Time clocks, brass or other payroll and accountability systems may be used at the option of the Contractor to check employees in or out of the Project on a daily basis on their own time.

The Parties acknowledge that certain construction activities may pose unique work scheduling issues, including a requirement for continuous work, 24 hours per day, 7 days per week. The City has the right to require that the Contractors establish a different work week, the number of shifts, and shift schedules for particular employees as are reasonably required to meet the operational needs of the Project and particular locations, or otherwise to mitigate adverse effects of certain construction activities. Shifts may be established for some or all crews when considered necessary by the Contractor, the CM or the City. The Contractor or the City may establish any shift without regard to whether or not a previous shift was worked.

- (c) Recognized holidays shall be as follows: New Year's Day, Martin Luther King Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas Day. There shall be no paid holidays, except as provided for operation of special equipment that has been historically guaranteed 40 hours per week. If employees are required to work on a Sunday or a holiday, they shall receive double the straight-time rate of pay.

Overtime shall be paid at the straight-time rate of pay plus one half of the straight-time rate of pay for all hours worked over eight (8) hours per day or in excess of forty (40) hours per week. All work performed on Saturdays shall be paid at straight-time rate of pay plus one half of the straight-time rate of pay.

- (d) The Contractor shall deduct from each employee's wages all uniform dues and working assessments set forth in the Employee's Local Collective Bargaining Agreement. If a labor organization is not affiliated with the Council, and supplies its members or referrals for work on the Project that is subject to this Agreement, such labor organization shall pay to the Council the dues and assessments it would owe the Council if affiliated, for all periods during which the labor organization has members or referrals working on the Project. Any disputes under this paragraph shall be resolved exclusively between the labor organization and the Council by using the grievance procedure appearing in Section 12, as provided herein. All grievances shall be reduced to writing within 30 days of the date on which the aggrieved party discovered the dispute. The grievance shall be initiated at Section 12, Step 3.

Section 10. Work Rules

- (a) The City through the CM may establish reasonable uniform site working rules/procedures and security, health and safety rules/procedures in compliance with federal, state, and local regulations. These rules will be reviewed at the pre-job conference conducted by the CM and will be posted at the Project site by the Contractor. The City through the CM may change these rules during the term of this Agreement with prior notice to the Unions. Such notice shall be given two weeks prior to implementation of the change, when practical. All Unions, Contractors and employees agree to abide by these rules and agree that violation of job site rules may result in disciplinary action up to and including suspension or discharge.

The City through the CM shall have the prerogative to designate tool rooms and trailer locations for Contractors on the Project. Each Contractor will provide proper facilities for lunch and storage of personal tools. The Contractor, working with the CM, may establish any reasonable system to control tool losses.

- (b) The receipt and inspection of materials and the methods, procedures and control for warehousing and storage of equipment, materials and tools shall be at the Contractor's discretion.
- (c) There shall be no organized breaks on the Project. All Parties and employees shall observe the site smoking policy; there shall be no smoking on the premises/site of any existing building or a building under construction.

Employees shall be at their place of work at the designated starting time and shall remain at their place during working hours until the designated quitting time. A reasonable clean-up time will be allowed for employees to put company and personal tools in secured storage.

If parking is not readily available near the jobsite, it shall be the responsibility of the Contractors to provide adequate parking facilities and the means for employees to be transported from the parking facilities to and from the job site in an expeditious manner.

Tool boxes, lunch boxes, vehicles, and other personal property may be subject to periodic unannounced inspection while on the site. Except in a security emergency employees shall be notified and given the opportunity to be present.

- (d) An employee who reports for work under the influence of alcoholic beverages or illicit drugs, or who drinks alcoholic beverages or uses illicit drugs on the work site, or who reports to the work site with alcoholic beverages or non-prescribed drugs or firearms in his or her possession, may be subject to immediate termination.
- (e) There is no job tenure. Continuing employment is contingent upon, but not limited to, the skill, competency, productivity, qualifications, attendance, and safety performance of the employee. Contractors will be the sole judge of skill, competency, productivity, and qualifications, except as provided for in Section 3(g), regarding Union Stewards who are recognized as a qualified technician by the Contractor.
- (f) Slowdowns, standby crews, and make-work practices shall not be tolerated. There will be no standby crews or personnel. Startup, checkout, and operation of process equipment and systems are the responsibility of the Contractor or City. Manpower requirements for these operations will be determined by the Contractor or the City. Written startup and equipment acceptance procedures will be established for each operation. Once the system, partial systems, areas, or pieces of equipment are turned over to the City, the calibration, testing, checking, and startup of the equipment or system shall be excluded from the terms of this Agreement.

Section 11. Work Stoppages and Lockouts

During the term of this Agreement, there shall be no strikes, sympathy strikes, picketing, work stoppages, slowdowns or other disruptive activity for any reason by the Unions or by any employee, and there shall be no lockout by the Contractor. Failure of any Union or employee to cross any picket line established at the Project site is a violation of this Section 11.

The Unions shall not sanction, aid or abet, encourage or continue any work stoppage, strike, picketing or other disruptive activity at the Contractor's project site and shall undertake all reasonable means to prevent or to terminate any such activity. No employee shall engage in activities that violate this Section 11. Any employee who participates in or encourages any activities that interfere with the normal operation of the Project shall be subject to disciplinary action, including discharge. If justifiably discharged for any of the foregoing reasons, the employee shall not be eligible for rehire on the Project for a period of not less than ninety 90 days.

The Parties agree that time is of the essence to this Agreement and the completion of the Project and that in the event that a Union initiates or participates in a work stoppage, strike, picketing or other disruptive activity in violation of this Section 11, or recognizes or supports the work stoppage, strike, picketing or disruptive activity of another Union that is in violation of this Section 11, the City or Contractor will have no adequate remedy at law, cannot be made whole by money damages and will be irreparably harmed by the conduct. In such case, the City or Contractor shall have the right to seek an immediate injunction from the appropriate court enjoining any such disruption, interference or delay and compelling resolution of such dispute pursuant to Section 12. In addition, once the injunction has been issued, the City shall retain the right to full legal and equitable relief resulting from a breach of this Agreement. The City and Contractor shall have the same rights and remedies provided by this Section 3 against all non-signatory Unions to this Agreement.

Disputes alleging violation of any other provision of this Agreement, including any underlying disputes alleged to be in justification, explanation or mitigation of any violation of this Section 11, shall be resolved under the grievance adjudication procedures set forth in Section 12.

Section 12. Disputes and Grievances

In an effort to facilitate a productive and harmonious project, any party to this Agreement may request and receive a job site meeting within a 48-hour notice to the appropriate parties.

The Contractors, Unions, and the employees, collectively and individually, realize time is of the essence in the performance of this Agreement and the completion of the Project and, therefore, the importance to all Parties to maintain continuous and uninterrupted performance of the work of the Project, and agree to resolve disputes in accordance with the grievance-arbitration

provisions set forth hereinafter. Work will continue uninterrupted while the grievance is being resolved.

Any question or dispute arising out of and during the term of this Agreement, other than the City's and Contractor's right to seek an immediate injunction under Section 11 and jurisdictional disputes under Section 13, shall be considered a grievance and subject to resolution under the following procedures:

Step 1(a). When any employee subject to this Agreement feels he is aggrieved by a violation of this Agreement, he shall give notice to the work-site representative of the involved Contractor, through his Union business representative or Steward, within five working days after the occurrence of the violation, stating the provision(s) alleged to have been violated. The business representative of the Union, the Steward, and the work-site representative of the involved Contractor shall meet and endeavor to resolve the matter within five working days after timely notice has been given. The representative of the Contractor shall keep the meeting minutes and shall respond to the Union representative in writing (copying the City) within 24 hours after the meeting. If they fail to resolve the matter within the prescribed period, the grieving party may pursue Step 2 of this grievance procedure, provided the grievance is reduced to writing, setting forth the relevant information concerning the alleged grievance, the date on which the grievance occurred, and the provision(s) of the Agreement alleged to have been violated.

Step 1(b). When the Union(s) or any Contractor has a dispute with the other party and, if after conferring, a settlement is not reached within five working days, the dispute may be reduced to writing, and it may proceed to Step 2 in the same manner as outlined herein for the adjustment of an employee complaint.

Step 2. A representative of the Union and the involved Contractor shall meet within seven working days of the referral of a dispute to this second step to arrive at a satisfactory settlement thereof. Meeting minutes shall be kept by the Contractor. If the Parties fail to reach an agreement, the dispute may be appealed in writing in accordance with the provisions of Step 3 within seven calendar days thereafter.

Step 3. If the grievance has been submitted but not resolved under Step 2, either party may proceed to take action in the Summit County Court of Common Pleas or the Federal Court for the Northern District of Ohio and the Parties consent to submit themselves to the jurisdiction and venue of that court

Failure of the grieving party to adhere to the time limits established herein shall render the grievance null and void. The time limits established herein may be extended only upon written consent of the Parties involved at that particular step and the City.

The City shall be notified of all action at each step and shall, upon request, be permitted to participate in all proceedings at these steps. The City has governing authority to conclusively determine adherence to established time limits at each step and the Contractor, Unions and aggrieved employee agree to same.

Section 13. Jurisdictional Disputes

The assignment of work is the sole responsibility of the Contractor performing the work involved, and such work assignments will be based on traditional craft jurisdictional lines and will be in accordance with the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry, as amended (the "Plan") or any successor Plan.

All jurisdictional disputes between or among building and construction trade unions and Contractors who are Parties, shall be settled and adjusted according to the present Plan or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on the Contractor and Union Parties. Work will continue uninterrupted while the dispute is being resolved.

All work will continue uninterrupted while the Jurisdictional Dispute is resolved. All Jurisdictional Disputes shall be resolved without the occurrence of any strike, work stoppage, or slow-down of any nature and the Contractor's assignment of work shall be adhered to until the Jurisdictional Dispute is resolved. Individuals violating this section may be subject to immediate discharge.

Each Contractor will conduct a pre-job conference with the Union prior to commencing work. The City and the CM will be advised in advance of all such conferences and may participate if they wish.

All work will continue uninterrupted while the Jurisdictional Dispute is resolved. All Jurisdictional Disputes shall be resolved without the occurrence of any strike, work stoppage, or slow-down of any nature and the Contractor's assignment of work shall be adhered to until the Jurisdictional Dispute is resolved. Individuals violating this section may be subject to immediate discharge.

Section 14. Union Security

- (a) All employees covered by this Agreement now in the employ of the Contractors shall remain members in the Union during the term of this Agreement, and all workers hereinafter employed by the Contractors shall either:
 - (1) become members of the Union seven days after the date of their employment and shall remain members of the Union in good standing during the term of this Agreement; or

- (2) comply with the Union security provisions pursuant to Section 3(a) seven days after the date of their employment and shall remain in good standing during the term of this Agreement.

This Section shall conform to the NLRA and other applicable laws.

- (b) A Contractor shall not discharge any employee for non-membership in the Union if it has reasonable grounds for believing that:
 - (1) membership was not available to the employee on the same terms and conditions generally applicable to other members, or
 - (2) membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and initiation fee uniformly required as a condition of acquiring or retaining membership.

Section 15. Subcontracting

Except as specifically provided in the Agreement, the Contractors agree that it and its subcontractors will only subcontract construction work at the Project site to a person, firm or corporation who is or agrees to become a party to this Agreement.

Any Contractor or subcontractor working on the Project shall, as a condition to working on said Project, become signatory to and perform all construction work under the terms of this Agreement. Each Contractor or subcontractor shall indicate their acceptance of the terms and conditions of this Agreement by signing the Letter of Assent (Appendix A) and by delivering a copy to the CM prior to commencement of construction work on the Project site.

All subcontractors subject to this Agreement are required to pay wages and benefits as established by the appropriate Union Trade Agreement through the duration of their work on the Project and will provide certified payrolls to the City or its successors or assigns, which will be available to the Unions upon request.

All subcontractors will arrange and conduct a pre-job conference with the Unions prior to starting work on the Project.

Except as otherwise provided in this Agreement, the furnishing of materials, supplies, or equipment, and the delivery or removal thereof shall not be considered subcontracting.

Section 16. Safety and Health

It shall be the responsibility of each Contractor to assure safe working conditions for its employees and compliance by its employees with any safety rules and requirements contained herein or established by the City, the CM, or the Contractor. Nothing in this Agreement will make the Unions liable to any employees or to other persons in the event that injury or accident occurs. The Parties agree to establish a job site safety committee comprised of representatives of the Contractors, the Council, the City, and the CM.

Employees shall be bound by the established safety requirements. Employees must use diligent care to perform their work in a safe manner and to protect themselves and the property of their employer. Contractors shall publish and post such requirements in conspicuous places throughout the work site. An employee's failure to satisfy his obligations under this Section 16 shall subject him to discipline, including discharge.

In order to protect the safety and health of employees, all Parties agree to comply with the applicable provisions of state and federal laws and regulations relating to job safety, health and safe work practices, including, but not limited to, state and federal OSHA laws, rules and regulations, as well as those specific Project safety rules published by the City or CM and the safety rules and regulations included in the governing local labor agreements.

Each Contractor shall provide its employees with a clean, safe area for eating their meals. In addition, each Contractor shall provide an adequate supply of safe drinking water and shall also provide adequate sanitary facilities for all employees.

Section 17. Substance Abuse Policy

The Parties agree that the Project will be a "drug free" worksite. The Unions agree to comply with a Contractor's Drug-Free Safety Program as recognized by the Ohio Bureau of Worker's Compensation. The Unions agree to cooperate with the City and CM in their efforts to create a drug and alcohol free workplace.

Section 18. Helmets to Hardhats.

The Parties desire to facilitate the entry into the building and construction trades of veterans who are interested in careers in the building and construction industry. The Parties agree to use good faith efforts to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment (the "Center") and the Center's "Helmets to Hardhats" program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the parties.

The Parties agree to coordinate with the Center to create and maintain an integrated database of veterans interested in working on this Project and of apprenticeship and employment opportunities for this Project. To the extent permitted by law, the Unions will give credit to such veterans for bona fide, provable past experience.

Section 19. Labor/Management Cooperation Joint Administrative Committee

The parties to this Agreement shall establish a Project Joint Administrative Committee ("Committee"). This Committee will be a two-person committee comprised of one member each appointed by the Owner (or its designee) and the Unions, with an alternate appointee Union member available to replace the regular appointee when a problem or grievance concerns the

regular appointee's Union. Each member of the Committee shall designate an alternate who shall serve in the absence of the member for any purpose contemplated by this Agreement.

The Committee shall meet at least quarterly, or more often if special circumstances warrant, to discuss the administration of the Agreement, the progress of the Project, labor/management problems that may arise, and any other relevant matters. Any need for interpretation which might arise from the application of the terms and conditions of the Agreement shall be referred directly to the Committee for resolution.

Section 20. General Savings Clause

If any provision of this Agreement shall be declared invalid, inoperative or unenforceable by any competent authority of the executive, legislative, judicial or administrative branch of the Federal or any State government, the City and the Union shall suspend the operation of such provision during the period of its invalidity and shall substitute by mutual consent, in its place and stead, a provision that will meet the objections to its validity and that will be in accord with the intent and purpose of the provision in question. Any final determination that any provision of this Agreement violates any law, or is otherwise not binding and enforceable, shall have no effect on the validity of the remaining provisions of this Agreement.

Section 21. Term of Agreement

This Agreement shall be effective as of the Effective Date and shall remain in full force and effect during the entire period of the construction of the Project

This Agreement represents the total results of the Parties' bargaining and the entire understanding between the Parties. This Agreement shall not be amended or supplemented except by the mutual consent of the Parties hereto, reduced to writing and duly signed by each.

Section 22. Authorized Signer

The President of the Council represents and affirms that he is authorized to sign this Agreement on behalf of the Council and on behalf of the Unions listed on Exhibit A.

FOR THE CITY AKRON, OHIO:

By: _____



Name and Title DONALD L. PLUSQUELLIC, MAYOR

Date 7-7-14

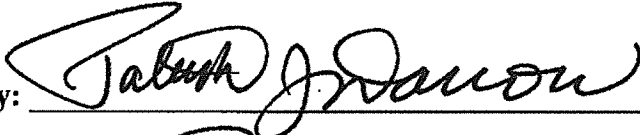
Approved as to form and correctness:



Cheri B. Cunningham
Director of Law
City of Akron, Ohio

FOR THE TRI-COUNTY BUILDING & CONSTRUCTION TRADES COUNCIL

By: _____



Name and Title PATRICK J. DARROW

PRESIDENT

Date 5/2/14

USE FORMAT THAT FOLLOWS FOR ALL CONTRACTORS TO SHOW THEIR AGREEMENT TO BE BOUND BY THE TERMS OF THIS PROJECT LABOR AGREEMENT DURING THE CONSTRUCTION OF THE PROJECT].

EXHIBIT A

- Heat & Frost Insulators Local 84
- International Union of Bricklayers and Allied Craftworkers Local 7
- Laborers' International Union of North America Local 894
- United Brotherhood of Carpenters and Joiners of America Local 285
- International Brotherhood of Electrical Workers Local 306
- International Union of Elevator Constructors Local 45
- Glaziers Architectural Metal and Glass Workers Union Local 1162
- International Union of Painters and Allied Trades Local 841
- Operative Plasterers' and Cement Masons' International Association Local 109
- Plumbers and Pipefitters Union Local 219
- United Union of Roofers, Waterproofers and Allied Workers Local 88
- Sheet Metal Workers' International Association Local 33
- International Brotherhood of Teamsters Local 348
- Sprinkler Fitters Union Local 669
- International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers Local 17

EXHIBIT B

Anticipated List of Projects:

Main Outfall Parallel Relief Sewer

Mud Run District Capacity Improvements

Mud Run District I-I Improvements
MR PS SB Construction

NSI Tunnel

OCI Tunnel and OCIT-2CS

OCIT-1CS

OCI 36 WM

OCI Lining

OCI EHRT

Rack 3 Storage Basin

Rack 5 & 7 Storage Basin Construction

Rack 10 & 11 Storage Basin

Rack 12 Storage Basin

Rack 13 Separation Project

Rack 14 Storage Basin

Rack 15 Storage Basin

Rack 21 Separation Project

Rack 22 Storage Basin

Rack 26 & 28 Storage Basin

Rack 27 & 29 Storage Basin

Rack 30 Separation Project

Rack 36 Storage Basin

WPCS Ph 2, Pt 1 Improve to 170 MGD

WPCS Ph 2, Pt 2 BioActiflo

ATTACHMENT A

LETTER OF ASSENT TO THE PROJECT LABOR AGREEMENT
FOR THE CITY OF AKRON COMBINED SEWER OVERFLOW CONTROL
PROGRAM

Pursuant to Sections 2 and 15 of the Project Labor Agreement (the "Agreement") for the City of Akron Combined Sewer Overflow Control Program described in the Agreement, the undersigned party hereby agrees that it will comply with and be bound by all of the terms and conditions of the Agreement and agrees to all approved amendments or revisions thereto.

This Letter of Assent shall ONLY apply to the above-referenced Project and shall remain in effect for the duration of the above-referenced Project, after which this understanding will automatically terminate without further notice.

For the Contractor (or Subcontractor of whatever tier):

Name of Contractor/Subcontractor: _____

Name and Signature of Authorized Person:

(Print Name) _____

(Title) _____

(Signature) _____

(Phone #) _____

(Date) _____

ATTACHMENT B

CITY OF AKRON COMBINED SEWER OVERFLOW CONTROL PROGRAM

**PROJECT LABOR AGREEMENT
GRIEVANCE FORM**

Grievance No.: _____		Date: / /	
Employer: _____			
Union: _____			
Grievant: _____		SS No.: - -	Date Grievance Occurred: / /
Nature of Grievance be specific (attach additional pages as required):			
State PLA Article(s) and/or PLA Section(s) allegedly violated:			
<u>Article(s):</u>		<u>Section(s):</u>	
Settlement Desire:			
Date: / /		Signature of Grievant: _____	
Date: / /		Signature of Union: _____	

CITY OF AKRON COMBINED SEWER OVERFLOW CONTROL PROGRAM

**PROJECT LABOR AGREEMENT
GRIEVANCE FORM**

Grievance No.: _____	Date: ____/____/____
Grievant Name: _____	Union: _____

Step 1

Resolution:	
Date: ____/____/____	Grievant Signature: _____
Date: ____/____/____	Union Rep. Signature: _____

Step 2

Disposition of Grievance:	
Date: ____/____/____	Employer Rep. Signature: _____
Date: ____/____/____	Union Rep. Signature: _____

Step 3

Disposition of Grievance:	
Date: ____/____/____	Ind. Rel. Mgr.: _____
Date: ____/____/____	BM or Int. Rep: _____