

AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES

THIS AGREEMENT, MADE AS OF THIS ____ day of _____, 2026 by and between the City of Joliet, Illinois, an Illinois Municipal Corporation, (hereinafter called the "City"), having its offices at 150 W. Jefferson, Joliet, IL 60432 and Burns & McDonnell Engineering Co., Inc. (hereinafter called the "Consultant"), an entity authorized to do business in the State of Illinois, whose principal address in Illinois is: 200 W. Adams Street, Suite 2700, Chicago, IL 60606, is an AGREEMENT for professional consulting services associated with the Alternative Water Source Program.

This Agreement is Based Upon the Following Recitals:

- A. The City has undertaken the Project known as Water Main Replacement Program. The scope of Consultant's services related to the Project is defined in Attachment A. Consultant has received and carefully studied the Project scope and other Project requirements.
- B. The City desires, in connection with the Project, to retain Consultant to perform the consulting services ("Services") as described in this Agreement and the attachments referenced in this Agreement.
- C. Consultant, who is in the business of supplying information and guidance to others, represents and warrants that: it has the professional qualifications to render such Services; it has adequate resources; and it is financially and legally capable of providing the required Services through personnel qualified to render such Services, in a manner fully responsive to the City's requirements in Attachment A.
- D. Consultant further agrees that all work to be performed by the Consultant's employees in fulfillment of this Agreement shall comply with all applicable federal, state, and local laws. Further, all work is to be performed in compliance with all applicable ordinances and regulations of the City unless a specific exemption is provided, in writing, by the City.

NOW, THEREFORE, the City and the Consultant in consideration of the mutual covenants hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

SECTION 1 – HIRING OF CONSULTANT

1.1 Consultant's Services

1.1.1. The City, by signing this Agreement, retains Consultant, and Consultant agrees to render the Services stipulated in Attachment A Scope of Services and all amendments thereto in accordance with Agreement requirements. Consultant is retained solely for the purposes set forth in the Agreement.

1.1.2. Consultant represents that neither it, nor any person it assigns to the Services, has or will acquire any direct or indirect interest that conflicts in any manner or degree with the rendering of the Services.

1.2 The Agreement

1.2.1. The Agreement, including all attachments, and written Amendments, contains the mutually agreed to and legally enforceable obligations between the City and Consultant with respect to the Project. The Agreement may be modified only as provided herein.

1.2.2. The Agreement supersedes any other prior or current oral or written communications between the City and Consultant with respect to its subject matter. Any statement, representation, promise or inducement not included in the Agreement is null and void and not binding on the City or Consultant.

1.2.3. The City and Consultant acknowledge that the Agreement and the Services provided are not intended to result in a legal benefit or detriment to any third party, nor will they create any relationship between the City and any Subconsultant or any other third party, or between the Consultant and any third party or agent, including the City's Contractor.

1.2.4. Amendments, once approved in writing by the City, modify the Agreement.

1.3 Glossary

1.3.1. The following terms or relative pronouns used in this Agreement have the following intent and meanings, if the context will permit:

Agent – A non-employee of the City, acting on the City's behalf, as set forth in the Agreement's scope of services.

Agreement – The written understanding between the City and Consultant describing the mutual obligations of the City and Consultant, including this City-Consulting Agreement, its attachments and all documents incorporated by reference, the general terms and conditions by which the Services will be provided and all amendments.

Amendment – A written modification to this Agreement approved and signed by the City and Consultant, providing for revisions as to the Services, the general terms and conditions by which the Services will be provided, Compensation and/or Completion Times.

Business Day – Any day except Saturdays, Sundays and holidays observed by the City.

Calculations – All computations having to do with the furnishing and/or performance of the required Services.

City – City of Joliet, an Illinois Municipal Corporation, for whom the services are to be rendered, acting by and through its City Council.

Compensation – The consideration payable by the City to Consultant for the Services, including all Amendments, specified in Attachment B Basis of Compensation.

Completion Time – Periods within which, or dates by which, the Services, in whole or in part, are to be completed.

Consultant – The firm identified as such at the beginning of this Agreement with whom the City has entered into this Agreement for consulting Services.

Contractor – The firm, including its subcontractor(s), that is contracted by the City to undertake the Construction Work, for which Services by the Consultant may be provided, or that otherwise may impact directly or indirectly upon the Services of the Consultant.

CPM Schedule – Work Schedule based on the Critical Path Method (CPM) of scheduling.

Day – Every day on the calendar, Saturdays, Sundays and holidays included.

Deliverable – That work product(s) identified in the Agreement as an item(s) to be created and submitted by Consultant to the City, constituting an instrument of service, and furnished to the City in printed, electronic, photographic or video form, or any combination thereof.

Director – The Director of Public Utilities or Acting Director of Public Utilities of the City.

Hazardous Material – A dangerous toxic, flammable or explosive substance, waste or other material, which is or becomes regulated by any local Public Agency or the State or U.S. Government, as further set forth in paragraph 3.17.

Invoice for Payment – Written and electronic form(s) acceptable to the City and used by Consultant to request partial payments and final payment, together with all supporting information required by the Agreement.

Law, Laws – All Federal, State, City, and local statutes, resolutions, ordinances, orders, codes, rules, and regulations applicable to the Services.

Phase – A division of an engineering project into sequential parts, mainly Study, Preliminary Design, Final Design, Bidding, and Award and Construction.

Project – The Design and Construction, in its entirety or if otherwise applicable to the Agreement, a part of the Construction, for which Service(s) may be provided

Project Calendar – Schedule in Attachment C setting forth the Completion Times and other start and/or completion dates for Services chronologically important to the Project.

Project Representative – A City employee other than the Director serving as owner's representative for the Project, within the limits provided by the Director's contractually assigned authority.

Public Utility – Department of a Public Agency, electric or gas utility, cable TV or telecommunications company or other owner or operator of utilities operated or maintained in, on, under, over or across public right-of-way or public or private easements.

Purchasing Administrator – The duly appointed officer of the City authorized to carry out the functions assigned to him/her for purchasing and contract administration.

Services – Professional consulting services to be provided by Consultant as expressly specified in the Agreement, whether performed directly by Consultant or through Subconsultants, for whom Consultant is responsible.

State – The State of Illinois including any of its departments, agencies or other units or instrumentalities of the State.

Subagreement – An agreement between Consultant and a Subconsultant (or between a Subconsultant and a lower tier Subconsultant) awarding a part of the Services to that Subconsultant (or to that lower tier Subconsultant).

Subconsultant – A firm having a Subagreement for part of the Services with Consultant or another Subconsultant.

Work – The entire construction required by the Contractor's Contract Documents.

1.3.2. Other capitalized terms used in the Agreement or the Agreement Forms, but not defined in this Glossary, have the intent and meanings assigned in the Construction Documents prepared by others.

1.3.3 References to paragraphs in this Agreement include all sub-paragraphs under that paragraph.

SECTION 2 SCOPE OF SERVICES

2.1 General Provisions

2.1.1. Consultant is retained as an independent service provider by the City and is responsible for providing Services specified in the Agreement.

2.1.2. Consultant confirms that it has read and carefully studied the terms and conditions of the Services. Consultant represents to be knowledgeable about the Project locality and Laws and existing and reasonably foreseeable prevailing conditions, to the extent they may impact the timing and performance of the Services.

2.1.3. Consultant is responsible for the performance of the required Services, including but not limited to the preparation and timely submittal of all Deliverables, to the extent that Consultant is in control of information required to complete its Services. It is understood that completion of Consultant's Services is dependent upon the availability and completeness of deliverables and information prepared by Program Team. Deliverables shall be submitted in a format as directed by the Director, consistent with industry and/or professional standards and applicable requirements of the Agreement.

2.1.4. Consultant, at the request of the City, shall attend, make presentations and participate in City meetings and other Project relevant community and public meetings as defined in Attachment A to further the Services. Consultant, if directed by the City and, as otherwise consistent with professional practice, shall provide materials describing the Services they have rendered or shall be rendering, and their current progress, if any, when such material is required or appropriate for such meetings and presentations.

2.2 Scope of Authorized Services

2.2.1. Basic Services are as specified or designated in Attachment A. Basic Services include all conferences, consultations and demonstrations the City considers reasonably necessary for the Services.

2.2.2. Consultant shall obtain the Director's written Notice to Proceed for the Phase before proceeding with Basic Services for that Phase. Nothing in the Agreement shall be construed as obligating the City to proceed with any Phase included as part of the Agreement. The Director shall not approve any payment before the City's authorization to enter into the Agreement with the Consultant.

2.2.3. Supplemental Services are as specified or designated in Attachment A Scope of Services and Attachment B Basis of Compensation and otherwise reasonably inferable from any such expressed services, or otherwise necessary to furnish and/or perform obligations undertaken by Consultant under Basic Services.

2.2.4. Consultant is authorized to proceed with Supplemental Services for a Phase upon receipt of written authorization to proceed with that Phase, unless Attachment A Scope of Services and/or Attachment B Basis of Compensation stipulate that any Supplemental Service be subject to a separate/specific prior authorization to proceed.

2.2.5. If required, Consultant may anticipate reasonably unobstructed access to the Construction site(s) and other field site(s) as necessary to witness and evaluate the Work and activities of the Contractor if part of the Consultant's services, and to confirm any requisite testing and/or inspection of the Work. This requirement however, shall not limit Consultant from other regular and/or periodic site visits to the extent such visits are, in its opinion, reasonably necessary to further Consultant's required Services.

2.3 Standard of Care

2.3.1. Consultant's Services and Deliverables shall conform to the standard of care and practice generally used, accepted and recognized by Consultant's profession for comparable services in Will County, Illinois, as of the time the Services at issue had been provided ("Standard of Care"). This Standard of Care shall apply to all obligations of the Consultant under this Agreement.

2.3.2. Not used.

2.3.3. If any error or omission in the Services resulting from failure by Consultant to conform to the standard of care is discovered by or reported in writing to Consultant during performance of or within one (1) year after completion of the Services, City may order Consultant to take prompt corrective action, without additional compensation. Failure to correct will be cause for City to terminate the Agreement. This requirement for Consultant errors or omissions will not limit the generality or application of any other provision contained in the Agreement.

2.3.4. In the event the Director determines that Consultant's failure to conform to the Standard of Care is substantially detrimental to the Project, the City may order Consultant to stop the Services, or any portion of the Services at issue.

2.4 City Order to Stop the Services

2.4.1. Consultant shall be responsible for an appropriate portion of the costs and delay resulting from any City stop. Conversely, Consultant shall be entitled to a reasonable increase in Completion Time and/or Compensation to the extent the Director concludes that the order to stop the Services was in error and that it necessarily extended the Services beyond a pertinent Completion Time and/or increased Consultant's costs.

2.5 General Deliverable Provisions

2.5.1. Electronic Deliverables submitted to the City by Consultant shall be in a format approved by the City and shall include two (2) hard copies of the electronic files, unless specified otherwise by the Agreement, which hard copies shall, in the event of conflict, take precedence over the electronic files. The City will perform tests as to functionality of the submitted electronic medium within sixty (60) days after receiving the files.

2.5.2 Engineering drawings prepared for the work under this Agreement shall be prepared by Computer Aided Design (CAD) techniques utilizing Autodesk AutoCAD.

2.5.3. A deficiency notice will be sent to Consultant advising whether the electronic files contain errors and/or discrepancies or vary from the hard copies or are otherwise non-functional. Electronic Deliverables deemed deficient by the City shall be promptly corrected and resubmitted by Consultant in conformance with the Agreement's requirements or professional and/or industry expectations.

2.5.4. Notwithstanding any other warranty pertaining to electronic Deliverables, Consultant shall use reasonable efforts to avoid: 1) discrepancies with applicable printed documentation; 2) any virus; 3) time bomb mechanism; 4) other software code that can disable or adversely affect any data or software; and 5) any defects or bugs that can adversely affect its own operation or the operations of the City.

2.5.5. Consultant shall revise any Deliverable as necessary, and at no increase in Compensation, until the Deliverable at issue is complete, as evidenced by its acceptance or approval by the City, which acceptance or approval shall not be unreasonably withheld. In the event of a disagreement as to the completeness or quality of all or any part of a Deliverable, the written determination of the Director shall be binding on Consultant, subject to Consultant's right to appeal as provided in Section 11.

2.5.6. The City and Consultant will jointly and at agreed intervals conduct reviews of in-progress Deliverables with the intent to stay current on their status, and to timely respond to issues advanced by Consultant.

2.5.7. Notwithstanding paragraph 2.5.6, City reviews are not conducted nor will they be relied upon to provide quality control or to check for errors or omissions or impose requirements for what is required by the Services at issue. City reviews shall not relieve Consultant of its sole responsibility for the proper and timely performance of Services.

2.5.8. Consultant shall exercise reasonable professional care to provide that the Deliverables conform to the requirements of Agencies from which the City receives/may receive loans and Project financing, to the extent such requirements are contained in the Agreement.

2.6 Rights to Deliverables

2.6.1. Completed deliverables shall become the City's permanent property upon payment by the City to Consultant for the Phase during which the Deliverables at issue were produced, whether or not the Project is built.

2.6.2. Consultant shall pay for all royalties and licenses required for the Services, and covenants to grant the City a permanent, royalty free, irrevocable, non-exclusive, paid-up license, to use, reuse, disclose, distribute or otherwise utilize the Deliverables, and any items or elements that may be proprietary to Consultant, for the Project or for its expansion, repair and renovation, or for future uses by the City.

2.6.3. In the event any such license to be granted to the City is limited in any material way as a result of previously existing copyright or patent restrictions, such limitation shall be disclosed by Consultant before starting the Services, and Consultant shall take whatever action is necessary to obtain a release of such restrictions.

2.6.4. Consultant shall not use any of the Deliverables in any project competition, awards of any nature, project testimonials or professional or community presentations, without obtaining prior written approval from the City. Any photographs taken of City property in the execution of the Consultant's work may not be re-used by the Consultant for advertising, proposals, presentations, professional papers, public display, or any other use without obtaining prior written approval from the City.

2.6.5. In the event a Deliverable, whether on hard copy or contained in electronic media, is modified or reused on an extension or renovation of the Project or on any other project without Consultant's involvement or prior consent, Consultant's name and seal shall be removed and obliterated from those Deliverables.

2.6.6. Any such modification or reuse of a Deliverable shall be without liability or legal exposure to Consultant. Consultant shall not be liable for injury or damage resulting from any such modification or reuse of those Deliverables and such modification or reuse shall be at the user's sole risk.

SECTION 3 CONTRACT ADMINISTRATION

3.1 City Representation

3.1.1. The Director will administer the Agreement and, as such, has authority to act on behalf of the City to the extent provided in the Agreement. The Director's assigned duties, responsibilities and limits of authority may not be changed without the City's prior written consent.

3.1.2. The Director may assign a Project Representative and/or Agent, who will be authorized to act on behalf of the Director with respect to the Services.

3.1.3. The Director will coordinate the City's Agreement involvement and secure City approval and acceptance as required to timely advance the Services.

3.2 Determinations by the Director

3.2.1. The Director is the sole interpreter of the Services required by the Agreement. Consultant concerns, questions, or proposals relating to the character and extent of the Services, acceptability of Services rendered and in-progress, and completed Deliverables and the interpretation of Agreement and Service requirements shall be referred to the Director in writing, with a request for a written determination. The Director will render such written determination within a reasonable time, acting in good faith, based upon facts known to him/her at the time.

3.2.2. Consultant, in the event it disagrees with a determination rendered by the Director may challenge that determination in accordance with the procedures and within the deadlines set forth in Section 11.

3.2.3. The City shall be provided with a reasonable opportunity to respond to any notice, proposal, claim, or other matter at issue before Consultant exercises any right or remedy available under Agreement or Law.

3.3 Acceptance of Responsibility

3.3.1. Services rendered by Consultant for the Project shall be as specifically indicated in the Scope of Services.

3.3.2. Consultant shall notify the City in writing if, while performing Services, it determines that any aspect of the Project, for whatever reason, cannot be developed consistent with this Agreement or that any City-provided facilities, information and services are incorrect or otherwise inappropriate for the Project.

3.3.3. Consultant will afford the City full site access where Services are being performed and, at the Director's request, furnish any in-progress or completed Deliverables for the City's review.

3.4 City-Furnished Facilities and Information

3.4.1. The City will furnish Consultant applicable City standards and formats, as required for the timely furnishing and performance of Services.

3.4.2. The City will provide Consultant reasonable access to the City offices during business hours to obtain information necessary for the Services and will make reasonable efforts to schedule acceptable arrangements for the City personnel to be available to Consultant for necessary meetings and/or interviews.

3.4.4. The following services shall be furnished by the City:

- Access to the work site
- Review of documents submitted at the progress milestone review points and at other times, in accordance with the times allocated in Attachment C Project Schedule
- Assignment of an individual to the project in the capacity of Project Manager to work with the Consultant in the daily execution of the work and provide direction to the Consultant
- Timely written notice of potential program or project schedule delays caused by funding or other City constraints
- Provide access to and make all provisions for Consultant to enter upon public and private property as required for Consultant to perform services under this Agreement
- Accounting, bond and financial advisory, independent and insurance counseling services as City may require
- Such legal services as City may require, which may include items Consultant may reasonably request regarding legal issues pertaining to the Project, including any that may be raised by professional service providers or construction contractors
- Such auditing services as City may require to ascertain how or for what purpose service providers or construction contractors have used the moneys paid on account for their Contract Price;

- Funding and payment of any required geotechnical investigation, materials testing, and environmental assessment services as City may require
- Unless explicitly stated otherwise, pay all fees associated with project, document, or data management systems, which will be provided by the Program Team
- Bear all costs incidental the City's Responsibilities.

3.4.5 The following material shall be furnished by the City to the Consultant as a part of the Agreement. The City shall furnish to Consultant all applicable information and technical data in City's possession or control reasonably required for the proper performance of the Services. Consultant shall be entitled to reasonably rely upon the information and data provided by the City or obtained from generally acceptable sources within the industry without independent verification except to the extent such verification is expressly included in the Services.

- Copies of applicable standards and formats required by the City
- Forms of bidding and contract documents
- All of City's standard documents and procedures pertaining to WMRP activity as needed for Consultant to perform the Services
- Data and information applicable to the WMRP prepared by or resulting from services of others including contracts; invoices; progress reports; program and project management plans; project planning, design and construction documents; financial models and reports; program and project budgets and schedules; and regulatory communications
- Environmental assessments, audits, investigations, and impact statements, and other relevant environmental or cultural studies
- Relevant information pertaining to the City's finances as may be required to support the pursuit of Federal or State sources of funding as needed for Consultant to perform the Services; and
- Other information determined by the City and Consultant to be relevant to the performance of services under this Agreement.

3.5 Coordination and Cooperation

3.5.1. Consultant agrees to work cooperatively with the City and any other consultant, vendor and contractor hired by the City for this Project, or any other Project(s) which may require coordination and cooperation efforts with the Consultant's Project.

3.5.2. The City will cooperate with Consultant during the term of the Agreement and render determinations, provide comments, acceptance and approvals and other inputs as appropriate and necessary to timely advance the Services. The Director will coordinate the activities of Consultant with any City units engaged on the Project.

3.5.3. The Director will coordinate the services and deliverables of any contractors and vendors hired by the City in furtherance of the Project with the respective Services to be furnished by Consultant, and Consultant shall reasonably cooperate with such efforts.

3.6 Consultant Personnel

3.6.1. Consultant shall use sufficient numbers of qualified, competent, and experienced personnel, with suitable training, credentials and skill to timely render and complete the Services. Consultant personnel assigned to the Services shall be licensed in their respective disciplines, if required by Illinois Law or otherwise by the City.

3.6.2. Consultant shall regularly monitor its assigned personnel recommendations, supervision and performance to confirm they continue to reflect the qualifications, experience and competency warranted by Consultant in this Agreement and required to properly complete the Agreement.

3.6.3. Consultant shall assign a Project Manager, on its behalf, to supervise, manage and provide for Consultant's timely and proper performance of Services. The Project Manager and other Consultant lead personnel will be subject to a City interview and approval before their assignment to the Services. In view of the importance of the quality, experience, and overall competence of the Consultant's lead personnel in performance of the Services, the specific individuals listed below shall be assigned to the work as active participants in the indicated capacities for the duration of the Agreement. Lead personnel may be replaced only with the City's prior written approval.

<u>EMPLOYEE'S NAME</u>	<u>FIRM</u>	<u>TITLE</u>	<u>PROJECT ROLE</u>
Joe Darlington	Burns & McDonnell	Operations Manager	Program Director
Shelli Schweickert	Burns & McDonnell	Project Manager	Program Manager

3.6.4. The Project Manager and other Consultant lead personnel shall be available to meet with the City at City-designated intervals and as specified in Attachment A to advance the Services.

3.6.5. Consultant covenants and warrants that all personnel it has engaged for Services on the Project shall not violate by performance of their work, any employment or other type of agreement previously executed.

3.6.6. The Consultant's Project Manager must be a full-time resident of the United States readily available to attend any meetings or presentations required by the City.

3.7 Removal and Replacement of Personnel

3.7.1. Consultant (for the duration of the term of the Agreement) will not, without obtaining the City's prior written consent, replace or alter the assignment of its lead personnel, to the extent their respective availability is reasonably within the Consultant's control.

3.7.2. Consultant shall promptly remove any person assigned to the Services in the event of notification by the City that he/she is no longer acceptable, irrespective of any prior City consent. Replacement lead personnel, prior to assignment, will be subject to the City's approval, which shall not be unreasonably withheld.

3.7.3. A violation by Consultant of paragraph 3.7.1 and/or 3.7.2 may be considered a substantial and material breach of Agreement, for which termination and damages otherwise provided by Law or the Agreement may be claimed.

3.7.4. The City's right to request the removal of Consultant personnel from the Services as set forth in paragraph 3.7.2 does not expressly or implicitly create an employer- employee relationship between the City and personnel assigned by Consultant. Such a relationship is expressly denied herein by Consultant and the City.

3.8 Safety-Related Provisions

3.8.1. Consultant shall provide for the safety of premises where Services are performed, and that equipment is being used, in each premises over which Consultant has control. Consultant and its personnel assigned to perform Services, as well as any Subconsultants and their assigned personnel, shall follow safe practices while Services are being performed. The Consultant shall be responsible for the safe conduct of its own employees and/or subconsultants' employees on City property.

3.8.2. Not used.

3.8.3. Neither the professional activities of the Consultant, nor the presence of the Consultant, or its employees and Subconsultants at a construction or Project site, shall relieve the Contractor of its obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending and coordinating the Work in accordance with the Construction Documents and any health or safety precautions required by any regulatory agencies.

The Consultant and its personnel have no authority to exercise any control over any Contractor or its employees in connection with the work, nor over any health or safety programs or procedures. The City agrees that the Contractor shall be solely responsible for jobsite safety and agrees that this intent shall be carried out in the City's contract with the Contractor. The City also agrees to require the Contractor to indemnify the City, the Consultant, and the Consultant's Consultants and to make the Consultant and the Consultant's Consultants additional insureds under the Contractor's policies of general liability insurance.

3.8.4. Consultant shall abide by all requirements of the City's Confined Space Entry Program if applicable to Consultant's performance of its Services on City property and City provides such requirements to Consultant in advance of Consultant entering City property.

3.8.5. The City's supervisory control is limited to the direction of the order in which the work shall be performed and to the prohibition of work being performed in a manner likely to be dangerous.

3.9 Relationship with the City

3.9.1. Until the Services in the Agreement shall have been fully performed, the Consultant, unless authorized in writing by the City to do so, shall not employ any person who is an employee of the City, or who was so employed within a period of ninety (90) calendar days prior to the date of this Agreement. Consultant may request City waiver.

3.9.2. Consultant shall treat material and information including, but not limited to, documents, drawings, plans, data, of any type received directly or indirectly from the City, its officers, agents and/or employees, or obtained as a result of, or in performance of, the Services, as confidential, except as specified herein. Material will be considered confidential unless disclosure (a) has been made public by the City, or (b) has been authorized otherwise in writing by the Director, or (c) is required by Law, or (d) is reasonably necessary in the performance of the Services, but such disclosure shall be limited to an as-needed basis. In connection with the material and information received or obtained by Consultant, Consultant will abide by the requirements of any non-disclosure and confidentiality agreements to which the City is a party and with which the City must comply.

3.10 Records; Right to Audit

3.10.1. Consultant shall maintain, and require its Subconsultants to maintain, according to generally accepted professional practice and records management and accounting standards, written communication, memoranda, time sheets, expense vouchers and other financial records that verify Consultant's costs pertaining to the Services. Such records shall be stored in a suitably secure location for seven (7) years after the completion or termination of the Services or, if applicable, until the resolution of any dispute or appeal, whichever is later.

3.10.2. Consultant and its Sub-consultants shall provide the City and its representatives or designee, with access and appropriate facilities to support the City's right to examine or audit and copy records that verify its costs for the Services, otherwise required to be maintained by Consultant. The City inspection access shall be provided during normal business hours, during the term of the Services, and until the expiration of the required retention period.

3.11 Intellectual Property

3.11.1. Consultant will furnish applicable licenses and pay, without additional reimbursement from the City, all royalties and fees of any invention, design, process, software, product, device or methodology covered by patents and/or copyrights and provided and utilized by Consultant for the Services or as part of the Project.

3.11.2. If any Deliverable furnished by Consultant specifies the use of or incorporation into the Project of any invention, design, process, product or device covered by patent rights or copyrights, such fact shall be annotated in the relevant Deliverables by Consultant. This provision shall not apply if the royalties or fees for the invention, design, process, product or device at issue are normally included as part of its regular commercially quoted price.

3.11.3 Software and software applications produced for the City will include modifiable program code submitted on acceptable media. Runtime versions may be used in actual applications.

3.11.4 Consultant hereby assigns to the City any and all inventions, improvements, innovations, designs, artwork, logos, original expressions of ideas, trade dress, processes, improvements and trade secrets, whether or not patentable or copyrightable ("Developments") that Consultant may develop as part of the scope of services under this Agreement.

3.11.5. In the event Consultant conceives of, or creates, any Developments relating to matters encompassed by this Agreement, Consultant shall promptly and fully disclose the same, as soon as practicable and in writing. Further, Consultant shall execute upon the City's request such documents as in the opinion of the City are necessary or desirable to transfer all right, title and interest in any such Developments to enable the City to obtain patents, copyright registrations, or other protections for any such Developments.

3.12 Indemnification

3.12.1. Consultant, to the fullest extent permitted by Law, shall, upon written notice, at its sole expense, indemnify and save harmless the City, its elected officials, officers, and employees, and successors and assigns, from and against damages, penalties, losses, charges and expenses, including but not limited to reasonable attorneys' fees and costs, expert witness fees and any costs of litigation and any dispute resolution costs which may be imposed on or incurred by the City to the extent caused by the wrongful or negligent act, error or omission of the Consultant, its subconsultants, anyone directly or indirectly employed or retained by any of them, or anyone for whose acts any of them may be liable including but not limited to the following occurrences in the performance of the Agreement:

3.12.1.1. Any bodily injury, including death, or third-party property damage in the performance of the Services, and to the extent caused by any negligent act, error or omission or willful misconduct of Consultant, its Subconsultants, or anyone directly or indirectly employed or retained by any of them, or anyone for whose acts any of them may be liable.

3.12.1.2. Any failure of Consultant or any Subconsultant, at any tier, or anyone directly or indirectly employed or retained by any of them or anyone for whose acts any of them may be liable, to perform their obligations, either express or implied, under the Agreement, including, but not limited to any violation of Law.

3.12.2. Consultant's indemnification obligation pursuant to paragraph 3.12.1.1 shall not be limited in any way with respect to any claim(s) brought by an employee of Consultant, due to a limitation on the amount or type of damages, benefits or compensation payable by/for Consultant under workers' compensation, disability benefit or other benefit acts.

3.12.3. In the event any action or proceeding is brought against the City by reason of a claim covered by this indemnification obligation, Consultant, upon written notice from the City, shall promptly notify the City that it is responding to such claim. The City will cooperate with Consultant to the extent it is in the interests

of the City to do so, and, at its sole expense, Consultant shall resist and defend the action or proceeding or settle same at no cost or expense to the City.

3.13 Laws and Legal Requirements

3.13.1. Consultant shall exercise reasonable professional care, diligence and judgment to become familiar, comply with and stay informed of all Laws, including, but not limited to the City's regulations and ordinances, which may be reasonably expected to affect Services and Deliverables. The City will not be responsible for monitoring Consultant's compliance with any Laws.

3.13.2. References to Law(s), unless otherwise defined in the Agreement, will mean Laws in effect during the performance of the Services. Unless modified by Amendment, the Consultant shall comply with all Laws and other applicable legal requirements in effect when the Agreement was executed, at no additional cost to the City.

3.13.3. Not used.

3.13.4. Consultant shall notify the City in writing, if, while performing Services, it discovers any conflicts within the Agreement. Consultant shall revise any Deliverable affected by any such conflict, at no increase in Compensation and/or Completion Time, if the Consultant rendered such Deliverable knowing, or having reason to know of any such conflict.

3.13.5. Not used.

3.14 No Limitation on the City's Rights

3.14.1. Rights and remedies of the City as provided by the Agreement are cumulative to any rights and remedies otherwise provided by Law. The City may, during the performance of or after completion of the Services, assert its right of recovery by any appropriate means, including, but not limited to dispute resolution, suit, recoupment of monies paid or counterclaim.

3.15 Federally-Funded Projects

3.15.1. Consultant, to the extent the project is funded in whole or in part by the federal government, unless specifically exempted by Agreement, shall comply with all applicable Federal laws.

3.15.2. Consultant shall comply with the applicable sections of the WIFIA Contract requirements presented in Attachment D WIFIA Contract Language. It is the responsibility of the Consultant to determine if these requirements apply to part or all of this Agreement.

3.16 IEPA-Funded Projects

The following, as required by 35 Ill. Adm. Code 365.630 – "Contracts for Personal and Professional Services" is incorporated into this Agreement:

3.16.1 Audit and Access to Records

- i. Consultant shall maintain books, records, documents and other evidence directly pertinent to performance of Public Water Supply Loan Program ("PWSLP") loan work under this Agreement consistent with generally accepted accounting standards in accordance with the American Institute of Certified Public Accountants Professional Standards. The Illinois Environmental Protection Agency (the "Agency") or any of its duly authorized representatives shall have access to the books, records, documents, and other evidence for the purpose of inspection, audit, and copying. Facilities shall be provided for such access and inspection.

- ii. Audits conducted pursuant to this provision shall be in accordance with generally accepted auditing standards.
- iii. All information and reports resulting from access to records pursuant to the above paragraphs shall be disclosed to the Agency. The auditing agency will afford Consultant an opportunity to comment on the pertinent portions of the draft audit report. The final audit report will include the written comments, if any, of the audited parties.
- iv. Records under the above paragraphs shall be maintained and made available during performance on Agency loan work under this Agreement and until three (3) years from the date of final Agency loan closing. In addition, those records that relate to any dispute pursuant to 35 Ill. Adm. Code 365.650 (Disputes), litigation, the settlement of claims arising out of project performance, costs or items to which an audit exception has been taken shall be maintained and made available for three (3) years after the resolution of the appeal, litigation, claim or exception.

3.16.2 Covenant Against Contingent Fees

Consultant warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an Agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bonafide employees. For breach or violation of this warranty, the Loan Recipient (i.e., City of Joliet) shall have the right to annul this Agreement without liability or in its discretion to deduct from the contract price or consideration or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

3.16.3 Executive Order 12549

Consultant shall sign and execute a "Certification Regarding Debarment, Suspension, and Other Responsibility Matters" (EPA Form 5700-49) showing compliance with federal Executive Order 12549 as furnished by the Agency.

3.16.4 Disadvantaged Business Enterprise Utilization

In accordance with 35 Ill. Adm. Code 365.630(b), Consultant shall provide the City and the Agency with a statement regarding the use of Disadvantaged Business Enterprises during the construction service phase.

Consultant agrees to take affirmative steps to assure that Disadvantaged Business Enterprises are utilized when possible during the construction service phase of the program as sources of supplies, equipment, construction and services in accordance with the Public Water Supply Loan Program rules. As required by the award conditions of USEPA's Assistance Agreement with IEPA. Consultant acknowledges that the fair share percentages are 5% for MBEs and 12% for WBEs.

3.16.5 Non-discrimination Clause

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

3.17 Hazardous Materials

3.17.1. Consultant shall not, at any time, cause any Hazardous Materials to be brought upon, stored, manufactured, blended, handled, or used in, on, or about the lands, areas, properties or facilities furnished by the City for any purpose except as lawful and necessary and in accordance with the Agreement.

3.17.2. Hazardous Material includes, without limitation, any material or substance which is designated as (a) a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. Sec. 1321); (b) a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, (42 U.S.C. Section 6903 et seq.); (c) a "hazardous substance" pursuant to Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, (42 U.S.C. Section 9601 et seq.); or (d) a "hazardous" or "toxic" substance in any Law similar to, or in any amendment of, any of the Laws cited in this clause.

3.17.3. Consultant shall have no responsibility for the existence of Hazardous Materials at the Project site nor shall Consultant furnish Services related to Hazardous Materials. Consultant shall give immediate written notice to the City, take appropriate safety precautions, and without liability for consequential or other damages, suspend those Services that would be reasonably affected by the existence of the Hazardous Material, in the event it unexpectedly encounters such Hazardous Materials at or near the site or has reasonable belief of their existence.

3.17.4. Reasonable effort shall be made by Consultant to mitigate delay, delay costs and any ancillary costs resulting from any such suspension of Services. Alternatively, the City, upon confirming the existence of the Hazardous Material, may for its convenience terminate the affected Services, or the Agreement as a whole.

3.17.5. If materials reasonably believed to be Hazardous Materials are encountered, the City shall retain a separate properly insured consultant.

3.18 Consultant's Offices

3.18.1 The Consultant's local Illinois office, from which all project work will be administered, and to which all project correspondence shall be directed is located at: 200 W. Adams Street, Suite 2700, Chicago, IL 60606.

3.18.2 The Consultant's principal place of business, to which all official notices shall be sent is located at: 200 W. Adams Street, Suite 2700, Chicago, IL 60606. Official notices should be addressed to Patrick Clifford, P.E., Regional Water Practice Manager.

SECTION 4 SUBCONSULTANTS

4.1 Use of Subconsultants

4.1.1. Consultant retains full responsibility for hiring Subconsultants in whatever disciplines it deems necessary, to provide the required Services. Consultant shall employ Subconsultants, pursuant to Subagreement(s). Nothing in the terms and conditions of any Subagreement(s) shall violate the provisions of this Agreement. Nothing in the Agreement, nor any act or omission of the City or its Commissioners, officers, employees or Agents, whether or not permitted by this Agreement, shall relieve Consultant of its sole responsibility for the Services.

4.1.2. All subcontracts entered into by the Consultant, including those involving the engagement of special consultants, pursuant to the work described herein, shall be made only after the Consultant secures the written approval of the City. Said subcontracts between the Consultant and his subcontractors shall contain all applicable provisions of this Agreement.

4.1.3. Nothing contained in the Agreement, including the right of the City to consent to or reject any Subconsultant, creates, or is intended to create a contractual relationship (privity) or any legal right or action in favor of a Subconsultant or other third party against the City.

4.1.4. Services rendered by a Subconsultant (at any tier) shall be through a written Subagreement expressly binding that Subconsultant to the applicable requirements of the Agreement. Each Subagreement will require the Subconsultant to assume toward Consultant all applicable obligations, duties and responsibilities Consultant assumes toward the City.

4.1.5. Consultant covenants that the Subconsultants named below are the Subconsultants Consultant shall retain and promptly execute Subagreements with, after executing this Agreement upon request the Consultant will provide copies of Subconsultant agreement within 10 days. Consultant may seek the substitution of a Subconsultant upon presentation of just cause.

<u>SUBCONSULTANT</u>	<u>SERVICE RENDERED</u>
Environmental Design International, Inc.	Construction observation
American Veteran Engineering, PLLC	Construction observation
Reach Grow Exceed Engineering	Construction observation
DLZ Corporation	Surveying & layout

4.1.6. Consultant shall investigate prospective Subconsultants to verify that they possess personnel with the requisite qualifications, skill and experience. Consultant shall be responsible for Services rendered by any Subconsultant, at any tier, to the same extent the Consultant is responsible for Services Consultant directly renders.

4.1.7. Consultant, in the event it concludes an additional Subconsultant is required for the Services, shall inform the City in writing of the scope of subconsulting necessary. The notice shall describe the qualifications needed and the part of the Compensation it wishes to designate for the prospective Subconsultant.

4.1.8. Consultant shall promptly resolve any situation in which any Subconsultant is failing to meet the stipulated standard of care as determined by the Director, so as to ensure that Services are fully compliant with the requirements of the Agreement.

4.1.9. Consultant is solely responsible for the performance and timely completion of the Services, regardless of whether such Services are performed by Consultant or its Subconsultants (at any tier).

SECTION 5 INSURANCE

5.1 Consultant's Insurance General Requirements

5.1.1. Consultant, before providing Services, shall obtain and maintain, through the term of the Agreement, including any extensions, at its sole expense, insurance, as designated and in the amount required in paragraphs 5.2 through 5.4.

5.1.2. Certificates of insurance evidencing the required coverage, including mandated endorsements shall be furnished to the City before beginning performance. Actual or certified copies of the insurance policies shall, upon request by the City, be provided by Consultant to the City at the City's offices or such other location as is acceptable to the City.

5.1.3. These insurance requirements, other than the Professional Liability Insurance requirements in Section 5.3 below, do not limit the liability of Consultant and should not be construed to do so.

5.1.4. The City does not represent that the specified coverage or limits are sufficient to protect the Consultant's interests or liabilities. Insurance coverage for the Services rests solely with the Consultant.

5.1.5 Insurance required by the Agreement will be provided by insurers authorized to do business in Illinois having at least an "A-" current Best's Rating and a Best's Class VII or better financial size category. Policies and certificates of insurance shall be endorsed to provide that coverage will not be canceled or renewal refused unless thirty (30) Days prior written notice has been delivered to the City and Consultant. Coverage nearing expiration during the period in which it is to remain in full force and effect will be renewed without any lapse in coverage and a certificate confirming the renewal or continuation of insurance will be promptly submitted to the City.

5.1.6. The City may order the Services to stop and payments to Consultant to cease, in the event any required insurance is canceled or not renewed, so as to cause the City, in its reasonable discretion, to believe the insurance to be no longer adequate for the Services. Delays in Completion Time and additional costs incurred in performing Services resulting from Services and/or payment being stopped because of these matters shall be the sole responsibility of Consultant.

5.2 The Consultant's Liability Insurance

5.2.1. Consultant shall purchase and maintain Workers' Compensation and Employer's Liability Insurance, Commercial General Liability, Commercial Automobile Liability, and Excess/Umbrella Liability Insurance. Such policies of insurance will provide protection from claims that are caused by Consultant's performance or nonperformance of the Consultant's Services under the Agreement. Coverage will be provided whether Services are furnished by Consultant, anyone directly or indirectly employed by Consultant, or anyone for whose professional acts Consultant may be liable.

5.2.2. Consultant shall maintain for any employee resident of and hired in Illinois, insurance for benefits payable under Illinois' Workers' Compensation Law, with limits required by statute. Consultant will maintain insurance for employees covered by Worker' Compensation Laws of another state or participate in a mandatory state fund to cover any such employee.

5.2.3. Commercial General Liability Insurance shall be on an occurrence basis. The policy shall include, as appropriate to the Services and the Project, contractual liability, explosion and collapse and underground hazards, products and completed operations, independent contractors, and broad form property damage (including products and completed operations). Coverage limits will be no less than \$1,000,000.00 each occurrence, \$2,000,000.00 general aggregate, \$2,000,000.00 products and completed operations aggregate, and \$1,000,000.00 personal and advertising injury. Completed Operations insurance, if required for Services, will be maintained for two (2) years after completion of Consultant's Services.

5.2.4. Commercial Automobile Liability Insurance coverage for liability arising from the ownership, maintenance or use of all owned, hired or non-owned vehicle (including contractual liability coverage) shall be consistent with Illinois statutory requirements and equivalent to that provided by the current edition of the ISO Form CA 00 01. Coverage limits shall be no less than \$1,000,000.00 combined single limit per accident.

5.2.5. Excess Liability (Umbrella) Insurance shall provide for employer's liability, general liability and automobile liability protection. The policy shall be at least as broad as the underlying policies of liability insurance. Coverage limits shall be no less than \$1,000,000.00 per occurrence and in the aggregate.

5.2.6. Not used.

5.2.7. Consultant's insurance, as required above in 5.2.1 through 5.2.5, shall be endorsed, except for Workers' Compensation and Employer's Liability Insurance, to identify Consultant as the named insured and to add the City, its elected officials, officers, and employees, and successors and assigns as additional insureds. Workers' Compensation Insurance shall be endorsed to include a Waiver of Subrogation in favor of the City.

5.2.8. The deductible on any policy of insurance and any losses excluded for payment by the insurer because of the applicable deductible shall remain the responsibility of and be paid by Consultant.

5.2.9. Not used.

5.2.10. The Consultant shall use commercially reasonable efforts to require each Subconsultant to provide liability insurance as is required of Consultant, with limits appropriate to the sublet Services and potential perils, subject to the same requirements as set forth by paragraph 5.2.7.

5.2.11 The required insurance limits may be met by any combination or primary umbrella and/or excess liability policies.

5.3 Professional Liability Insurance (PLI)

5.3.1. Consultant shall maintain Professional Liability Insurance. Consultant shall be the Named Insured, and the insurance shall provide protection from claims caused by negligent acts, errors or omissions of Consultant, with a limit of \$5,000,000.00 per claim and aggregate for Consultant. If written on a claims-made basis, Consultant shall maintain said policy for at least one (1) year after completion of Consultant's Services, providing the City a certificate of insurance indicating evidence of actual coverage annually, until this obligation has been fulfilled. Consultant's aggregate liability for all claims caused by negligent acts, errors or omissions of Consultant in connection with its performance of professional Services in this Agreement will not exceed \$5,000,000.

5.4 Not used

5.4.1. Not used.

SECTION 6 SCHEDULING REQUIREMENTS

6.1 Prosecution and Completion

6.1.1. Consultant agrees to prosecute and complete the Work within the time limits specified herein, and in compliance with other requests that the City may reasonably make unless delays are caused by force majeure or acts beyond control of the Consultant, including but not limited to delays arising from services performed by others, labor strikes, riots, war, acts or failures to act of governmental authorities, unusually severe weather conditions or other natural catastrophe, disease, epidemic or pandemic.

6.1.2. Consultant, if required by the Director, shall submit initial and monthly updates of its schedule for the Services to the Director. Such schedule will be kept current, reflecting Consultant's most current rate of progress and approach to the Services and Deliverables. Consultant's Invoices shall reflect the progress supported by its schedule updates.

6.2 Compliance with Completion Times

6.2.1. Completion Times allowed for the furnishing, performance and completion of the required Services are designated in Attachment C Project Schedule.

6.2.2. If the Director determines that an overrun by more than fifteen (15) Days of any Completion Time is reasonably likely, then Consultant shall promptly do what is reasonably necessary to get back on schedule, unless Consultant demonstrates, to the reasonable satisfaction of the Director, that the delay is excusable.

6.3 Consultant-caused Delays

6.3.1. The City will be entitled to deduct from progress payments, to the extent the Compensation is adequate to do so, or alternatively, Consultant shall promptly pay the City for any delay, acceleration and

impact costs and damages actually incurred by the City, if Consultant overruns any required Completion Time, to the extent Consultant is liable.

6.4 Excusable Delay (Excusable to Consultant)

6.4.1. Delays or hindrances caused by the City or its Contractor or Agents which impact the work schedule by more than seven days shall be considered excusable delays under this Agreement and shall be compensated solely by an extension of time for such reasonable period as negotiated by the parties.

6.4.2 The permitting of the Consultant to proceed with its Services after the date of completion designated in Attachment C Project Schedule, or to any date to which the completion may have been extended, shall in no way operate as a waiver on the part of the City of any of its rights herein.

6.4.3. No proposal or claim by Consultant for any City caused delay of the Services will be valid unless the proposal or claim is submitted to the Director in writing within 14 days after the end of the delay and made before the date of final payment to Consultant.

6.4.4. A delay will be excusable and justify a revised Completion Time, if not caused by any negligent act, error or omission of Consultant, or Consultant's failure to act timely on a matter requiring its determination.

SECTION 7 CONSULTANT OPINION OF COST

7.1 Cost Opinions

7.1.1 If the Agreement requires Consultant to render cost opinions, Consultant's opinion of cost will require use of its experience and qualifications to apply pertinent industry cost data to the Project in accordance with the Standard of Care. Consultant's opinions of cost shall represent its best judgment as an experienced and qualified professional, based on Consultant's own construction cost data, its familiarity with the Project and its knowledge and use of generally available and acceptable construction industry cost data. Consultant's opinions, recommendations and assessments are limited by a) the accuracy and completeness of information upon which it may reasonably rely, b) schedule constraints or scope limitations, c) unknown or variable site or other conditions, d) other factors beyond Consultant's control. Any estimates as to construction costs are limited by a lack of control over financial and/or market conditions, including the future price or availability of labor, materials, and prospective bidding environments and procedures. Consultant does not warrant or guarantee the accuracy or completeness of its Services to the extent impacted by these limitations and the City should limit its reliance on the Services in like manner.

7.1.2. Consultant's opinion of cost will account for, among other factors, site location, extent of renovation, and the Project schedule. Unusual cost factors that the Consultant recommends will be specifically noted and their costs segregated.

7.1.3. If the Agreement requires Consultant to render cost opinions, then the format and the estimate structure for which Consultant's opinion of cost is required will be identified in Attachment A Scope of Work.

7.1.4. The City reserves the right to obtain a second opinion regarding estimated costs. In that event, Consultant shall be required to reconcile significant differences between the two cost opinions.

SECTION 8 PAYMENTS TO CONSULTANT

8.1 Compensation for Services Rendered

8.1.1. The Compensation stipulated in Attachment B Basis of Compensation represents the full payment due from the City for the satisfactory furnishing, performance and completion of the Services.

8.1.2. The City will make partial payments to Consultant based on the separate Compensation items detailed in Attachment B Basis of Compensation, subject to any further City-required cost breakdowns necessary to more properly and accurately ascertain progress.

8.1.3 No expenditures or charges shall be included in determination of the costs to be reimbursed to the Consultant that are 1) contrary to the provisions of the Agreement and 2) incurred without the consent of the City.

8.1.4. If Federal funds are involved, then all applicable Federal Accounting Principles must be followed.

8.2 Conditions Governing Payment

8.2.1. The City will make payments for Services rendered based on monthly Invoices for Payment ("Invoices") submitted by Consultant and evaluated and approved, with or without adjustments, by the Director. Payment for any Deliverable, which is due before, or with any Invoice, will require the Director's receipt and/or acceptance or approval of that Deliverable.

8.2.2. Unless otherwise specified, Consultant shall submit Invoices, no more than once every thirty (30) Days, and not less frequently than once every forty-five (45) Days, unless authorized by the Director, attaching a report describing the Services rendered for which payment is sought. The City's fiscal year ends on December 31st. Invoices may not include services for more than one fiscal year and shall be submitted by January 12th of the following year. Each Invoice shall detail (1) Compensation breakdown; (2) amount invoiced through the preceding Invoice; (3) amount invoiced for the current period; (4) percentage of Services completed; and (5) Compensation remaining, after that Invoice. Each Invoice shall be accompanied by a sworn Affidavit in a form acceptable to the City.

8.2.3. Not used.

8.2.4. Timely submittal of Invoices is a material term of the Agreement, the failure of which may result in (1) an order to stop Services until such deficiencies are corrected; (2) the auditing of Services covered by the Invoice; and/or (3) termination for cause in the event such violations are not promptly corrected and/or adversely affect any Completion Time.

8.2.5. In the event payment is conditioned on a Deliverable, and the Deliverable requires testing by the City, approval or disapproval of the Invoice will be made upon completion of the testing.

8.2.6. The Director, in the event he/she disputes an Invoice, will recommend payment of the unquestioned amount and request Consultant to support the amount at issue. The amount at issue will be withheld until the City receives a written response that the concerns raised by the Director have been satisfied.

8.2.7. The City will make payments approved by the Director in accordance with the Illinois Local Government Prompt Payment Act. (50 ILCS 505/1)

8.2.8 It is the responsibility of the Consultant to determine if the Prevailing Wage Act, 820 ILCS 130/0.01 et seq. applies to part or all of this Agreement and shall comply with any applicable requirements thereof.

8.2.9. In the event that part of any payment is disallowed by an audit, the City shall have the right to recover the overpayment from future amounts due, offset from funds due on other agreements with the Consultant, or recover directly from the Consultant along with all costs of recovery.

8.3 Payments For Services.

8.3.1. Direct Labor Cost (DLC) shall be defined as the billing rate of all Consultant's personnel, including all professionals whether owners or employees, authorized by the City to charge person-hours directly to the project. Compensation for the Direct Labor Cost (DLC) of any individual, including principals, engaged

in the work under this Agreement shall be invoiced at that individual's authorized billing rate, unless otherwise specifically approved by the City in writing.

8.3.2. In order for any of the Consultant's engineering and technical personnel to be authorized to make charges to this project the Consultant shall, before commencing actual work, submit to the City, for its approval, a list enumerating the names of proposed engineers and technical personnel, their employee numbers (if any), billing rates, exact job titles, and general job classifications (i.e., principal, engineer, architect, etc.)

8.3.3. If Attachment B Basis of Compensation stipulates payments on a billing rate method, payments will be made based upon mutually agreed to billing rates.

8.3.4. DLC charges by Consultant principals and/or officers will be limited to direct labor associated with the delivery of Services defined in Attachment A.

8.3.5. The amount of invoiceable Compensation will be determined by the product of the Consultant's billing rates times the person-hours worked plus Subconsultant costs and reimbursable costs owed to Consultant. DLC shall be supported by time sheets or payroll records.

8.3.6. Reimbursable costs will constitute those costs, exclusive of DLC, indirect costs and Subconsultant costs, directly chargeable to the Services, as stipulated in Attachment B Basis of Compensation, or otherwise mutually agreed to by the City and Consultant and will be subject to expense voucher. Reimbursable costs may be invoiced by Consultant at its final net cost without markup of any kind. When the Consultant is authorized reimbursement of travel, meals, or lodging expenses, a "not to exceed" amount will be established prior to incurring the expense. Unless otherwise approved by the Director, the following costs are not allowed as direct costs but shall be contained in the billing rates:

- Costs precluded under Code of Federal Regulations, 48 CFR Part 31;
- Costs precluded under OMB Circular A133
- Transportation to/from Consultant's local office and City facilities (except for vehicles for Consultant's field personnel);
- Transportation within Northeastern Illinois (Cook County and collar counties) related to project meetings with parties other than Joliet (except for vehicles for Consultant's field personnel);
- Transportation costs to/from Consultant's local office and other non-local Consultant offices, and per diem costs, unless specifically approved by the Director;
- Computer time, Digital imaging, and CAD;
- Printing (other than printing of deliverables, plans & specifications);
- Working lunches;
- Ordinary Business Supplies (telephone, photocopies, etc. except to support Consultant field personnel's responsibilities)

8.3.7 The billing rates shall be based upon the assumption that the majority of the Services will be performed at the City's field sites. In the event that the location of the Services changes, the City retains the right to renegotiate the billing rates.

8.3.8. At the City's discretion, the billing rates may be subject to renegotiation if the duration of the Agreement exceeds 24 months or if the Agreement calls for both a separate office assignment followed by a separate field assignment.

8.3.9. Overtime labor costs, if part of Consultant's normal practice, or when necessary to maintain the schedule or recover schedule, or for Consultant's convenience will be invoiced at regular hourly billing rates. Except as otherwise set forth below, the cost of any premium paid to employees for overtime charges will be entirely incurred by Consultant.

8.3.10. In the event overtime is required as a result of a change in the scope of Services or for the City's convenience, the actual amount of premium wages paid to Consultant's employees for such overtime Services, if previously authorized in writing by the City, will be invoiced to and paid by the City. The amount of invoiceable Compensation will be determined by the product of the Consultant's regular direct labor cost times the overall multiplier plus the direct cost differential for overtime without the multiplier. (Example: if an hourly rate is \$100 and the multiplier is 2 then one hour of overtime would be calculated as $(\$100 * 2) + \$50 = \$250$).

8.3.11. Consultant will not be paid for personnel hourly charges unless Consultant has actually paid those wages.

8.3.12. The City shall not be liable for payment beyond the "not to exceed" limits set forth in Attachment B Basis of Compensation, for the DLC, Subcontractor fees and Reimbursable Direct Costs. Unexpected monies in one phase are not transferable to another phase without the approval of the Director. In the event that the Consultant exceeds the "not to exceed" limit set forth, it is understood and agreed that Services required by this Agreement shall be completed without additional compensation, unless it is mutually agreed that a change in scope of Services has occurred, and that additional compensation is negotiated and agreed upon by both parties to this Agreement.

8.4 Correction of Design Errors or Omissions: Not Applicable

8.5 Final Payment

8.5.1. Upon completion of the work described herein, the Consultant shall notify the City and shall submit a final invoice for the fee earned in the performance of this work. The final invoice shall also summarize invoices previously submitted for reimbursement. The total fee shall not exceed the amount(s) set forth in Attachment B Basis of Compensation and any amendments or change orders to this Agreement. Upon receipt of a final invoice, the City shall review the cost records of the Consultant and, if appropriate, shall identify its agent or designee who will perform the audit. The City shall, upon completion of the review, notify the Consultant of any Services that fail to meet the Standard of Care and the Scope of Services. If the City finds no deficiencies, or if the Consultant corrects all deficiencies noted by the City within 30 days, the City shall, subject to the provisions of the Agreement, pay the final invoice.

8.5.2 The acceptance of the work by the City shall not, however, relieve the Consultant of the responsibility for any deficiencies which may be discovered at a later date.

8.5.3 Prior to final payment to the Consultant, the Consultant shall execute and deliver to the City, the City's standard form for release of all claims against the City arising under or by virtue of this Agreement.

SECTION 9 CONTRACT AMENDMENTS

9.1 Directed Changes or Additional Services

9.1.1 Any and all adjustments in this Agreement which may become necessary due to changes in project scope, or otherwise requested by the City, and which will affect either the work time, schedule, or fee specified in the Attachments shall be negotiated between the City and Consultant.

9.1.2. The Director and Consultant jointly will establish procedures for processing Additional Services. Such procedures will provide that the Director, directly or through a designee, may initiate processing of Additional Services by describing their scope and requesting Consultant to submit a proposal.

9.2 Consultant Initiated Changes in the Services

9.2.1. A proposal or claim by Consultant for an adjustment resulting from constructive changes in the level of Services will not be allowed for any costs or delay incurred more than thirty (30) Days before Consultant gives its required written notice to the City.

9.3 Additional Provisions

9.3.1. Compensation and Completion Times may be changed only by Amendment signed by the City.

9.3.2 The City may direct the Consultant to proceed with work in dispute, whether by scope or by terms of an Amendment.

SECTION 10 TERMINATION

10.1 Termination for Cause by the City

10.1.1. The City, upon serving written notice of intent to terminate, may initiate termination of the Agreement and Consultant's right to provide further Services, in the event that the Director has determined that the Consultant has failed to perform in accordance with the requirements of the Agreement and after providing Consultant the opportunity to cure as set forth in Section 10.1.2.

10.1.2. The City will be entitled to terminate, if Consultant, within thirty (30) Days after receiving the intent to terminate for cause notice, fails to correct the non- performance. In the event of a Consultant filing for bankruptcy, this Agreement is terminated immediately. The City may thereafter prosecute the Services to completion by agreement with another consultant or as the City, in its sole discretion, may otherwise deem expedient.

10.1.3. The City will make payment to Consultant for properly authorized and performed Services completed to the effective date of the termination, and for obligations relating to commitments, if any, that had become firm prior to the termination. Payment to Consultant will exclude any and all anticipated administrative costs and profit on unperformed or uncompleted Services.

10.1.4. If, after Consultant is terminated for cause, it is determined either by negotiation with the City or through alternate dispute resolution or litigation, that Consultant was not in default, then the termination will be deemed to have been for the convenience of the City. In that event, Consultant may recover from the City payment, to the extent provided in paragraph 10.2.2.

10.2 Termination for the City's Convenience

10.2.1. The Director, upon seven (7) Days' prior written notice to Consultant, without cause and/or prejudice to any other right or remedy it may have, may terminate the Services, in whole or in part, as the City deems appropriate for its convenience. Written notice will be by letter delivered either in person to the Consultant's authorized project representative or by registered mail or delivery service requiring signature for delivery to the Consultant's place of business.

10.2.2. In the event of a termination for convenience, Consultant will be paid for properly authorized Services completed to the effective date of the termination, and for obligations relating to commitments, if any, that had become firm prior to the termination. Payment to Consultant will exclude any and all anticipated administrative costs and profit on unperformed or uncompleted Services. Consultant may suspend or terminate Services under this Agreement upon thirty (30) days' notice in writing in the event the City has committed material breach of this Agreement. Non-payment of the Consultant's invoices will be considered a material breach of this Agreement.

10.3 Actions of Consultant Upon Termination

10.3.1. Consultant, upon receipt of a notice of termination, shall proceed in accordance with any specific instructions in the notice, and unless required otherwise, cease rendering Services to the extent specified, protect the Deliverables, and make every reasonable effort to mitigate costs that may result from the termination. Consultant, promptly after making such arrangements, shall turn over to the City all confidential material and information received directly or indirectly from the City, project-related information and data,

work product to date, equipment, materials, items and objects obtained or acquired by Consultant; however, Consultant shall be entitled to maintain a copy of such documents, work product, data, and information for its records, provided, however, that to the extent that the material and information received or obtained by Consultant is subject to the requirements of any non-disclosure and confidentiality agreements to which the City is a party and with which the City must comply, Consultant's ability to maintain copies may be limited.

SECTION 11 DISPUTES

11.1 Claims

11.1.1. Claims between the City and Consultant, resulting from the Agreement and/or its purported breach, unless otherwise barred by the final payment provisions of this Agreement, will be resolved as provided herein, and such resolution attempt will be a condition precedent to litigation.

11.1.2. A Consultant claim means a written demand appealing a written Director determination and seeking an adjustment in Compensation, payment of monies due, an extension in Completion Time, or any other relief arising under or relating to the Services. A claim includes a counterclaim, dispute, appeal and any other contractually related matter at issue between the City and Consultant.

11.1.3. Not used.

11.1.4. The Director, within thirty (30) Days after receiving Consultant's claim with supporting data and sum certain, shall review the claim. The Director shall deliver written notice to Consultant as to his/her final determination. The City and Consultant agree that any dispute relating to the Services of the Consultant and its Subconsultants will be decided through direct negotiations between the parties involved prior to mediation, and litigation.

11.1.5. The City and Consultant shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

11.1.6 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in the court specified in Section 11.2.3.

11.2 Litigation

11.2.1. In the event the Director and Consultant fail to agree, the Consultant or City, except if otherwise excluded by Law or this Agreement, may file suit in accordance with paragraph 11.2.3.

11.2.2. Consultant, pending final resolution of any dispute shall diligently continue to perform the Services, and comply with any reasonable decision of the City and/or Director.

11.2.3. Venue-Consultant agrees that this Agreement, and any subsequent amendments, addenda or modifications that are awarded pursuant thereto, is governed by, and construed in accordance with the laws of the State of Illinois in all respects, including matters of construction, validity and performance. Consultant further agrees that the proper venue to resolve any dispute which may arise out of this agreement is the appropriate Court of competent jurisdiction located in Will County, Illinois.

11.2.4. This restriction includes any action at law or suit in contract, equity or tort, arising under or relating to the proposing, award, performance or completion of the Services, payment for Services performed, termination or any other claim resulting from or arising out of, or relating to the Agreement, in addition to any method provided by Illinois Law. Consultant agrees to consent and submit to service of process at the address specified by this Agreement.

11.2.5. Consultant shall insert a provision containing these venue and choice of law requirements in all Sub-agreements between Consultant and Subconsultants, altering the provision only as necessary to properly identify the parties.

SECTION 12 ADDITIONAL PROVISIONS

12.1. If a determination is made by the Director or court order that the Consultant is liable to the City for damages, the City is entitled to withhold the amount due from payments to Consultant. If the City does not hold sufficient funds to offset the Consultant's liability, the City may choose alternative means to recover the amount due and owing.

12.2. Not used.

12.3. The relationship of Consultant to the City is and will be that of an independent contractor. No liability or benefits arising out of or related to a contract for hire or employer/employee relationship will arise or accrue to either party's agent or employee with respect to the City as a result of the Services. Liabilities and benefits barred by this clause include, without limitation workers' compensation and disability benefits, retirement rights or liabilities and insurance rights or liabilities, of any kind.

12.4. If any provision in the Agreement is invalid, illegal or unenforceable, all other provisions of the Agreement will nevertheless remain in full force and effect. If any provision in the Agreement is inapplicable to any Person or circumstance, the provision will nonetheless remain applicable to all other Persons and circumstances.

12.5. Consultant shall not sell, assign, transfer or otherwise convey any of its rights, nor will it delegate any of its duties, obligations and responsibilities under the Agreement without prior written consent of the City and its Purchasing Administrator. The City, in its sole discretion, may refuse to consent to any proposed assignment or delegation. Any attempted sale, assignment, transfer, conveyance or delegation in violation of this clause will be void and relieve the City, at its discretion, of any further liability under the Agreement. Any City consent in writing to an assignment will not release or discharge Consultant from any duty, obligation or responsibility set forth in the Agreement unless otherwise stated to the contrary in the consent.

12.6. This Agreement will be binding on the City, Consultant and, at the City's option, all Consultant's successors and legal representatives, and, if properly assigned in accordance with paragraph 12.5, all of City's and Consultant's respective assignees and delegates.

12.7. Consultant and its Subconsultants are not agents of the City, and nothing contained in the Agreement shall either expressly, or impliedly authorize, empower or constitute Consultant or any Subconsultant to be considered agents of the City. Consultant or any Subconsultant is neither authorized nor empowered to assume or create any obligation or responsibility whatsoever, express or implied, on behalf of or in the name of the City, nor may they bind the City in any manner or make any representation, warranty, covenant, agreement or commitment on behalf of the City.

12.8. A waiver by the City of any provision of the Agreement must be in writing and apply only to the specific matter and not to other similar or dissimilar matters. A waiver by the City of any breach of this Agreement shall not be held to be a waiver of any other or subsequent breach.

12.9. On termination and/or completion of this Agreement, all warranty, infringement, confidentiality, and liability obligations and limitations, which by their nature are intended to survive, will survive. Termination

or completion will not prejudice either party to require performance of any surviving obligation due at or after the time of termination or completion.

12.10. Headings of Sections and paragraphs in this Agreement are for convenience only. No such headings shall be used to construe or interpret the scope or intent of this Agreement, or in any way affect any of them.

12.11. If the context of any provision so requires, the singular number includes the plural and vice versa, and the use of any gender includes any other and all genders.

12.12 No person shall be employed on this contract unless they are a citizen of the United States, a national of the United States under Section 1401 of Title 8 of the United States Code, an alien lawfully admitted for permanent residence under Section 1101 of Title 8 of the United States Code, an individual who has been granted asylum under Section 1158 of Title 8 of the United States Code. (70 ILCS 2605/11.15), or an individual who is otherwise legally authorized to work in the United States.

12.13 Security

12.13.1 The City's facilities have certain security requirements and may be subject to heightened security from time to time. The Consultant shall co-operate fully, at no cost to the City, with security checks, personnel processing, drills and programs that may be required.

12.13.2 The Consultant shall provide a list of personnel assigned to work on this project with State driver's license numbers, or other suitable identification, that may be used by the City for security background checks. Individuals who will be entering City Facilities in the course of their work must provide a copy of their driver's license with this submittal.

12.13.3 The Consultant shall limit access to information on City facilities only to employees assigned to this Project and that have been submitted to the City for security background checks. Project information may be required to be specially segregated and safeguarded, depending on the threat level and the security sensitivity of the project.

12.13.4 In the event of a terrorist attack within the boundaries of the City or a State or Federally declared emergency in the City or a county adjacent to the City:

12.13.4.1 Upon City direction, the Consultant's equipment and personnel and subconsultants equipment and personnel assigned to this Agreement shall be fully available to the City without reservation. The Consultant shall take direction from the Director to assist when and where needed for the duration of the emergency. As much as is practical, the Consultant shall maintain Time and Material (T&M) sheets and submit them to the City on a regular basis.

12.13.4.2 The Consultant shall take steps to segregate and safeguard all City information. The Consultant shall then report to the Director what steps have been taken and request direction. This includes such steps as making immediate back-ups of project files and data.

12.14 In no event shall the Consultant or the City (including their respective officers, agents, servants and employees) be liable for indirect, special, incidental, punitive, or consequential damages, including, but not limited to, loss of use, lost profits, or interest on borrowed funds, whether arising in contract, in tort (including the negligence of the Consultant or the City), as a result of the application of the principle of strict liability or otherwise.

SECTION 13 SPECIAL CONTRACTUAL TERMS

13.1 Inclusion – This document, its amendments, its attachments, and all documents incorporated by reference constitute the entire Agreement between the parties.

13.2 Confidentiality – The Consultant agrees to not disclose information or provide documentation concerning this Agreement or project to any third party without written approval of the City. If any records are subpoenaed or requested under any law or statute by a court or regulatory agency, the Consultant will immediately inform the City of the subpoena or request and provide full disclosure and documentation of the issue or case involved as well as copies of all disclosures made.

IN WITNESS WHEREOF, the undersigned have placed their hands and seals upon and executed this Agreement in triplicate as though each copy hereof were an original and that there are no other oral agreements that have not been reduced to writing in this statement.

Burns & McDonnell Engineering Co., Inc
200 W. Adams Street, Suite 2700
Chicago, IL 60606

By:

Timothy Faber, P.E.
Vice President

City of Joliet
150 W. Jefferson Street
Joliet, Illinois 60432

By:

H. Elizabeth Beatty
City Manager, City of Joliet

ATTEST

By:

Name _____
Title _____

ATTEST

By:

Lauren O'Hara
City Clerk (Seal)

ATTACHMENT A SCOPE OF SERVICES

Attachment A

Scope of Services

Consultant: Burns & McDonnell Engineering Company, Inc.
City: City of Joliet, Illinois
Project: Water Main Replacement Program – Construction Phase Services ¹
City RFQ No: RFQ 2747-1123

General

The City of Joliet, Illinois (City) is implementing the Water Main Replacement Program (WMRP) and Lead Service Line Replacement Program (LSLRP). The purpose of the WMRP is to replace water mains with a goal of reducing the City's non-revenue water to less than 10% by 2030, as required by the City's Lake Michigan allocation permit. A total of approximately 20 to 30 miles of water main is planned for replacement each year through 2030. The LSLRP aims to eliminate all lead service lines by 2030.

The design and construction of the WMRP is managed and funded by the City. Funding sources include local funds, State Revolving Fund (SRF) loans, and Water Infrastructure Finance and Innovation Act (WIFIA) funds.

Other Consultants and Contractors. The City has retained Baxter & Woodman (Design Engineering Consultant) to provide planning, preliminary and final design engineering services for the WMRP and LSLRP. The City has contracted separately for legal, financial advising, rate consulting, and public outreach strategy development services related to the WMRP and LSLRP. It is anticipated that the City will engage multiple contractors (Construction Contractors) through a competitive public bidding process to construct the individual contracts under the WMRP. During 2026, the City does not plan to have a separate contract specific to the LSLRP. Lead service line replacement work is included in the 2026 WMRP contracts.

Program Elements. Each year, the City solicits bids for WMRP construction contracts. Construction of the projects under the 2026 WMRP will be split into twelve (12) separate bid packages as listed below.

¹ The level of effort and budget for this scope of services assumes the services will be provided as defined herein for the 2026 WMRP and 2027 WMRP (design-related services only) projects. The budget has been developed assuming that services will generally be performed during the period of January 1, 2026 to February 28, 2027. Changes in project schedules or other factors may require Consultant to continue to provide its services after the end of this period. Consultant may continue its services after the end of the period using remaining available funds up to the approved contract maximum limit. If additional funds are required for Consultant to continue providing its services, such continuation of services will be designated as Additional Services and described in an amendment to the original agreement, subject to the City's approval.

- Cunningham Phase 1
- Emerald Lawns Phase 2
- Forest Park Phase 4
- Fourth & Eastern
- Glenwood & West Acres
- Heggie Park Phase 2
- Larkin (Theodore to Glenwood)
- Oneida
- Twin Oaks Phase 2
- Virginia Phase 2
- Washington Street
- York Avenue

The Project. Burns & McDonnell Engineering Co., Inc. (Consultant) will work with the City and others under contract to the City to support implementation of the WMRP and LSLRP during the construction phase for the 2026 WMRP and 2027 WMRP (design-related services only) projects as described herein. Consultant will provide any authorized Services as an extension of the City's staff. In this limited agency role, it is the intent of the parties that Consultant shall not be at risk to the City for or assume any liability for the Services or Equipment provided by others under direct contract, purchase order, or otherwise employed by, or working directly or indirectly for the City. The Design Engineering Consultant has the sole responsibility for the design and Construction Contractors have the sole responsibility for construction of the WMRP and LSLRP. It is understood that Consultant will assist the City in its efforts to implement the WMRP and LSLRP, but that Consultant's services are not intended to, and cannot, eliminate all risk or guarantee an efficient or best value program and/or project.

Contract Renewal. Absent a major change in program scope, and predicated on continued satisfactory performance of Consultant, the Agreement will continue to be extended based on mutual agreement regarding scope of services, staffing, and financial terms for each subsequent extension. Determination of the specific tasks necessary for each subsequent authorization will be agreed to by the City and Consultant prior to the beginning of each extension, subject to approval by the City's Governing Authorities.

Additional Services. It is understood that due to the unknown and changing nature of needs within the City over the term of this Agreement, the types of Consultant services necessary may be changed, modified, or extended beyond the areas defined in the Scope of Services. Only major tasks have been captured in the Scope of Services. It is envisioned that over the course of the program, the City may require support on other initiatives and tasks. At the discretion of the City, and during the completion of the professional services defined in this Agreement, Consultant may be requested to provide additional City-authorized services under an amendment to this Agreement.

Basic Services

The Basic Services to be provided by Consultant are described below and organized under the following Task Series:

TASK SERIES 100 – 2026 WMRP DESIGN RELATED SERVICES

TASK SERIES 200 – 2026 WMRP CONSTRUCTION ADMINISTRATION SERVICES

TASK SERIES 300 – 2026 LSLRP CONSTRUCTION ADMINISTRATION SERVICES

TASK SERIES 400 – 2027 WMRP DESIGN RELATED SERVICES

The title of each Task Series correlates with the City’s SRF loan agreements. See the detailed description of the services that Consultant will provide under each Task Series.

It is understood that the City intends to track efforts and costs associated with each task separately. Consultant will confirm the preferred approach for tracking its efforts with the City prior to submitting its first invoice(s).

Task Series 100 – 2026 Design Related Services

Consultant will provide the following services for projects slated to go to construction in 2026 as follows:

Task 101 – Project Initiation

Consultant will complete the following activities to support the City’s efforts to initiate the 2026 Construction projects.

- A. Distribute Issued for Construction documents to the Construction Contractors. The City will provide the signed and sealed documents to the Consultant for it to distribute to the Construction Contractors.
- B. Develop a Project Startup Checklist and track the status of the following documents for each Project:
 - i. Notice of Intent to Award
 - ii. Notice of Award
 - iii. Agreement
 - iv. Bonds
 - v. Power of Attorney
 - vi. Certificate of Insurance

The City will work directly with the Construction Contractors to finalize executed agreements and associated supporting contract documents. Consultant’s role is limited to tracking the status of the above items.

- C. Permit and Utility Administration: Compile and become generally familiar with permits and associated requirements for each project prior to the start of construction. Develop tracking

documents and track the status of the following permit and utility requirement documents for each Project, as applicable:

- i. IDOT Permits
- ii. Railroad Permits
- iii. ComEd Requirements
- iv. Other Permits

The Design Engineering Consultant is responsible for preparing permit applications and submitting such applications to authorities having jurisdiction (AHJ) during the design phase. Consultant's services do not include preparing permit applications, initiating contact with AHJ, or obtaining permits on behalf of the City or the Construction Contractor(s). During the design phase, the Design Engineering Consultant is also responsible for maintaining a list of permits for each project. Consultant will request the permit list from the City during initiation of the 2026 construction projects. The permit list will be used to support Consultant's general understanding of permit requirements and to identify supporting documentation that needs to be provided to the AHJ by the Construction Contractor(s). If necessary, Consultant will request additional information required by the AHJ from the Construction Contractor(s) for each applicable Project, compile such information, and submit it to the applicable AHJ. Consultant will be available to attend meetings between the AHJ and the Construction Contractor(s) to maintain awareness of information discussed during the meetings.

- D. IEPA SRF and WIFIA Loan Requirements: Compile and become generally familiar with the City's IEPA SRF and WIFIA loans associated with the 2026 construction projects prior to the start of construction. Develop tracking documents and track the status of the loans associated with each Project.

The Design Engineering Consultant is responsible for preparing SRF loan applications and submitting such applications to IEPA during the design phase. The City (or its other consultant) is responsible for preparing WIFIA loan applications and submitting such applications to US EPA. Consultant's services do not include preparing loan applications, requesting or obtaining signatures, or serving as point of contact in the City's communications with IEPA or US EPA. The City will provide the executed SRF and/or WIFIA loan agreements to Consultant during initiation of the 2026 construction projects and indicate the project(s) funded by each loan.

- E. Project Administration

- i. Become generally familiar with the construction drawings and specifications for each project in advance of the start of construction, as well as the existing conditions of each project.
- ii. Become generally familiar with the project schedules submitted by the Construction Contractor(s). Review such schedules to check conformance with the

contract documents in regard to Notice to Proceed (NTP), staging, contract milestones, activities accounted for, and project duration (e.g., substantial and final completion).

- iii. Setup SharePoint site for project documentation management.
- iv. Setup tracking documents for items such as Project Issues, Quantities, Requests for Information, Submittals, Project Delays, and Extras.
- v. Prepare Pre-Construction Meeting Agendas for each Project (or groups of projects where a single contractor has multiple projects).
- vi. Prepare templates for Weekly Progress Meeting Agendas.
- vii. Prepare templates for Pay Estimates, Punchlist, and Project Closeout Checklists.
- viii. Update the City's Construction Tracking Dashboard for the 2026 Construction projects.

Task 102 – Meetings

Consultant will participate in meetings as follows:

- A. Consultant's project manager will attend up to three (3) meetings with the City and the Design Engineering Consultant. The meetings are anticipated to be planned, scheduled, organized, and conducted by the City.
- B. Up to four (4) Consultant staff will attend one (1) Public Open House Meeting that will be planned, organized, scheduled, and conducted by the City.

Task Series 200 – 2026 Construction Administration Services

Consultant will provide staff as defined in the staffing plan to periodically observe, monitor, document, and report the work performed by the Construction Contractor for each of the 2026 construction projects. Services anticipated to be provided include the following:

Task 201 – Project Management Services

Consultant will provide project management for services completed under this Agreement. The Consultant's project manager will be the primary liaison with the City and provide general coordination services to lead a team of Consultant and subconsultant staff. Services anticipated to be provided by Consultant's personnel consist of:

- A. Participate in the following regular meetings to establish requirements, maintain alignment, and provide updates:
 - i. Construction Status Meetings (weekly) between Consultant's project manager and the City's construction manager.
 - ii. Construction Progress Meetings (Weekly) with the City and each contractor.
 - iii. WMRP Status Check In (Monthly) with the City and the Design Engineering Consultant.

- iv. Program Status Check Ins (Quarterly) with the City's water utility leadership and Consultant's leadership team.
- B. Periodic monitoring of program status, progress, and Consultant personnel assigned.
- C. Submit a status report monthly summarizing the cost and schedule of each of the 2026 projects. In addition, the Consultant will provide the City with weekly progress reports providing updates on the work completed that week and projected for the following week on each project.
- D. Monthly Invoicing and Documentation – Consultant will provide project administration for services completed under this Agreement. Prepare and issue monthly invoices for services rendered with supporting cost backup and status documentation.
- E. Prepare a scope, budget, schedule, and agreement for Consultant's subconsultants. Conduct meetings as required to prepare subconsultant agreements; review services, work products, and deliverables; and to execute defined scope of work. Provide administration of subconsultant agreements including review of services, work products, and deliverables; subconsultant invoices; and schedule maintenance.

Task 202 – Program Administration Services

Consultant will work with the City to provide administration services described below to support data management and monitoring and reporting for the Program status and progress.

- A. Document Management – Consultant will maintain a SharePoint site to store project related documentation, organized by individual construction project. At the completion of all 2026 construction projects, the SharePoint folder will be shared with the City so the City can download the documents for their files.
- B. Project Status Updates via ArcGIS Online Dashboards– Consultant will provide a status summary for each project weekly on the City's HUB Dashboard. Consultant will periodically update the City's HUB Dashboard with information provided by the City and Design Engineering Consultant for the current and upcoming construction season. This information will consist of resident notifications and project updates.
- C. GIS Data Processing and Reporting – Each Construction Contractor is responsible for using GPS units to collect GPS coordinates of the water main and appurtenances as they are being installed. They are also responsible for uploading this data to the City's GIS. The Consultant will:
 - i. Periodically check to confirm that Construction Contractors are collecting GPS coordinates and uploading the data to the City's GIS. This check will generally occur every day during a normal work week.
 - ii. Connect the linework in the City's GIS. This will generally occur every day during a normal work week.

- iii. Provide regular GIS data status reports to the City. This will generally occur weekly.
- iv. Be available to communicate with new Construction Contractors who do not already have an account and are not familiar with the process.
- v. Notify the City when water main and service installation is complete on a project so the City can prepare to finalize updates to the GIS for that project into their systems.

D. SRF Loan Documentation – Based on information in the contract documents and documentation provided by the City and the Construction Contractor(s), Consultant will prepare and submit documentation associated with project initiation, disbursement requests, and project closeout. Documents will be prepared for the City’s signature and, upon the City’s approval, submitted to IEPA. These efforts will consist of:

- i. Documents prior to the first disbursement:
 - i. Budget Supplement Form
 - ii. Executed construction contracts
 - iii. Apprenticeship Initiative Forms
 - iv. Signage Requirement Certificate of Completion Form
- ii. Monthly disbursement requests with supporting documentation
- iii. Quarterly apprenticeship reports with supporting documentation
- iv. Final disbursement request with supporting documentation
- v. Loan closing documents

Conforming to construction record drawings are required to close the loan(s). The Design Engineering Consultant is responsible for completing the conforming to construction record drawings. The Consultant will submit conforming to construction record drawings for each construction project to IEPA following receipt of such documents from the City.

E. WIFIA Loan Documentation – Based on information in the contract documents and documentation provided by Construction Contractor(s), Consultant will compile and provide information to the City related to WIFIA loan documentation. Information and documents will be compiled and provided to the City for the City to submit to US EPA. These efforts will consist of:

- i. Provide information for quarterly WIFIA construction progress reports such as project status, percent complete and costs incurred.
- ii. Compile AIS documentation.
- iii. Check that WIFIA signage is visible on sight and alert Construction Contractor(s) if signage needs to be installed.
- iv. Perform quarterly project-site Davis-Bacon interviews and complete interview form.
- v. If requested by the City, be available to participate during meetings related to WIFIA and/or AIS audits to maintain general awareness of information discussed.

Task 203 – WMRP Construction Administration Services

Consultant will provide the following administrative services to support the City's implementation of WMRP projects.

- A. Pre-Construction Meetings – Consultant will prepare for and conduct a preconstruction meeting for each project. Following the meeting, Consultant will distribute meeting notes to meeting participants via email.
- B. Submittals and Request for Information (RFI) – Consultant will log, review, and distribute responses to submittals and RFI for each construction project. Consultant's review is solely to check for conformance with the contract documents. The City's Design Engineering Consultant will consult on and provide responses for submittals or RFI that require interpretation of the design.
- C. Construction Layout – Consultant's subconsultant will provide one round of construction layout for the water main for each 2026 project based on water main alignment information provided by the City. The objective of the construction layout is to stake the general horizontal water main alignment to provide a way to visualize its proposed location in the field. The layout effort will include marking the approximate horizontal locations of sanitary sewer services in the general vicinity of where the service(s) cross the proposed water main alignment based on documentation provided by the City. The vertical elevation of the proposed water main will not be included in the layout and no other existing utilities will be marked. The Construction Contractor(s) is responsible for determining if the proposed water main alignment presents a conflict with existing utilities and requesting changes to the alignment, subject to the City's review and approval.
- D. Construction Observation – Consultant will provide a project manager who will oversee a team of field staff to periodically observe, monitor, and document the work performed by the Construction Contractor(s). Consultant's project manager will maintain a staffing plan for personnel assigned. Based on how work proceeds under various projects and Consultant's staffing needs, it may be necessary for Consultant to periodically adjust the staffing plan. Staffing changes will be communicated to the City for awareness.

Consultant's budget includes providing construction observation for 8 hours per day Monday through Friday on each project based on the project durations provided by the City. Consultant has included an allowance to accommodate time required above this allotted amount (including but not limited to overtime hours). Additional hours will be tracked by project and communicated to the City on a monthly basis. As budget is expended on each project, amendments will be prepared for processing by the City to add additional budget to cover the remainder of the construction project.

The field staff assigned will complete the following activities:

- i. Be generally present during normal working hours (within the 8 hour per day budgeted allotment) to periodically observe, monitor, and document the work performed by the Construction Contractor(s).
 - ii. After construction layout has been completed, make efforts to identify potential conflicts not identified in the design drawings and communicate such issues to the Construction Contractor(s) to support their efforts to adjust the layout as necessary. Any adjustments to the water main alignment are subject to the City's review and approval.
 - iii. Complete daily reports providing general documentation of activities that occurred. All daily reports will be digitized and included in the project files.
 - iv. Complete maintenance of traffic inspection reports. This will generally occur every day during a normal work week.
 - v. Complete erosion control inspection reports. This will generally occur weekly and within 24 hours of a significant rain event.
 - vi. Track pay item quantities installed each day and at the completion of that day, discuss the quantities installed with the contractor.
 - vii. Receive the Construction Contractor(s) requests to schedule water main testing and sampling and communicate such requests to the City.
 - viii. Document the results of water main and sanitary sewer testing.
- E. Contractor Payment Applications and Potential Change Orders – Consultant will review pay applications submitted by the Construction Contractor(s) to confirm that the quantities requested for payment are in alignment with the quantities that have been agreed to between the Construction Contractor and the Consultant's field team. Once pay applications have been deemed acceptable, Consultant will submit the pay application to the City along with a Letter of Recommendation for payment for the City to process. Consultant will also review potential change orders submitted by the contractors. Each potential change order will be evaluated for overall impact on the project budget and to understand its merit considering contract requirements. Potential Change Orders that are determined to be reasonable will be submitted to the City along with a letter of recommendation from the Consultant.
- F. Project Closeout
- i. Following notification by the Construction Contractor(s) that a project has been completed, Consultant will schedule and conduct a punch list walk through, utilizing the checklist developed in Task 100, for each construction project with representatives from the City and the Construction Contractor(s). The punch list will be distributed to all participants of the walk through. Once the Construction

Contractor has indicated that all items have been completed, the Consultant will visit the site to check that items noted on the punch list were addressed.

- ii. Review the Construction Contractor final quantities, extra work orders, and time extensions for agreement and approval. Consultant will prepare final documentation including final change order, certificates of Substantial and Final Completion, and the final pay estimate. Closeout documentation will follow the checklist developed in Task 100.
- iii. Request redline drawings from the Construction Contractor and provide the drawings to the City upon receipt. The City will work directly with the City's Design Engineering Consultant to complete conforming to construction record drawings for each construction project.
- iv. If requested by the City, Consultant can be available to participate during IEPA final inspections related to the SRF loan(s) to maintain general awareness of information discussed.

Task 204 – Warranty Period Observations

The Consultant will periodically monitor the status of open construction concerns related to projects completed during previous construction seasons which are in the warranty period and periodically discuss the concerns with the City. At the City's request, the Consultant will schedule a site visit to the previously completed project(s) for the purpose of observing and documenting open construction concerns noted. The Consultant will complete the site visit when its field staff have availability. The Consultant will meet with the City to discuss observations noted during the site visit(s). Following a meeting with the City, the Consultant will issue communications to the Construction Contractor(s) requesting that they address issues noted. Following the Construction Contractor(s) notification that the issues have been addressed, the Consultant will visit the site(s) to document the actions completed.

Task Series 300 – 2026 LSLRP Administration Services

Lead service lines will occasionally be replaced as part of the WMRP contracts. Consultant will provide the following services associated with the replacement of lead service lines encountered during the WMRP contracts.

Construction Observation:

- Periodically visually observe and document the work performed by the Construction Contractors.
- Document quantities to the point of delivery.

GIS Data Processing and Reporting:

- Update the City's GIS to reflect material of construction based on the observations in the field.
- Initiate and close work orders in VueWorks.

SRF Loan Documentation:

Based on information in the contract documents and documentation provided by the City and the Construction Contractor(s), Consultant will prepare and submit documentation associated with disbursement requests. Documents will be prepared for the City's signature and, upon the City's approval, submitted to IEPA. These efforts will consist of:

- Monthly disbursement requests with supporting documentation
- Final disbursement request with supporting documentation
- Loan closing documents

Task Series 400 – 2027 Design Engineering Services

Consultant will provide the following services for projects slated to go to construction in 2027 as follows:

Task 401 – Constructability Review

The City will provide the prefinal (60%) design drawings for the 2027 WMRP projects prepared by the Design Engineering Consultant to the Consultant. Consultant will review the drawings to gain a general understanding of the design development of 2027 WMRP projects. City and Consultant agree that such review, inspection, or observation is solely for the purpose of understanding the project or related information and work product. Following its review, Consultant will prepare a summary of comments related to potential opportunities pertaining to constructability. Comments will be provided for the City's consideration, decision, and action. Consultant will also participate in a meeting with City staff to discuss the comments.

Consultant's review of design documents prepared by others is solely to provide the City with opinions and/or considerations that the City may or may not want to consider. No action or implementation regarding any opinion, recommendation, or observation expressed should be implemented without the involvement of the third-party Design Engineering Consultant.

City's Responsibilities

City will furnish the following items, as required by the Basic Scope of Services:

- A. Designate a contact person to act on behalf of the City with respect to management of this Consultant contract.
- B. Furnish, as requested by the Consultant for performance of services the following:
 - i. All City's standard documents and procedures pertaining to WMRP activity;

- ii. Timely written notice of potential program or project schedule delays caused by funding or other City constraints or decisions;
 - iii. Data and information applicable to the WMRP prepared by or resulting from services of others including contracts, planning, design and construction documents;
- C. Provide access to and make all provisions for Consultant to enter upon public and private property as required for Consultant to perform services under this Agreement.
- D. Provide, as may be required for WMRP:
 - i. Accounting, bond and financial advisory, independent and insurance counseling services;
 - ii. Such legal services as City may require or Consultant may reasonably request regarding legal issues pertaining to WMRP, including any that may be raised by professional service providers or Construction Contractors;
 - iii. Such auditing services as City may require to ascertain how or for what purpose service providers or Construction Contractors have used the moneys paid on account for their Contract Price; and
 - iv. Funding and payment of any required geotechnical investigation, materials testing, and environmental assessment services;
 - v. Bear all costs incidental to compliance with the requirements of the City's Responsibilities.
- E. Provide the services of at least one City employee who has the right of entry to and knowledge of existing City facilities. Site visits will be required on multiple occasions over the course of the Project.
- F. Operate all existing equipment, valves, or other systems necessary for operations, functional or performance testing.
- G. City shall be responsible for, and Consultant may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by or through City to Consultant pursuant to this Agreement. Consultant may use such requirements, reports, data, and information in performing or furnishing services under this Agreement without independently verifying the accuracy, completeness, or currentness of such information.
- H. Advise Consultant of the identity and scope of services of any independent consultants, designers, contractors, construction managers, or other third parties employed by City to perform or furnish services in regard to the Program or a Specific Project, and define and set forth in writing the duties, responsibilities, and limitations of authority of such other parties and the relation thereof to the duties, responsibilities, and authority of Consultant.

- I. Public advertisement and procurement of WRMP projects.
- J. Payment of regulatory and permitting fees.
- K. Fees associated with project, document, or data management systems.

Clarifications

The following clarifications and assumptions apply to this scope of services:

- A. The City acknowledges that Consultant monitoring of the work performed by the Construction Contractor will be periodic and limited by what the Consultant staff can visually observe and that Consultant will not visually observe all work performed. This could be attributed to multiple crews or contractors working, in-person progress meetings located off-site, or any number of other reasons. Additional staff can be added as an additional fee.
- B. Consultant's sole responsibility during the construction phase of a Specific Project will be to observe and report the execution of the Specific Project. Consultant shall not supervise, direct, or have control over a Construction Contractor's work, nor shall Consultant have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by a Construction Contractor, for safety or security at the Site, for safety precautions and programs incident to a Construction Contractor's work in progress, or for any failure of a Construction Contractor to comply with Laws and Regulations applicable to a Construction Contractor's furnishing and performing the work. Consultant shall not have the authority to direct, control or stop the work of City's Contractors, Design Professionals, or consultants or their respective employees, subcontractors, agents, or vendors. City shall advise City's Design Professionals and Construction Contractors regarding Consultant's authority.
- C. Consultant neither guarantees the performance of any Design Professional, Contractor, or third party, nor assumes responsibility for any Design Professional's, Contractor's, or third party's failure to furnish and perform the work in accordance with the Contract Documents. Consultant is not expected to validate or confirm the accuracy, adequacy, completeness, or suitability of any third-party work or work product nor is Consultant under a duty to discover all discrepancies, ambiguities, defects, or issues with any third-party work or work product. Consultant does not guarantee or warrant the budgets, schedules, or performance of or the work, work product, or deliverables of any of Design Professionals, Contractors, or the performance or actions of any third-parties relating to the Project or the Work. The City will look solely to the Design Engineering Consultant or Construction Contractors or other third-party for any deficiencies or defects in the work or work product. The City will provide a waiver for any claims or liabilities arising out of or related to any third-party work or work product.

- D. Consultant will only enter the residences of private property owners at the direction of the Contractor or City staff and only with the Contractor or a member of City staff present. Consultant is not obligated to observe unsafe conditions or enter properties that may be unsafe. This includes, but is not limited to, the following: violent animals, residents displaying unsafe behaviors in the sole discretion of Consultant, noxious fumes, cluttered homes, or any other perceived or observed situations that Consultant determines makes entry unsuitable.
- E. The City will be responsible for outreach to residents, and in the event of non-responsive property owners, the City will issue the IDPH Waiver of Full Lead Service Line Replacement.
- F. Conflicts and disputes with residents, property owners, or businesses and any of their complaints directed to Consultant related to the project will be referred to the City. Consultant will not resolve property owner disputes regarding contractor actions in carrying out work. The City will retain final decision-making authority regarding adequacy of contractor performance and resolution of resident or property owner complaints.
- G. Consultant will not provide building inspection, health and safety inspection, or plumbing inspection services, as these tasks will be performed by the City if and when required. Consultant's services are solely for the purpose of monitoring and observing that the work performed by the City's contractors is in general conformance with the contract documents and so advising City. Consultant's personnel are not licensed plumbers or building inspectors, and Consultant's services are not for the purpose of confirming that work performed is in accordance with building codes and/or ordinances or any professional standards. Consultant does not have a duty to discover, but will periodically note conditions observed on private property, including but not limited to foundation cracks or deterioration, drainage problems, plumbing defects, leaks, or others to the City's building inspector for further assessment and resolution.

End of Scope of Services

ATTACHMENT B BASIS OF COMPENSATION

Attachment B

**WATER MAIN AND LEAD WATER SERVICE REPLACEMENT PROGRAM
CONSTRUCTION ENGINEERING SERVICES
BASIS OF COMPENSATION: SERVICES THROUGH DECEMBER 31, 2026**

The fee for the **Consultant's** basic services shall consist of:

1. Prime Consultant Fee

a. Consultant Labor Fee	\$3,006,778.00	
b. Reimbursable Direct Costs (RDC)	\$152,850.00	
c. Consultant Sub-Total (1a. + 1b.)		\$3,159,628.00

2. Sub-Consultant Fees

a. Environmental Design International, Inc.		
Direct Labor Costs (DLC)	\$121,440.00	
Overall Multiplier (OM) 2.85		
Consultant Labor Fee	\$346,104.00	
Reimbursable Direct Costs (RDC)	\$36,000.00	
b. American Veteran Engineering, PLLC		
Direct Labor Costs (DLC)	\$83,720.00	
Overall Multiplier (OM) 2.73		
Consultant Labor Fee	\$228,555.60	
Reimbursable Direct Costs (RDC)	\$18,000.00	
c. Reach Grow Exceed Engineering		
Direct Labor Costs (DLC)	\$125,640.00	
Overall Multiplier (OM) 2.26		
Consultant Labor Fee	\$283,226.48	
Reimbursable Direct Costs (RDC)	\$28,350.00	
d. DLZ Corporation		
Consultant Labor Fee	\$174,028.80	
Reimbursable Direct Costs (RDC)	\$--	

3. <u>Additional City-Authorized Services</u>	\$300,000.00
Allowance for 2026 Construction Season	

4. <u>TOTAL CONTRACT, NOT TO EXCEED</u>	<u>\$4,573,892.88</u>
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Reimbursement for meals shall not exceed \$45 per person per day. The amount listed shall be considered a “not to exceed” amount. Travel outside of the City boundaries shall be approved in advance.

Invoices shall be serially numbered from number 1, labeled with the Purchase Order number, and annotated as either a “Progress Payment” or “Final Payment”. Invoices shall be emailed in PDF format to the Deputy Director of Public Utilities - Engineering.

The City has multiple IEPA SRF Loans (6077, 6078 and 6080) which will be utilized to cover the Consultant's fee. The Consultant's Total Contract, Not to Exceed fee (Item #4 above) is broken down in the following table based on the specific loan as well as design and construction costs:

LOAN #	SERVICES	FEE
6077	2026 WMRP Design Related Services	\$110,400.00
6077	2026 WMRP Construction Administration Services	\$4,413,492.88
6080	2026 LSLRP Construction Administration Services	\$25,000.00
6078	2027 WMRP Design Related Services	\$25,000.00
	TOTAL NOT TO EXCEED	\$4,573,892.88

Burns & McDonnell
Schedule of Hourly Professional Service Billing Rates

<u>Position Classification</u>	<u>Hourly Billing Rate</u>
Admin Assistant	\$96.00
Project Assistant	\$120.00
Project Coordinator	\$150.00
Project Accountant	\$161.00
Financial Analyst	\$195.00
Construction Coordinator	\$161.00
Construction Project Manager I	\$173.00
Construction Project Manager II	\$222.00
Construction Project Manager III	\$261.00
Construction Project Manager IV	\$279.00
Engineer I	\$166.00
Engineer II	\$204.00
Engineer III	\$243.00
Engineer IV	\$278.00
Engineer V	\$282.00
Project Manager I	\$219.00
Project Manager II	\$239.00
Project Manager III	\$261.00
Project Manager IV	\$284.00
Project Director	\$295.00
Project Controls Specialist I	\$158.00
Project Controls Specialist II	\$199.00
Project Controls Specialist III	\$255.00
Project Controls Specialist IV	\$269.00
Project Controls Specialist V	\$277.00
Resident Representative I	\$135.00
Resident Representative II	\$150.00
Resident Representative III	\$175.00
Resident Representative IV	\$195.00
Resident Representative V	\$225.00
Intern	\$119.00
Burns & McDonnell India	\$105.00

NOTES:

1. Position classifications listed above refer to the firm's internal classification system or project role.
2. The services of contract/agency and/or any personnel of a Burns & McDonnell parent, subsidiary, affiliate, or related or associated entity shall be billed to Owner according to the rate sheet as if such personnel is a direct employee of Burns & McDonnell.
3. The rates shown above are effective for services through December 31, 2026, and are subject to revision thereafter. The composition or build-up of the rates shown above are not subject to audit, inspection, or review.

ATTACHMENT C PROJECT SCHEDULE

Attachment C
WATER MAIN AND LEAD WATER SERVICE REPLACEMENT PROGRAM
CONSTRUCTION ENGINEERING SERVICES
PROJECT SCHEDULE: SERVICES THROUGH DECEMBER 31, 2026

Professional consulting construction engineering services associated with the Water Main and Lead Water Service Replacement Programs.

Consultant's services under this Agreement are anticipated to be provided during the period of January 1, 2026 to February 28, 2027 (the contract period). Consultant will provide its services as described in Attachment A generally following the project staffing plan with adjustments as necessary based on the WMRP project schedules. Changes in project schedules or other factors may require Consultant to continue to provide its services after the end of the contract period. Consultant may continue its services after the end of the contract period using remaining available funds up to the approved contract maximum limit. If additional funds are required for Consultant to continue providing its services, such continuation of services will be designated as Additional Services and described in an amendment to the original agreement, subject to the City's approval.

ATTACHMENT D WIFIA CONTRACT LANGUAGE

WIFIA Specification Package and Bid Contract Language

Last Updated: May 2025

AMERICAN IRON AND STEEL (AIS) REQUIREMENT

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

BUILD AMERICA, BUY AMERICA ACT

Other language may be included on contracts for clarity on this federal requirement if an applicable waiver applies. For example, if the WIFIA program has determined program waiver coverage, indicate in contract documents, "This Project is covered under the WIFIA Program Waiver (June 22, 2022), which waives BABA requirements."

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

~~The Contractor acknowledges to and for the benefit of _ ("Purchaser") and the United States Environmental Protection Agency ("EPA") that it understands the goods and services under this Agreement are being funded with federal monies made available by the Water Infrastructure Finance and Innovation Act program of EPA that have statutory requirements commonly known as "Build America, Buy America," that requires all of the iron and steel, manufactured products, and construction materials used in the project to be produced in the United States ("Build America, Buy America Requirements") including iron and steel, manufactured products, and construction materials provided by the Contractor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Purchaser and Funding Authority (a) the Contractor has reviewed and understands the Build America, Buy America Requirements, (b) all of the iron and steel, manufactured products, and construction materials used in the project will be and/or have been produced in the United States in a manner that complies with the Build America, Buy America Requirements, unless a waiver of the requirements is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the Build America, Buy America Requirements, as may be requested by the Purchaser or the Funding Authority. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Purchaser or Funding Authority to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney's fees) incurred by the Purchaser or Funding Authority resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the Funding Authority or any damages owed to the Funding Authority by the Owner). If the Contractor has no direct contractual privity with the Funding Authority, as a lender or awardee to the Purchaser for the funding of its project, the Purchaser and the Contractor agree that the Funding Authority is a third party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the Funding Authority.~~

LABOR LAWS AND STANDARDS

The language below reflects the August 2023 updates to the Davis Bacon regulations.

Contract provisions and related matters.

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

(1) *Minimum wages* —

- (i) *Wage rates and fringe benefits.* All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of basic hourly wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. As provided in paragraphs (d) and (e) of this section, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act (40 U.S.C. 3141(2)(B)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(v) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in paragraph (a)(4) of this section. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (a)(1)(iii) of this section) and the Davis-Bacon poster (WH-1321) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) *Frequently recurring classifications.*

- (A) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in 29 CFR part 1, a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to paragraph (a)(1)(iii) of this section, provided that:
- (1) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;
 - (2) The classification is used in the area by the construction industry; and
 - (3) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.
- (B) The Administrator will establish wage rates for such classifications in accordance with paragraph (a)(1)(iii)(A)(3) of this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

(iii) *Conformance.*

- (A) The contracting officer must require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate only when the following criteria have been met:
- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (2) The classification is used in the area by the construction industry; and
 - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (B) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.
- (C) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken will be sent by the contracting officer by email to DBAconformance@dol.gov. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (D) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer will, by email to DBAconformance@dol.gov, refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period

that additional time is necessary.

- (E) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division under paragraphs (a)(1)(iii)(C) and (D) of this section. The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph (a)(1)(iii)(C) or (D) of this section must be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- (iv) *Fringe benefits not expressed as an hourly rate.* Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (v) *Unfunded plans.* If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, in accordance with the criteria set forth in § 5.28, that the applicable standards of the Davis- Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
- (vi) *Interest.* In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.
- (2) *Withholding —*
- (i) *Withholding requirements.* The [write in name of Federal agency or the recipient of Federal assistance] may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in paragraph (a) of this section for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work (or otherwise working in construction or development of the project under a development statute) all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in paragraph (a)(3)(iv) of this section, the [Agency] may on its own initiative and after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, take such action as may be necessary to cause the suspension of any further payment,

advance, or guarantee of funds until such violations have ceased.

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

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

(3) *Records and certified payrolls —*

(i) *Basic record requirements —*

- (A) *Length of record retention.* All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.
- (B) *Information required.* Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.
- (C) *Additional records relating to fringe benefits.* Whenever the Secretary of Labor has found under paragraph (a)(1)(v) of this section that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act, the contractor must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.
- (D) *Additional records relating to apprenticeship.* Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

(ii) *Certified payroll requirements —*

- (A) *Frequency and method of submission.* The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to the [write in name of appropriate Federal agency] if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the certified payrolls to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to the [write in name of

agency]. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

- (B) *Information required.* The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under paragraph (a)(3)(i)(B) of this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (*e.g.*, the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH-347 or in any other format desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347/.pdf> or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the sponsoring government agency (or the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records).
- (C) *Statement of Compliance.* Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:
- (1) That the certified payroll for the payroll period contains the information required to be provided under paragraph (a)(3)(ii) of this section, the appropriate information and basic records are being maintained under paragraph (a)(3)(i) of this section, and such information and records are correct and complete;
 - (2) That each laborer or mechanic (including each helper and apprentice) working on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR part 3; and
 - (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.
- (D) *Use of Optional Form WH-347.* The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 will satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(C) of this section.
- (E) *Signature.* The signature by the contractor, subcontractor, or the contractor's or

subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.

- (F) *Falsification*. The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 3729.
- (G) *Length of certified payroll retention*. The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.
- (iii) *Contracts, subcontracts, and related documents*. The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.
- (iv) *Required disclosures and access —*
 - (A) *Required record disclosures and access to workers*. The contractor or subcontractor must make the records required under paragraphs (a)(3)(i) through (iii) of this section, and any other documents that the [write the name of the agency] or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by § 5.1, available for inspection, copying, or transcription by authorized representatives of the [write the name of the agency] or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.
 - (B) *Sanctions for non-compliance with records and worker access requirements*. If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to § 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under 29 CFR part 6 any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.
 - (C) *Required information disclosures*. Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address of each covered worker, and must provide them upon request to the [write in name of appropriate Federal agency] if the agency is a party to the contract, or to the Wage and Hour Division of the Department of Labor. If the Federal agency is not such a party to the contract, the contractor, subcontractor, or

both, must, upon request, provide the full Social Security number and last known address, telephone number, and email address of each covered worker to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to the [write in name of agency], the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

(4) *Apprentices and equal employment opportunity* —

(i) *Apprentices* —

- (A) *Rate of pay.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (B) *Fringe benefits.* Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.
- (C) *Apprenticeship ratio.* The allowable ratio of apprentices to journeymen on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to paragraph (a)(4)(i)(D) of this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph (a)(4)(i)(A) of this section, must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.
- (D) *Reciprocity of ratios and wage rates.* Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

- (ii) *Equal employment opportunity.* The use of apprentices and journeyworkers under this part must be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.
- (5) *Compliance with Copeland Act requirements.* The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.
- (6) *Subcontracts.* The contractor or subcontractor must insert in any subcontracts the clauses contained in paragraphs (a)(1) through (11) of this section, along with the applicable wage determination(s) and such other clauses or contract modifications as the [write in the name of the Federal agency] may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate.
- (7) *Contract termination: debarment.* A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
- (8) *Compliance with Davis-Bacon and Related Act requirements.* All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
- (9) *Disputes concerning labor standards.* Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
- (10) *Certification of eligibility.*
- (i) By entering into this contract, the contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of 40 U.S.C. 3144(b) or § 5.12(a).
 - (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of 40 U.S.C. 3144(b) or § 5.12(a).
 - (iii) The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, 18 U.S.C. 1001.
- (11) *Anti-retaliation.* It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:
- (i) Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or 29 CFR part 1 or 3;
 - (ii) Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or 29 CFR part 1 or 3;
 - (iii) Cooperating in any investigation or other compliance action, or testifying in any

- proceeding under the DBA, Related Acts, this part, or 29 CFR part 1 or 3; or
- (iv) Informing any other person about their rights under the DBA, Related Acts, this part, or 29 CFR part 1 or 3.
- b) *Contract Work Hours and Safety Standards Act (CWHSSA)*. The Agency Head must cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1) through (5) of this section in full, or (for contracts covered by the Federal Acquisition Regulation) by reference, in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses must be inserted in addition to the clauses required by paragraph (a) of this section or 29 CFR 4.6. As used in this paragraph (b), the terms “laborers and mechanics” include watchpersons and guards.
- (1) *Overtime requirements*. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) *Violation; liability for unpaid wages; liquidated damages*. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchpersons and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$32 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1).
- (3) *Withholding for unpaid wages and liquidated damages* —
- (i) *Withholding process*. The [write in the name of the Federal agency or the recipient of Federal assistance] may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this paragraph (b) on this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

- (ii) *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with paragraph (a)(2)(i) or (b)(3)(i) of this section, or both, over claims to those funds by:
 - (A) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
 - (B) A contracting agency for its procurement costs;
 - (C) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
 - (D) A contractor's assignee(s);
 - (E) A contractor's successor(s); or
 - (F) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901-3907.
- (4) *Subcontracts.* The contractor or subcontractor must insert in any subcontracts the clauses set forth in paragraphs (b)(1) through (5) of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (5). In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.
- (5) *Anti-retaliation.*
 - (i) It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for: Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;
 - (ii) Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;
 - (iii) Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or
 - (iv) Informing any other person about their rights under CWHSSA or this part.
- c) *CWHSSA required records clause.* In addition to the clauses contained in paragraph (b) of this section, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other laws referenced by § 5.1, the Agency Head must cause or require the contracting officer to insert a clause requiring that the contractor or subcontractor must maintain regular payrolls and other basic records during the course of the work and must preserve them for a period of 3 years after all the work on the prime contract is completed for all laborers and mechanics, including guards and watchpersons, working on the contract. Such records must contain the name; last known address, telephone number, and email address; and social security number of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid; daily and weekly number of hours actually worked; deductions made; and actual wages paid. Further, the Agency Head must cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph must be made available by the contractor or

subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview workers during working hours on the job.

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

PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment (Effective August 13, 2020). The John S. McCain National Defense Authorization Act for Fiscal Year 2019 (P.L. 115-232), at Section 889, prohibits EPA financial assistance recipients, including WIFIA borrowers, from expending loan funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in the Act, “covered telecommunications equipment or services” means:

- a) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
- b) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- c) Telecommunications or video surveillance services provided by such entities or using such equipment.
- d) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- e) The Act does not prohibit:
- f) Procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements.
- g) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

ECONOMIC AND MISCELLANEOUS AUTHORITIES

DEBARMENT AND SUSPENSION AND PROHIBITIONS RELATING TO VIOLATIONS OF CWA AND CAA WITH RESPECT TO FEDERAL CONTRACTS, GRANTS, OR LOANS

Debarment and Suspension. Contractor certifies that it will not knowingly enter into a contract with anyone who is ineligible under the 2 CFR part 180 and part 1532 (per Executive Order 12549, 51 FR 6370, February 21, 1986) or who is prohibited under Section 306 of the Clean Air Act or Section 508 of the Clean Water Act to participate in the [Project]. Suspension and debarment information can be accessed at <http://www.sam.gov>. Contractor represents and warrants that it has or will include a term or conditions requiring compliance with this provision in all of its subcontracts under this Agreement.

NEW RESTRICTIONS ON LOBBYING

Federal Lobbying Restrictions (31 U.S.C 1352). Recipients of federal financial assistance may not pay any person for influencing or attempting to influence any officer or employee of a federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress with respect to the award, continuation, renewal, amendment, or modification of a federal grant, loan, or contract. These requirements are implemented for USEPA in 40 CFR Part 34, which also describes types of activities, such as legislative liaison activities and professional and technical services, which are not subject to this prohibition. Upon award of this contract, Contractor shall complete and submit to the City the certification and disclosure forms in Appendix A and Appendix B to 40 CFR Part 34. Contractor shall also require all subcontractors and suppliers of any tier awarded a subcontract over \$100,000 to similarly complete and submit the certification and disclosure forms pursuant to the process set forth in 40 CFR 34.110.

CIVIL RIGHTS, NONDISCRIMINATION, AND EQUAL EMPLOYMENT OPPORTUNITY AUTHORITIES

AGE DISCRIMINATION ACT, SECTION 504 OF THE REHABILITATION ACT, TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, AND SECTION 13 OF THE CLEAN WATER ACT

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

- Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP). (42 U.S.C 2000D, *et. seq*)
- Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities. (29 U.S.C. 794, supplemented by EO 11914, 41 FR 17871, April 29, 1976 and EO 11250, 30 FR 13003, October 13, 1965)
- The Age Discrimination Act of 1975, which prohibits age discrimination. (42 U.S.C 6101 *et. seq*)
- Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex.
- 40 CFR Part 7, as it relates to the foregoing.

EQUAL EMPLOYMENT OPPORTUNITY

Note the language below include 41 CFR 60 contract language for: EEO, Standard Federal Equal Employment Opportunity Construction Contract Specifications, and Segregated Facilities.

Executive Order 14173, Ending Illegal Discrimination and Restoring Merit-Based Opportunity, revokes Executive Order 11246, Equal Employment Opportunity. However, the Department of Labor issued regulations implementing certain sections of the EO 11246 at 41 CFR part 60. Until DOL revokes these regulations, they remain effective law and compliance is required. Note that the required contract language references the revoked EO 11246 in several places. Though the language is required, any mention of EO 11246 can be disregarded.

Equal Employment Opportunity (EEO). The Contractor shall comply with Executive Order 11246, entitled 'Equal Employment Opportunity,' as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60). (EO 11246, 30 FR 12319, September 28, 1965)

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

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

1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

2. The contractor will, in all solicitations or advancements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
3. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
4. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
5. The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
6. The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
7. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
8. The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such

provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States. [Sec. 202 amended by EO 11375 of Oct. 13, 1967, 32 FR 14303, 3 CFR, 1966–1970 Comp., p. 684, EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230, EO 13665 of April 8, 2014, 79 FR 20749, EO 13672 of July 21, 2014, 79 FR 42971]

Standard Federal Equal Employment Opportunity Construction Contract Specifications. (41 CFR 60-4.3)

2) As used in these specifications:

- f) “Covered area” means the geographical area described in the solicitation from which this contract resulted;
- g) “Director” means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
- h) “Employer identification number” means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
- i) “Minority” includes:
 - i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2) Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

- 3) If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

- 4) The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.
- 5) Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
- 6) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
- 7) The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
 - a) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - b) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
 - c) Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
 - d) Provide immediate written notification to the Director when the union or unions with which the

Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

- e) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.
- f) Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g) Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h) Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- i) Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- j) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.
- k) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR part 60-3.
- l) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

- m) Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
 - n) Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
 - o) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
 - p) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
- 8) Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
 - 9) A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
 - 10) The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, sexual orientation, gender identity, or national origin.
 - 11) The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
 - 12) The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
 - 13) The Contractor, in fulfilling its obligations under these specifications, shall implement specific

affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

- 14) The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
- 15) Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

Segregated Facilities. (41 CFR 60-1.8) The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensuring that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. This obligation extends to all contracts containing the equal opportunity clause regardless of the amount of the contract. The term "facilities," as used in this section, means waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, wash rooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees; Provided, That separate or single-user restrooms and necessary dressing or sleeping areas shall be provided to assure privacy between the sexes.