



**CENTRALBIDDING**  
FROM CENTRAL AUCTION HOUSE

**Martintown Industrial Park ARC MS-21383 TREE PLANTING**  
Union County

Project documents obtained from [www.CentralBidding.com](http://www.CentralBidding.com)

10-Feb-2024 11:24:02 PM

# CONTRACT DOCUMENTS AND SPECIFICATIONS

MARTINTOWN NORTH INDUSTRIAL PARK  
APPALACHIAN REGIONAL COMMISSION  
PROJECT NUMBER MS-21383  
FOR  
THE BOARD OF SUPERVISORS  
UNION COUNTY, MISSISSIPPI

JANUARY, 2024



**ELLIOTT & BRITT  
ENGINEERING, P.A.**

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APPALACHIAN REGIONAL COMMISSION  
PROJECT NUMBER MS-21383  
FOR THE BOARD OF SUPERVISORS  
UNION COUNTY, MISSISSIPPI

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## **INVITATION FOR BIDS DHUD FORMAT 4283-A**

Separate sealed bids for ARC-MS-21383, Martintown North Industrial Park, Union County, Mississippi will be received by the Union County Board of Supervisors, Union County Courthouse, 109 East Main Street, New Albany, Mississippi, until 10:00 AM Local Time, Thursday, February 15, 2024 at which time and place all Bids will be publicly opened and read aloud.

Each bid must be submitted in a sealed envelope addressed to the Union County Board of Supervisors. Each sealed envelope containing a bid must be plainly marked on the outside as "Bid for ARC-MS-21383, Martintown North Industrial Park, Union County, Mississippi." Any bid for a sum in excess of \$50,000.00 shall contain on the outside or exterior of the envelope of such bid the contractor's current certificate of responsibility number, and no bid shall be opened or considered unless such contractor's current certificate number appears on the outside or exterior of the envelope or unless there appears a statement on the outside or exterior of such envelope to the effect that the bid enclosed does not exceed \$50,000.00.

The work is as follows: Provide labor and materials for approximately (919) nine hundred-nineteen six foot tall, container grown evergreen trees (Eastern Red Cedar or Green Giant Arborvitae) spaced at 10' intervals over approximately 8,546 linear feet of property line and right-of-way in order to provide a continuous screen for an industrial park expansion.

Contract Documents, including Drawings and Specifications, are on file at the office of Elliott & Britt Engineering, 823 North Lamar Boulevard, Oxford, Mississippi 38655 and may be reviewed.

Copies of the Contract Documents may be obtained by depositing \$105.00 with Elliott & Britt Engineering, P.O. Box 308, Oxford, Mississippi 38655, telephone (662) 234-1763 for each set of documents so obtained. This deposit is nonrefundable.

Official bid documents can be downloaded at [www.centralbidding.com](http://www.centralbidding.com). Electronic bids may be submitted at [www.centralbidding.com](http://www.centralbidding.com). For any questions relating to the electronic bidding process, please call Central Bidding at 225-810-4814.

A certified check or bank draft, payable to the order of the Union County Board of Supervisors, negotiable U.S. Government bonds (at par value), or a satisfactory Bid Bond executed by the Bidder and an accepted Surety, in an amount equal to five percent (5%) of the total of the Bid shall be submitted with each bid.

Attention is called to the fact that not less than the minimum salaries and wages set forth in the Contract Documents must be paid on this project, and that the Contractor must ensure that employees and applicants for employment are not discriminated against because of their race, color, religion, sex or natural origin.

This project is financed by an Appalachian Regional Commission Grant and is subject to the rules and regulations thereof.

Minority and Woman Owned Business Enterprises are solicited to bid on this contract as prime contractors and are encouraged to make inquiries regarding potential subcontracting opportunities, equipment, material and/or supply needs.

The Union County Board of Supervisors is an Equal Opportunity Employer, and hereby notifies all Bidders that they will be afforded the full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, religion, sex, national origin, age, disability, sexual preference, marital or veteran status, or any other legally protected status in consideration for an award.

The successful bidder must comply with the Davis-Bacon Act which requires that all laborers and mechanics shall be paid at rates not less than those determined by the Department of Labor to be prevailing for the locality in which the project is located.

The Union County Board of Supervisors reserves the right to reject any or all Bids or to waive any informalities in the bidding.

Bids may be held by the Union County Board of Supervisors for a period not to exceed 90 days from the date of the opening of Bids for the purpose of reviewing the bids and investigating the qualifications of Bidders, prior to awarding of the Contract.

/s/  
\_\_\_\_\_  
Sam Taylor  
President

Dates of Advertisement: January 17, 2024  
January 24, 2024

### **SPECIAL NOTICE TO BIDDERS NO. 1**

The Successful Bidder will adhere to the Buy America Guidelines attached to this notice to bidders.

## APPALACHIAN REGIONAL COMMISSION

### *Interim Implementation Guidance on the Application of the*

### *Buy America Preference in ARC Grants for Infrastructure*

On May 5, 2022, ARC notified the implementation of the domestic content procurement preference (Buy America) provided in the Build America, Buy America Act, starting on May 14, 2022. The new requirement in ARC grants for infrastructure projects means that, 1-all of the iron and steel in the project is produced in the United States, 2-the manufactured products used in the project are produced in the United States, and 3- the construction materials used in the project are produced in the United States. This interim guidance describes the type of projects subject to the Buy America requirements and the process to request waivers.

#### **I. Applicability:**

This guidance applies to all ARC grants whether or not funded through Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (IIJA)—where funds are made available and used in the infrastructure portion of all grants involving infrastructure. It will also apply to subawards made with ARC grants.

The Buy America preference applies to an entire infrastructure project, even if it is funded by both Federal and non-Federal funds under one or more awards. The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. It does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of or permanently affixed to the structure.

#### **II. Definitions:**

1. **Construction materials** includes an article, material, or supply— other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives — that is or consists primarily of: non-ferrous metals; plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber; or drywall.
2. **Domestic content procurement preference**- The term “domestic content procurement preference” means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.

3. **Infrastructure-** The term infrastructure encompasses public infrastructure projects. Thus, the term “infrastructure” includes, at a minimum, the structures, facilities, and equipment for roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property.

In determining whether a particular construction project constitutes “infrastructure” for purposes of the Buy America requirement, the ARC will consider whether the project will serve a public function, including whether the project is publicly owned and operated, privately operated on behalf of the public, or is a place of public accommodation, as opposed to a project that is privately owned and not open to the public. Projects with the former qualities have greater indicia of infrastructure, while projects with the latter quality have fewer. If ARC determines that no funds from a particular grant will be used for infrastructure, a Buy America preference does not apply to that grant award.

4. **Produced in the United States-** The term produced in the United States means-  
(A) in the case of iron or steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;  
(B) in the case of manufactured products, that (i) the manufactured product was manufactured in the United States; and (ii) the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and  
(C) in the case of construction materials, that all manufacturing processes for the construction material occurred in the United States.
5. **Project-** The term project means construction, alteration, maintenance, or repair of infrastructure.

### III. Waivers

ARC may waive the application of the Buy America preference in any case in which the Federal Co-Chair finds that—

- (1) applying the domestic content procurement preference would be inconsistent with the public interest (a “public interest waiver”);
- (2) types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality (a “non-availability waiver”); or



(3) the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent (an “unreasonable cost waiver”).

#### **A. Non-availability Waivers**

In considering a request for a non-availability waiver, ARC will assess whether the recipient or subrecipient performed a thorough market research and adequately considered, where appropriate, qualifying alternate items, products, or materials.

#### **B. Unreasonable Cost Waivers**

In considering a request for an unreasonable cost waiver, ARC will examine whether the recipient or subrecipient has provided adequate documentation that no domestic alternatives are available within the cost parameter. An unreasonable cost waiver is available if the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent. The waiver justification must include, as applicable, a comparison of the cost of the domestic product to the cost of the foreign product or a comparison of the overall cost of the project with domestic products to the overall cost of the project with foreign-origin products. Publicly available cost comparison data may be provided in lieu of proprietary pricing information.

#### **C. Public Interest Waivers**

ARC may issue public interest waivers when it determines that its statutory mandate and policy goals cannot be achieved consistent with the Buy America requirements and the proposed waiver would not meet the requirements for a non-availability or unreasonable cost waiver. ARC may consider issuing general applicability public interest waivers in the interest of efficiency and to ease burdens for recipients or subrecipients.

### **IV. Process to Request a Waiver**

ARC sponsored construction projects administered by a Federal Basic Agency will follow the policies and procedures of the Federal Agency for Buy American waivers. ARC sponsored construction projects administered by a Registered State Basic Agency that follows the policies and procedures of a Federal agency in administering an ARC grant will follow the policies and procedures for Buy America waivers as determined by said Federal agency. Whenever a construction project is co-funded by a Federal agency and ARC, the grantee and subgrantee will follow the processes and procedures for Buy America waivers of the Federal agency. In the event that two or more Federal agencies participate in funding an infrastructure project, the grantee or subgrantee will follow the policies and procedures for Buy America of the Federal agency with the highest contribution of funds to the project.

The following process will apply in those circumstances not covered in the previous paragraph. ARC grant recipients and subrecipients will submit their request for Buy America waivers in writing (email) to the ARC project coordinator and the administering agency point of contact. All waiver requests must include a detailed justification for the use of goods, products, or materials mined, produced, or manufactured outside the United States and a certification that there was a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and nonproprietary communications with potential suppliers.

The request for a Buy America waiver must include, at a minimum and to the greatest extent practicable, the following information:

- Waiver type (non-availability, unreasonable cost, or public interest)
- Recipient name and Unique Entity Identifier (UEI)
- ARC program name (POWER, INSPIRE, BWI, DCI)
- ARC Grant Award Identification Number
- ARC and Federal financial assistance (if applicable) funding amount
- Total cost of infrastructure expenditures, including all Federal and non-Federal funds (to the extent known)
- Infrastructure project description and location
- List of iron or steel item(s), manufactured products, and construction material(s) proposed to be excepted from Buy America requirements, including name, cost, and country(ies) of origin (if known), and relevant Product and Service Code (PSC) and North American Industry Classification System (NAICS) code for each.
- A certification that the recipient made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and nonproprietary communications with the prime contractor.
- A statement of waiver justification, including a description of efforts made (e.g., market research, industry outreach), by the recipient, in an attempt to avoid the need for a waiver. Such a justification may cite, if applicable, the absence of any Buy America-compliant bids received in response to a solicitation.
- Anticipated impact if no waiver is issued.

ARC will consider request for waivers on a case-by-case basis. The grantee or subgrantee must promptly submit the request for a Buy America waiver upon having the documentation to support the request for the waiver and not less than 60 days prior to the expected day for starting construction.

In issuing a waiver on Buy America, ARC will consider the statutory provisions of the Build America, Buy America Act, the Appalachian Regional Development Act of 1965, as amended, the Guidance of the U.S. Office of Management and Budget (OMB), and its mission and policy goals described in its Strategic Fiscal Plan for Fiscal Years 2022-2026. ARC Buy America waiver determinations will be notified to the grantees or subgrantees by the ARC project coordinator in writing.

#### **V. Buy America Guidance Updates**

ARC would be updating this Buy America guidance, that is applicable to the infrastructure portion of all grants involving infrastructure, as new guidelines are issued by the OMB and the Made in America Office, including but not limited to the final standards on construction material.

## **SPECIAL NOTICE TO BIDDERS NO. 2**

Bidders are required to show proof of Contractor EEV Certification and Agreement and submit with Bid Package.

### **SPECIAL NOTICE TO BIDDERS NO. 3**

The following is information regarding your Storm Water Permit.



State of Mississippi  
Mississippi Department of Environmental Quality  
(MDEQ) Office of Pollution Control (OPC)  
Environmental Permits Division (EPD)



## SMALL CONSTRUCTION STORM WATER GENERAL PERMIT

FOR LAND DISTURBING ACTIVITIES OF ONE (1) to LESS THAN FIVE (5) ACRES

TO DISCHARGE STORM WATER AND ALLOWABLE NON-STORM WATER FROM REGULATED CONSTRUCTION  
ACTIVITIES IN ACCORDANCE WITH THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)

### THIS CERTIFIES THAT

FACILITIES OR PROJECTS ISSUED A CERTIFICATE OF PERMIT COVERAGE UNDER THIS PERMIT ARE GRANTED  
PERMISSION TO DISCHARGE STORM AND/OR ALLOWABLE NON-STORM WATER FROM REGULATED  
CONSTRUCTION ACTIVITIES INTO STATE WATERS

in accordance with effluent limitations, inspection requirements and other conditions set forth in herein. This permit is issued  
in accordance with the provisions of the Mississippi Water Pollution Control Law (Section 49-17-1 et seq., Mississippi Code  
of 1972), and the regulations and standards adopted and promulgated thereunder, and under authority granted pursuant to  
Section 402(b) of the Federal Water Pollution Control Act.

Mississippi Environmental Quality Permit Board

  
Authorized Signature

Mississippi Department of Environmental Quality

Issued: MAY 20 2019

Expires: APR 30 2024

Permit No. MSR15

AT 35524

# Submit only upon request from MDEQ



## SMALL CONSTRUCTION NOTICE OF INTENT (SCNOI)

GENERAL NPDES PERMIT MSR15 \_\_\_\_\_ (Number to be assigned by MDEQ if submitted)

Prior to the commencement of small construction activity (see Small Construction General Permit ACT11, T-17), the owner or operator of a small construction project must complete this form and develop a Storm Water Pollution Prevention Plan (SWPPP) as required by ACT5 of Mississippi's Small Construction General Permit. **This SCNOI and SWPPP shall be submitted to the Mississippi Department of Environmental Quality (MDEQ) only upon request from MDEQ; however, the SCNOI and SWPPP must be maintained at the permitted site or locally available in case inspector review is necessary.** Attachments with this SCNOI must include: a USGS quad map or copy showing site location (only if required to be submitted to MDEQ) and a Storm Water Pollution Prevention Plan (SWPPP). All questions must be answered – answer "NA" if the question is not applicable.

### PROJECT INFORMATION

<b>OWNER CONTACT PERSON:</b> _____ <b>OWNER COMPANY NAME:</b> _____ <b>OWNER STREET (P.O. BOX):</b> _____ <b>OWNER CITY:</b> _____ <b>STATE:</b> _____ <b>ZIP:</b> _____ <b>OWNER PHONE # (INCLUDE AREA CODE):</b> _____	<b>OPERATOR (if different from owner) CONTACT PERSON:</b> _____ <b>OPERATOR COMPANY:</b> _____ <b>OPERATOR STREET (P.O. BOX):</b> _____ <b>OPERATOR</b> _____ <b>CITY:</b> _____ <b>STATE:</b> _____ <b>ZIP:</b> _____ <b>OPERATORPHONE # (INCLUDE AREA CODE):</b> _____
--	---

<b>PROJECT NAME:</b> _____	
<b>DESCRIPTION OF CONSTRUCTION ACTIVITY:</b> _____	
<b>ACREAGE DISTURBED</b> (to be covered by this permit, area must be less than five (5) acres): _____	
<b>PHYSICAL SITE ADDRESS</b> (If not available, indicate the nearest named road. For linear projects, indicate the beginning of the project and identify all counties the project traverses.):	
<b>STREET:</b> _____	
<b>CITY:</b> _____	<b>COUNTY:</b> _____ <b>ZIP:</b> _____
<b>NEAREST NAMED RECEIVING STREAM:</b> _____	
<small>I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.</small>	
<b>Signature<sup>1</sup></b> _____	<b>Date Signed</b> _____
<b>Printed Name</b> _____	<b>Title</b> _____

<sup>1</sup>This application shall be signed according to the Small Construction General Permit, ACT10, T-4.

If requested, please submit this form to:

Chief, Environmental Permits Division  
MDEQ, Office of Pollution Control  
P.O. Box 2261  
Jackson, Mississippi 39225

## INFORMATION FOR BIDDERS

### DHUD FORMAT 4238

#### 1. RECEIPT AND OPENING OF BID

The Union County Board of Supervisors (hereinafter Called the "OWNER"), invites Bids on the forms attached hereto. All blanks must be appropriately filled in. Bids will be received by the Owner in the Union County Board Room until the time specified in the INVITATION FOR BIDS, and then at said office publicly opened and read aloud. The envelope containing the Bids must be sealed and addressed to:

Union County Board of Supervisors  
109 East Main Street  
New Albany, Mississippi

The owner may consider informal any bid not prepared and submitted in accordance with the provisions hereof and may waive any informalities or reject any and all Bids. Any Bid may be withdrawn prior to the above-scheduled time for the opening of Bids or authorized postponement thereof. Any Bid received after the time and date specified shall not be considered. No Bidder may withdraw a Bid within ninety (90) days after the actual date of the opening thereof.

#### 2. PREPARATION OF BID

Each bid must be submitted on the prescribed form and accompanied by Certification by Bidder Regarding Equal Employment Opportunity, Certification by Bidder (Contractor) concerning Labor Standards and Prevailing Wage Requirements, , and Certification of Bidder Regarding Section 3 and Segregated Facilities. All blank spaces for Bid prices must be filled in (in ink or typewritten) and the foregoing certification must be fully completed when submitted. Should the Bidder fail to correctly submit a Unit Price for Each item, his Bid will be classed as irregular. Failure to properly sign Proposals shall disqualify same.

Each Bid must be submitted in a sealed envelope bearing on the outside the name of the Bidder, his address, his Certificate of Responsibility Number, his State License Number, and the name of the Project for which the Bid is submitted. If forwarded by mail, the sealed envelope containing the Bid must be enclosed in another envelope as specified in the Bid Form.



### 3. **REJECTION OF PROPOSAL**

Proposals may be rejected in the case of any omission, alterations of forms, additions or conditions not called for, unauthorized alternate Bids, incomplete Bids, erasures or irregularities of any kind. Proposals received, conditioning their consideration or rejection upon Proposals for other work submitted by the same Bidder, may be classed as "irregular", unless the Special Conditions specifically invite or permit conditional or combination Bids. Proposals in which the prices obviously are unbalanced may be rejected.

### 4. **SUBCONTRACTORS**

The Bidder is specifically advised that any person, firm, or other party to whom it is proposed to award a subcontract under this contract---

- A. Must be acceptable to the Owner, the United States Department of Housing and Urban Development, and the State of Mississippi Department of Economics and Community Development.
- B. Must submit "Certification by Proposed Subcontractor Regarding Equal employment Opportunity" (DHUD Form 4238-CD-2). Approval of the proposed subcontract award cannot be given by the Owner unless and until the proposed subcontractor has submitted the certification and/or other evidence showing that it has fully complied with any reporting requirements to which it is or was subject.

Although the Bidder is not required to attach such certification by proposed subcontractors to his Bid, the Bidder is hereby advised of this requirement so that appropriate action can be taken to prevent subsequent delay in subcontract awards.

### 5. **TELEGRAPHIC MODIFICATION**

Any Bidder may modify his Bid by telegraphic communication at any time prior to the scheduled closing time for receipt of Bids, provided such telegraphic communication is received by the Owner prior to the closing time, and provided further, the Owner is satisfied that a written confirmation of the telegraphic modification over the signature of the Bidder was mailed prior to the closing time. The telegraphic communication should not reveal the Bid Price, but should provide the addition or subtraction or other modification so that the final prices or terms will not be known by the Owner until the sealed Bid is opened. If written confirmation is not received within two (2) days from the closing time, no consideration will be given to the telegraphic modification.

### 6. **METHOD BIDDING**

The Owner invites only one Bid with alternates thereto, if any. Each Bidder must present a complete Proposal for all of the work as only one Contract will be awarded.

7. **QUALIFICATIONS OF BIDDER**

The Owner may make such investigation as he deems necessary to determine the ability of the Bidder to perform work, and the Bidder shall furnish to the Owner all such information and data for this purpose as the Owner may request. The Owner reserves the right to reject any Bid if the evidence submitted by, or investigation of, such Bidder fails to satisfy the Owner that such Bidder is properly qualified to carry out the obligations of the Contract and to complete the work contemplated therein.

CONDITIONAL BIDS WILL NOT BE ACCEPTED.

8. **BID SECURITY**

Each Bid must be accompanied by cash, Certified Check of the Bidder, or Bid Bond, duly executed by the Bidder as principal and having as surety thereon a surety company approved by the Owner, in the amount of five percent (5%) of the Bid. Such cash, checks or Bid Bond will be returned to all except the three lowest Bidders within three (3) days after the opening of Bids. The remaining cash, checks or Bid Bonds will be returned promptly after the Owner and the accepted Bidder have executed the Contract. If no award has been made within ninety (90) days after the date of the opening of Bids, upon demand of the Bidder at any time thereafter, his Bid will be returned by the Owner so long as the Bidder has not been notified of the acceptance of his Bid.

9. **LIQUIDATED DAMAGES FOR FAILURE TO ENTER INTO CONTRACT**

The successful Bidder, upon his failure or refusal to execute and deliver the Contract and Bonds required within ten (10) days after he has received notice of the acceptance of his Bid, shall forfeit to the Owner (as liquidated damages for such failure or refusal) the security deposited with his Bid.

10. **TIME OF COMPLETION AND LIQUIDATED DAMAGES**

The Bidder must agree to commence work on or before a date to be specified in a written NOTICE TO PROCEED of the Owner and to fully complete the project within the Contract Time stated in the Bid Proposal. The Bidder must also agree to pay (as liquidated damages) the sum stated in the Bid Proposal for each consecutive calendar day thereafter as hereinafter provided in the General Conditions.

11. **CONDITIONS OF WORK**

Each Bidder must inform himself fully of the conditions relating to the construction of the project and the employment of labor thereon. Failure to do so will not relieve a successful Bidder of his obligation to furnish all materials and labor necessary to carry out the provisions of his Contract. Insofar as possible, the Contractor, in carrying out his work, must employ such methods or means as will not cause any interruption of or interference with the work of any other contractor.

## 12. **ADDENDA AND INTERPRETATIONS**

No interpretation of the meaning of the Plans, Specifications or other prebid documents will be made to any Bidder orally.

Every request for such interpretation should be in writing, addressed to:

Elliott & Britt Engineering, P.A.  
PO Box 308  
Oxford, MS 38655

and, to be given consideration, must be received at least five (5) days prior to the date fixed for the opening of Bids. Any and all such interpretations and any supplemental instructions will be in the form of written Addenda to the Specifications which, if issued, will be mailed by certified mail with return receipt requested, to all prospective Bidders (at the respective addresses furnished for such purposes), not later than three (3) days prior to the date fixed for the opening of Bids. Failure of any Bidder to receive any such Addenda of interpretation shall not relieve such Bidder from any obligation under his Bid as submitted. All addenda so issued shall become part of the Contract documents.

## 13. **SECURITY FOR FAITHFUL PERFORMANCE**

Simultaneously with his delivery of the executed Contract, the Contractor shall furnish a Surety Bond or Bonds as security for faithful performance of this Contract and for the payment of all persons performing labor on the project under this Contract and furnishing materials in compliance with this Contract as specified in the General Conditions included herein. The surety on such Bond or Bonds shall be a duly authorized surety company satisfactory to the Owner.

## 14. **POWER OF ATTORNEY**

Attorneys-in-fact who sign Bid Bonds or Contract Bonds must file with each Bond a certified and effectively dated copy of their Power of Attorney.

## 15. **NOTICE OF SPECIAL PROVISIONS**

Attention is particularly called to those parts of the Contract Documents and Specifications which deal with the following:

- A. Insurance Requirements
- B. Federal Labor Standards
- C. Wage Rates
- D. Occupational Safety and Health Act

## 16. **LAWS AND REGULATIONS**

The Bidder's attention is directed to the fact that all applicable State laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the project shall apply to the Contract throughout, and they will be deemed to be included in the Contract the same as though written out in full.

17. **METHOD OF AWARD - LOWEST QUALIFIED BIDDER**

If, at the time this Contract is to be awarded, the lowest Base bid submitted by a responsible Bidder does not exceed the amount of funds then estimated by the Owner as available to finance the Contract, the Contract will be awarded to the lowest qualified Bidder. If such Bid exceeds such amount, the Owner may reject all Bids.

18. **OBLIGATION OF BIDDER**

At the time of the opening of the Bids, each Bidder will be presumed to have inspected the site and to have read and to be thoroughly familiar with the Plans and Contract Documents (including all Addenda). The failure or omission of any Bidder to examine any form, instrument or document shall in no way relieve any Bidder from any obligation in respect to his Bid.

19. **SAFETY STANDARDS AND ACCIDENT PREVENTION**

With respect to all work performed under this contract, the contractor shall:

- a. Comply with the safety standards provisions of applicable laws. Building and construction codes and the "Manual of Accident Prevention in Construction" published by the Associated General Contractors of America, the requirements of the Occupational Safety and Health Act of 1970 (Public Law 91-596), and the requirements of Title 29 of the Code of Federal Regulations, Section 1518 as published in the "Federal Register", Volume 36, No. 75, Saturday, April 17, 1971.
- b. Exercise every precaution at all times for the prevention of accidents and the protection of persons (including employees) and property.
- c. Maintain at his/her office or other well-known place at the job site, all articles necessary for giving first aid to the injured, and shall make standing arrangements for the immediate removal to a hospital or a doctor's care of persons (including employees), who may be injured on the job site. In no case shall employees be permitted to work at a job site before the employer has made a standing arrangement for removal of injured persons to a hospital or a doctor's care.

20. **SCOPE OF WORK**

The Bidder agrees to perform all the work described in the contract documents and construct the work, complete in place and ready for use.

21. **PRECEDENCE OF DOCUMENTS**

The various Contract Documents shall be given precedence, in case of conflict, error or discrepancy in the following order: Addenda, Construction Plans, General Specifications, Technical (Item) Specifications, Special Conditions, Supplemental General Conditions and General Conditions.

**Please Submit Bid On this Form  
BIDDER'S PROPOSAL  
(DHUD FORMAT 4238-C)**

**PROJECT:** MARTINTOWN NORTH INDUSTRIAL PARK

APPALACHIAN REGIONAL COMMISSION

PROJECT NUMBER MS-21383

FOR THE BOARD OF SUPERVISORS

UNION COUNTY, MISSISSIPPI

Proposal of Patton Construction, LLC  
(hereinafter called "Bidder") organized and existing under the laws of the State of  
Mississippi doing business as a a limited liability company \*.  
\*(Insert "Corporation", "Partnership" or "Individual" as applicable.)

**TO:**

Union County Board of Supervisors-- (hereinafter called "Owner")

GENTLEMEN:

The Bidder, in compliance with your Invitation for Bids for MARTINTOWN NORTH INDUSTRIAL PARK, APPALACHIAN REGIONAL COMMISSION PROJECT NUMBER MS-21383, FOR THE BOARD OF SUPERVISORS, UNION COUNTY, MISSISSIPPI having examined the Plans and Specifications with related documents and the sites of the proposed work and being familiar with all of the conditions surrounding the construction of the proposed Project, including the availability of materials and labor, hereby proposes to furnish all labor, materials, supplies and to construct the Project in accordance with the Contract Documents within the time set forth therein and at the Unit Prices stated below. These prices are to cover all expenses incurred in performing the work required under the Contract Documents of which this Proposal is a part.

The Bidder further understands that the Owner reserves the right to reject any or all Bids and to waive informalities in the Bidding.

The Bidder agrees that this Bid shall be valid and may not be withdrawn for a period of ninety (90) calendar days after the scheduled closing time for receiving Bids.

Bidder hereby agrees to commence work under this Contract on or before a date to be specified in written "Notice to Proceed" of the Owner and to fully complete the Project within    thereafter as stipulated in the Specifications. Bidder further agrees to pay as liquidated damages \$200.00 for each consecutive calendar day thereafter that the Project remains incomplete as hereinafter provided in Article 19 of the General Conditions.

Bidder hereby acknowledges receipt of the following addenda:

Addendum #1 dated 2/7/24

(Write unit prices in words & figures words govern)

Item No.	Item Quantity	Unit Price	Amount
-------------	------------------	------------	--------

1. Not applicable. Bid should be filled out on Bid Sheet(s)

Upon receipt of written notice of the acceptance of this bid, bidder will execute the formal contract attached within 10 days and deliver a Surety Bond or Bonds as required by Article 29 of the General Conditions. The bid security attached in the sum of \_\_\_\_\_

5 percent of bid total (\$ \_\_\_\_\_)

is to become the property of the Owner in the event the contract and bond are not executed within the time above set forth, as liquidated damages for the delay and additional expense to the Owner caused thereby.

Respectfully submitted this the 15th day of February, 2024

By [Signature] Matt Bollinger, Manager  
Title

Company Patton Construction, LLC

Address P.O. Box 1074, Pontotoc, MS 38863

Employer Identification No. 64-0945259

Phone Number 662-489-5360

(SEAL) if bid is by a corporation.

## BID FORM

MARTINTOWN NORTH INDUSTRIAL PARK  
APPALACHIAN REGIONAL COMMISSION  
PROJECT NUMBER MS-21383  
FOR THE BOARD OF SUPERVISORS  
UNION COUNTY, MISSISSIPPI  
February 15, 2024  
10:00 a.m.


I, WE AGREE TO COMPLETE THIS PROJECT WITHIN 75 CALENDAR DAYS.

BID		APPROX		UNIT PRICE		AMOUNT	
ITEM NO.	DESCRIPTION	QUANTITY	UNIT	DOLLARS	CENTS	DOLLARS	CENTS
*M-1	MOBILIZATION	1.0	LS	XXXXX	XXXXX	25,000.00	
P-1	EVERGREEN TREES (AS PER SPECIFICATIONS, SEE SHEET L102)	919.0	EACH	\$350.00		\$321,650.00	
*S-212-B	COMMERCIAL FERTILIZER (13:13:13)	4.0	TON	\$5,000.00		\$20,000.00	
*S-214-A	SEEDING	4.0	ACRE	\$4,000.00		\$16,000.00	
*S-215-A	VEGETATIVE MULCH	9.0	TON	\$3,000.00		\$27,000.00	
PS-1	PROJECT SIGN	1.0	EACH	\$1,000.00		\$1,000.00	
TOTAL BID:						\$410,650.00	

\*NOTE: As per attached Mississippi Standard Specifications for State Aid Road and Bridge Construction, 2004 Edition, adopted by the Office of State Aid Road Construction of the Mississippi Department of Transportation and the Federal Highway Administration.



# CERTIFICATION OF BIDDER REGARDING EQUAL EMPLOYEMENT OPPORTUNITY

<b>CERTIFICATION OF BIDDER REGARDING EQUAL EMPLOYEMENT OPPORTUNITY</b>	
<b>Instructions</b>	
<p>This certification is required pursuant to Executive Order 11246 (30 F.R. 12319-25). The implementing rules and regulations provide that any bidder or prospective contractor, or any of their proposed subcontractors, shall state as an initial part of the bid or negotiations of the contract whether it has participated in any previous contract or subcontract subject to the equal opportunity clause, and if so, whether it has filed all compliance reports due under applicable instructions.</p> <p>Where the certification indicates that the bidder has not filled a compliance report due under applicable instructions, such bidder shall be required to submit a compliance report within seven calendar days after bid opening. No contract shall be awarded unless such report is submitted.</p>	
<b>Certification by Bidder</b>	
<p>Name and Address of Bidder (include zip code)</p> <p>Patton Construction, LLC P.O. Boxx 1074 Pontotoc, MS 38863</p>	
<p>1. Bidder has participated in a previous contract or subcontract subject to the Equal Opportunity Clause. Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p>	
<p>2. Compliance reports were required to be filed in connection with such contract or subcontract. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>	
<p>3. Bidder has filed all compliance reports due under applicable instructions, including Monthly Employment Utilization Report (257). Yes <input type="checkbox"/> No <input type="checkbox"/> None Required <input checked="" type="checkbox"/></p>	
<p>3. Have you ever been or are you being considered for sanction due to violation of Executive Order 11246, as amended? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>	
<p>Name and Title of Signer (please type)</p> <p>Matt Bollinger, Manager</p>	
<p>Signature </p>	<p>Date 2/15/24</p>



## CONTRACT FORM

THIS AGREEMENT, made this \_\_\_\_ day of \_\_, \_\_\_\_, by and between the Union County Board of Supervisors,  
herein called "Owner," acting herein through its Board President, and

\_\_\_\_\_  
STRIKE OUT (a corporation) (a partnership)  
INAPPLICABLE (an individual doing business as) \_\_\_\_\_  
TERMS

Of \_\_, County of \_\_, and State of MS,

hereinafter called "Contractor."

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the OWNER, the CONTRACTOR hereby agrees with the OWNER to commence and complete the construction describe as follows:

MARTINTOWN NORTH INDUSTRIAL PARK  
APPALACHIAN REGIONAL COMMISSION  
PROJECT NUMBER MS-21383  
FOR  
THE BOARD OF SUPERVISORS  
UNION COUNTY, MISSISSIPPI

hereinafter called the project, for the sum of \_\_\_\_\_  
-----Dollars (\$) and all extra work in connection therewith, under the terms as stated in the General and Special Conditions of the Contract; and at his (it's or their) own proper cost and expense to furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to complete the said project in accordance with the conditions and prices stated in the Proposal, the General Conditions, Supplemental General Conditions and Special Conditions of the Contract, the plans, which include all maps, plats, blue prints, and other drawings and printed or written explanatory matter thereof, the specifications and contract documents therefore as prepared by Larry L. Britt PE/PS, herein entitled the Architect/Engineer, and as enumerated in Paragraph 1 of the Supplemental General Conditions, all of which are made a part hereof and collectively evidence and constitute the contract.

The Contractor hereby agrees to commence work under this contract on or before a date to be specified in a written "Notice to Proceed" of the Owner and to fully complete the project within 75 Calendar Days thereafter. The Contractor further agrees to pay, as liquidated damages, the sum of \$200.00 for each consecutive calendar day thereafter as hereinafter provided in Paragraph 19 of the General Conditions.

The OWNER agrees to pay the CONTRACTOR in current funds for the performance of the contract, subject to additions and deductions, as provided in the General Conditions of the Contract, and to make payments on account thereof as provided in Paragraph 25, "Payment to Contractor," of the General Conditions.

IN WITNESS WHEREOF, the parties to these presents have executed this contract in Four (4) counterparts, each of which shall be deemed an original, in the year and day first above mentioned.

(Seal)

ATTEST:

(Secretary)

(Witness)

UNION COUNTY BOARD OF  
SUPERVISORS

(Owner)

By:

SAM TAYLOR, PRESIDENT

(Title)

(Seal)

(Secretary)

(Witness)

(Contractor)

By:

(Title)

(Address and Zip Code)

NOTE: Secretary of the Owner should attest. If Contractor is a corporation, Secretary should attest

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: that

\_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_  
(Address of Contractor)

A \_\_\_\_\_, hereinafter called  
(Corporation, Partnership, or Individual)

Principal, and \_\_\_\_\_  
(Name of Surety)

\_\_\_\_\_  
(Address of Surety)

hereinafter called Surety, are held and firmly bound unto

UNION COUNTY BOARD OF SUPERVISORS

109 East Main Street, New Albany, Mississippi

hereinafter called OWNER, in the penal sum of \_\_\_\_\_Dollars, \$, in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the OWNER, dated the day of \_\_\_\_, , a copy of which is hereto attached and made a part hereof for the construction of:

MARTINTOWN NORTH INDUSTRIAL PARK

APPALACHIAN REGIONAL COMMISSION

PROJECT NUMBER MS-21383

FOR THE BOARD OF SUPERVISORS, UNION COUNTY, MISSISSIPPI

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extensions thereof which may be granted by the OWNER, with or without notice to the Surety and during the one year guaranty period, and if he shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the OWNER from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the OWNER all outlay and expense which the OWNER may incur in making good any default, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to WORK to be performed thereunder or the SPECIFICATIONS accompanying the same shall in any wise affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in \_\_\_\_ counterparts, each one of which shall be deemed an original, this the \_\_\_\_ day of \_\_\_\_\_.

**ATTEST:**

_____	_____
	(Principle)
_____	BY _____
(Principle) Secretary	(S)
(SEAL)	
_____	_____
(Witness as to Principle)	(Address)
_____	_____
(Address)	
_____	

**ATTEST:**

_____	_____
(Surety) Secretary	(Surety)
(SEAL)	
_____	BY _____
(Witness as to Principle)	Attorney-in-Fact
_____	_____
(Address)	(Address)

NOTE: Date of BOND must not be prior to date of Contract. If CONTRACTOR is a Partnership, all partners should execute BOND.

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the PROJECT is located.

**PAYMENT BOND**

KNOW ALL MEN BY THESE PRESENTS: that

\_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_  
(Address of Contractor)

a \_\_\_\_\_, hereafter called Principal,  
(Corporation, Partnership, or Individual)

and \_\_\_\_\_  
(Name of Surety)

\_\_\_\_\_  
(Address of Surety)

hereinafter called Surety, are held and firmly bound unto

MARSHALL COUNTY BOARD OF SUPERVISORS  
(Name of Owner)

109 East Main Street, New Albany, Mississippi

hereinafter called OWNER, in the penal sum of -----Dollars, \$\_\_\_\_\_ in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents. THE CONTITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the OWNER, dated the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, a copy of which is hereto attached and made a part hereof for the construction of:

MARTINTOWN NORTH INDUSTRIAL PARK  
APPALACHIAN REGIONAL COMMISSION  
PROJECT NUMBER MS-21383  
FOR THE BOARD OF SUPERVISORS  
UNION COUNTY, MISSISSIPPI

NOW, THEREFORE, if the Principal shall promptly make payment to all persons, firms, SUBCONTRACTORS, and corporations furnishing materials for performing labor in the prosecution of the WORK provided for in such contract, and any authorized extension or modification thereof, including all amount due to materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such WORK, and all insurance premiums on said WORK, and for all labor, performed in such WORK whether by SUBCONTRACTOR or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the WORK to be performed thereunder or the SPECIFICATIONS accompanying the same shall in any wise affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration of addition to the terms of the contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder whose claim may be unsatisfied.

PROVIDED, FURTHER, that the said Surety for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the WORK to be performed thereunder or the SPECIFICATIONS accompanying the same shall in any wise affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration of addition to the terms of the contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in 4 counterparts, each one of which shall be deemed an original, this the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**ATTEST:**

\_\_\_\_\_

\_\_\_\_\_  
(Principle)

\_\_\_\_\_  
(Principle) Secretary

BY

\_\_\_\_\_  
(S)

(SEAL)

\_\_\_\_\_  
(Witness as to Principle)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address)

**ATTEST:**

\_\_\_\_\_  
(Surety) Secretary

\_\_\_\_\_  
(Surety)

(SEAL)

BY

\_\_\_\_\_  
(S)

\_\_\_\_\_  
(Witness as to Principle)

\_\_\_\_\_  
Attorney-in-Fact

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address)

NOTE: Date of BOND must not be prior to date of Contract. If CONTRACTOR is a Partnership, all partners should execute BOND.

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the PROJECT is located.

## CERTIFICATE OF OWNER'S ATTORNEY

I, the undersigned, \_\_\_\_\_, the duly authorized  
and acting legal representative of \_\_\_\_\_,

do hereby certify as follows:

I have examined the attached contract(s) and surety bonds and the manner of execution thereof, and I am of the opinion that each of the aforesaid agreements has been duly executed by the proper parties thereto acting through their duly authorized representatives; that said representatives have full power and authority to execute said agreements on behalf of the respective parties named thereon; and that the foregoing agreements constitute valid and legally binding obligations upon the parties executing the same in accordance with terms, conditions and provisions thereof.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

MARTINTOWN NORTH INDUSTRIAL PARK  
APPALACHIAN REGIONAL COMMISSION  
PROJECT NUMBER MS-21383  
FOR THE BOARD OF SUPERVISORS  
UNION COUNTY, MISSISSIPPI

**NOTICE OF AWARD**

TO:

The OWNER has considered the BID submitted by you dated for the above described work in response to its Advertisement for Bids and Information for Bidders.

You are hereby notified that your BID has been accepted for items in the amount of \_\_\_\_\_.

You are required by the Information for Bidders to execute the Agreement and furnish the required Contractor's Performance Bond and Payment Bond within ten calendar days from the date of this Notice to you.

If you fail to execute said Agreement and to furnish said bonds within ten days from the date of this notice, said OWNER will be entitled to consider all your rights arising out of the OWNER's acceptance of your BID as abandoned and as a forfeiture of your Bid Bond. The OWNER will be entitled to such rights as may be granted by law.

You are required to return an acknowledged copy of this NOTICE OF AWARD to the OWNER.  
Dated this \_\_\_\_ day of \_\_\_\_\_, 2024.

OWNER

Owner: \_\_\_\_\_  
By: SAM TAYLOR, PRESIDENT

**ACCEPTANCE OF NOTICE**

Receipt of the above NOTICE OF AWARD is hereby acknowledged by

\_\_\_\_\_ this the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.  
(CONTRACTOR)



**MARTINTOWN NORTH INDUSTRIAL PARK  
APPALACHIAN REGIONAL COMMISSION  
PROJECT NUMBER MS-21383  
FOR THE BOARD OF SUPERVISORS  
UNION COUNTY, MISSISSIPPI**

**NOTICE TO PROCEED**

TO:

**Project: MARTINTOWN NORTH INDUSTRIAL PARK  
APPALACHIAN REGIONAL COMMISSION  
PROJECT NUMBER MS-21383  
FOR THE BOARD OF SUPERVISORS  
UNION COUNTY, MISSISSIPPI**

You are hereby notified to commence work in accordance with the Agreement dated on or before \_\_\_\_\_, 2024, and you are to complete all WORK within 75 consecutive calendar days thereafter.

The date of completion of all WORK is therefore \_\_\_\_\_.  
In addition, work on the interim completion items shall be completed by \_\_\_\_\_.

UNION COUNTY BOARD OF SUPERVISORS

**Owner:** \_\_\_\_\_  
By: SAM TAYLOR  
Title: PRESIDENT

**ACCEPTANCE OF NOTICE**

Receipt of the above NOTICE TO PROCEED is hereby acknowledged by

\_\_\_\_\_ this the \_\_\_\_ of \_\_\_\_\_, 2024.

By: \_\_\_\_\_

Title: \_\_\_\_\_

U.S. Department of Housing and Urban Development

Community Development Block  
Grant Program

GENERAL CONDITIONS

1. Contract and Contract Documents

The project to be constructed pursuant to this contract will be financed with assistance from the Department of Housing and Urban Development and is subject to all applicable Federal laws and regulations.

The Plans, Specifications and Addenda, hereinafter enumerated in Paragraph 1 of the Supplemental General Conditions shall form part of this Contract and the provisions thereof shall be as binding upon the parties hereto as if they were herein fully set forth. The table of contents, titles, headings, running headlines and marginal notes contained herein and in said documents are solely to facilitate reference to various provisions of the Contract Documents and in no way affect, limit or cast light on the interpretation of the provisions to which they refer.

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\*See alphabetical subject index at end

## Provisions

### 2. Definitions

The following terms as used in this contract are respectively defined as follows:

- (a) "Contractor": A person, firm or corporation with whom the contract is made by the Owner.
- (b) "Subcontractor": A person, firm or corporation supplying labor and materials or only labor for work at the site of the project for, and under separate contract or agreement with the Contractor.
- (c) "Work on (at) the project": Work to be performed at the location of the project, including the transportation of materials and supplies to or from the location of the project by employees of Contractor or any Subcontractor.

### 3. Additional Instructions and Detail Drawings

The Contractor will be furnished additional instructions and detail drawings as necessary to carry out the work included in the contract. The additional drawings and instruction thus supplied to the Contractor will coordinate with the Contract Documents and will be so prepared that they can be reasonably interpreted as part thereof. The Contractor shall carry out the work in accordance with the additional detail drawings and instructions. The Contractor and the Architect/Engineer will prepare jointly (a) a schedule, fixing the dates at which special detail drawings will be required, such drawings, if any, to be furnished by the Architect/Engineer in accordance with said schedule, and (b) a schedule fixing the respective dates for the submission of shop drawings, the beginning of manufacture, testing and installation of materials, supplies and equipment, and the completion of the various parts of the work; each such schedule to be subject to change from time to time in accordance with the progress of work.

### 4. Shop or Setting Drawings

The Contractor shall submit promptly to the Architect/Engineer two copies of each shop or setting drawing prepared in accordance with the schedule predetermined as aforesaid. After examination of such drawings by the Architect/Engineer and the return thereof, the Contractor shall make such corrections to the drawings as have been indicated and shall furnish the Architect/Engineer with two corrected copies. If requested by the Architect/Engineer the Contractor must furnish additional copies. Regardless of corrections made in or approval given to such drawings by the Architect/Engineer, the Contractor will nevertheless be responsible for the accuracy of such drawings and for their conformity to the Plans and Specifications, unless he notifies the Architect/Engineer in writing of any deviations at the time he furnishes such drawings.

### 5. Materials, Services, and Facilities

- (a) It is understood that except as otherwise specifically stated in the Contract Documents, the Contractor shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, superintendence, temporary construction of every nature, and all other services and facilities of every nature whatsoever necessary to execute, complete, and deliver the work within the specified time.
- (b) Any work necessary to be performed after regular working hours, on Sundays or Legal Holidays, shall be performed without additional expense to the Owner.

### 6. Contractor's Title to Materials

No materials or supplies for the work shall be purchased by the Contractor or by any Subcontractor subject to any chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller. The Contractor warrants that he has good title to all materials and supplies used by him in the work, free from all liens, claims or encumbrances.

#### **7. Inspection and Testing of Materials**

- (a) All materials and equipment used in the construction of the project shall be subject to adequate inspection and testing in accordance with accepted standards. The laboratory or inspection agency shall be selected by the Owner. The Owner will pay for all laboratory inspection service direct, and not as a part of the contract.
- (b) Materials of construction, particularly those upon which the strength and durability of the structure may depend, shall be subject to inspection and testing to establish conformance with specifications and suitability for uses intended.

#### **8. "Or Equal" Clause**

Whenever a material, article or piece of equipment is identified on the plans or in the specifications by reference to manufacturers' or vendors' names, trade names, catalogue numbers, etc., it is intended merely to establish a standard; and, any material, article, or equipment of other manufacturers and vendors which will perform adequately the duties imposed by the general design will be considered equally acceptable provided the material, article, or equipment so proposed, is, in the opinion of the Architect/Engineer, of equal substance and function. It shall not be purchased or installed by the contractor without the Architect/Engineer's written approval.

#### **9. Patents**

- (a) The Contractor shall hold and save the Owner and its officers, agents, servants, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of, any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the contract, including its use by the Owner, unless otherwise specifically stipulated in the Contract Documents.
- (b) License or Royalty Fees: License and/or Royalty Fees for the use of a process which is authorized by the Owner of the project must be reasonable, and paid to the holder of the patent, or his authorized licensee, direct by the Owner and not by or through the Contractor.
- (c) If the Contractor uses any design, device, or materials covered by letters, patent or copyright, he shall provide for such use by suitable agreement with the Owner of such patented or copyrighted design, device or material. It is mutually agreed and understood, that, without exception, the contract prices shall include all royalties or costs arising from the use of such design, device or materials, in any way involved in the work. The Contractor and/or his Sureties shall indemnify and save harmless the Owner of the project from any and all claims for infringement by reason of the use of such patented or copyrighted design, device or materials-or any trademark or copyright in connection with work agreed to be performed under this contract, and shall indemnify the Owner for any cost, expense or damage which it may be obligated to pay by reason of such infringement at any time during the prosecution of the work or after completion of the work.

#### **10. Surveys, Permits, and Regulations**

Unless otherwise expressly provided for in the Specifications, the Owner will furnish to the Contractor all surveys necessary for the execution of the work.

The Contractor shall procure and pay all permits, licenses and approvals necessary for the execution of his contract.

The Contractor shall comply with all laws, ordinances, rules, orders, and regulations relating to performances of the work, the protection of adjacent property, and the maintenance of passageways, guard fences or other protective facilities.

#### **11. Contractor's Obligations**

The Contractor shall and will, in good workmanlike manner, do and perform all work and furnish all supplies and materials, machinery, equipment, facilities and means, except as herein otherwise expressly specified, necessary or proper to perform and complete all the work required by this contract, within the time herein specified, in accordance with the provisions of this contract and said specifications and in accordance with the plans and drawings covered by this contract any and all supplemental plans and drawings, and accordance with the directions of the Architect/Engineer as given from time to time during the progress of the work. He shall furnish, erect, maintain and remove such construction plant and such temporary works as may be required.

The Contractor shall observe, comply with, and be subject to all terms, conditions, requirements, and limitations of the contract and specifications and shall do, carry on, and complete the entire work to the satisfaction of the Architect/Engineer and the Owner.

#### **12. Weather Conditions**

In the event of temporary suspension of work, or during inclement weather, or whenever the Architect/Engineer shall direct, the Contractor will, and will cause his subcontractors to protect carefully his and their work and materials against damage or injury from the weather. If, in the opinion of the Architect/Engineer, any work or materials shall have been damaged or injured by reason of failure on the part of the Contractor or any of his Subcontractors so to protect his work such materials shall be removed and replaced at the expense of the Contractor.

#### **13. Protection of Work and PropertyEmergency**

The Contractor shall at all times safely guard the Owner's property from injury or loss in connection with this contract. He shall at all times safely guard and protect his own work, and that of adjacent property from damage. The Contractor shall replace or make good any such damage, loss or injury unless such be caused directly by errors contained in the contract or by the Owner, or his duly authorized representatives.

In case of an emergency which threatens loss or injury of property, and/or safety of life, the Contractor will be allowed to act, without previous instructions from the Architect/Engineer, in a diligent manner. He shall notify the Architect/Engineer immediately thereafter. Any claim for compensation by the Contractor due to such extra work shall be promptly submitted to the Architect/Engineer for approval.

Where the Contractor has not taken action but has notified the Architect/Engineer of an emergency threatening injury to persons or damage to the work or any adjoining property, he shall act as instructed or authorized by the Architect/Engineer.

The amount of reimbursement claimed by the Contractor on account of any emergency action shall be determined in the manner provided in Paragraph 17 of the General Conditions.

#### **14. Inspection**

The authorized representatives and agents of the Department of Housing and Urban Development shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records.

#### **15. Reports, Records, and Data**

The Contractor shall submit to the Owner such schedule of quantities and costs, progress schedules, payrolls, reports, estimates, records, and other data as the Owner may request concerning work performed or to be performed under this contract.

#### **16. Superintendence by Contractor**

At the site of the work the Contractor shall employ a construction superintendent or foreman who shall have full authority to act for the Contractor. It is understood that such representative shall be acceptable to the Architect/Engineer and shall be one who can be continued in that capacity for the particular job involved unless he ceases to be on the Contractor's payroll.

#### **17. Changes in Work**

No changes in the work covered by the approved Contract Documents shall be made without having prior written approval of the Owner. Charges or credits for the work covered by the approved change shall be determined by one or more, or a combination of the following methods:

- (a) Unit bid prices previously approved.
- (b) An agreed lump sum.
- (c) The actual cost of:
  - 1. Labor, including foremen;
  - 2. Materials entering permanently into the work;
  - 3. The ownership or rental cost of construction plant and equipment during the time of use on the extra work;
  - 4. Power and consumable supplies for the operation of power equipment;
  - 5. Insurance;
  - 6. Social Security and old age and unemployment contributions. To the cost under (c) there shall be added a fixed fee to be agreed upon but not to exceed fifteen percent (15%) of the actual cost of the work. The fee shall be compensation to cover the cost of supervision, overhead, bond, profit and any other general expenses.

#### **18. Extras**

Without invalidating the contract, the Owner may order extra work or make changes by altering, adding to or deducting from the work, the contract sum being adjusted accordingly, and the consent of the Surety being first obtained where necessary or desirable. All the work of the kind bid upon shall be paid for at the price stipulated in the proposal, and no claims for any extra work or materials shall be allowed unless the work is ordered in writing by the Owner or its Architect/Engineer, acting officially for the Owner, and the price is stated in such order.

#### **19. Time for Completion and Liquidated Damages**

It is hereby understood and mutually agreed, by and between the Contractor and the Owner, that the date of beginning and the time for completion as specified in the contract of the work to be done hereunder are ESSENTIAL CONDITIONS of this contract; and it is further

mutually understood and agreed that the work embraced in this contract shall be commenced on a date to be specified in the "Notice to Proceed."

The Contractor agrees that said work shall be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and the Owner, that the time for the completion of the work described herein is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.

If the said Contractor shall neglect, fail or refuse to complete the work within the time herein specified, or any proper extension thereof granted by the Owner, then the Contractor does hereby agree, as a part consideration for the awarding of this contract, to pay to the Owner, the amount specified in the contract, not as a penalty but as liquidated damages for such breach of contract as hereinafter set forth, for each and every calendar day that the Contractor shall be in default after the time stipulated in the contract for completing the work.

The said amount is fixed and agreed upon by and between the Contractor and the Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain, and said amount is agreed to be the amount of damages which the Owner would sustain and said amount shall be retained from time to time by the Owner from current periodical estimates.

It is further agreed that time is of the essence of each and every portion of this contract and of the specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the contract an additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be of the essence of this contract. Provided, that the Contractor shall not be charged with liquidated damages or any excess cost when the Owner determines that the Contractor is without fault and the Contractor's reason for the time extension are acceptable to the Owner; Provided, further, that the Contractor shall not be charged with liquidated damages or any excess cost when the delay in completion of work is due:

- (a) To any preference, priority or allocation order duly issued by the Government;
- (b) To unforeseeable cause beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God, or of the public enemy, acts of the Owner, acts of another Contractor in the performance of a contract with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and severe weather; and
- (c) To any delays of Subcontractors or suppliers occasional by any of the causes specified in subsections (a) and (b) of this article;

Provided, further, that the Contractor shall within ten (10) days from the beginning of such delay, unless the Owner shall grant a further period of time prior to the date of final settlement of the contract, notify the Owner, in writing, of the causes of the delay, who shall ascertain the facts and extent of the delay and notify the Contractor within a reasonable time of its decision in the matter.

## **20. Correction of Work**

All work, all materials, whether incorporated in the work or not, all processes of manufacture, and all methods of construction shall be at all times and places subject to the inspection of the Architect/Engineer who shall be the final judge of the quality and suitability of the work, materials, processes of manufacture, and methods of construction for the purposes for which they are used. Should they fail to meet his approval they shall be forthwith reconstructed, made good, replaced and/or corrected, as the case may

be, by the Contractor at his own expense. Rejected material shall immediately be removed from the site. If, in the opinion of the Architect/Engineer, it is undesirable to replace any defective or damaged materials or to reconstruct or correct any portion of the work injured or not performed in accordance with the Contract Documents, the compensation to be paid to the Contractor hereunder shall be reduced by such amount as in the judgment of the Architect/Engineer shall be equitable.

#### **21. Subsurface Conditions Found Different**

Should the Contractor encounter sub-surface and/or latent conditions at the site materially differing from those shown on the Plans or indicated in the Specifications, he shall immediately give notice to the Architect/Engineer of such conditions before they are disturbed. The Architect/Engineer will thereupon promptly investigate the conditions, and if he finds that they materially differ from those shown on the Plans or indicated in the Specifications, he will at once make such decrease of cost resulting from such changes to be adjusted in the manner provided in Paragraph 17 of the General Conditions.

#### **22. Claims for Extra Cost**

No claim for extra work or cost shall be allowed unless the same was done in pursuance of a written order of the Architect/Engineer approved by the Owner, as aforesaid, and the claim presented with the first estimate after the changed or extra work is done. When work is performed under the terms of subparagraph 17(c) of the General Conditions, the Contractor shall furnish satisfactory bills, payrolls and vouchers covering all items of cost and when requested by the Owner, give the Owner access to accounts relating thereto.

#### **23. Right of the Owner to Terminate Contract**

In the event that any of the provisions of this contract are violated by the Contractor, or by any of his subcontractors, the Owner may serve written notice upon the Contractor and the Surety of its intention to terminate the contract, such notices to contain the reasons for such intention to terminate the contract, and unless within ten (10) days after the serving of such notice upon the Contractor, such violation or delay shall cease and satisfactory arrangement of correction be made, the contract shall, upon the expiration of said ten (10) days, cease and terminate. In the event of any such termination, the Owner shall immediately serve notice thereof upon the Surety and the Contractor and the Surety shall have the right to take over and perform the contract: Provides, however, that if the Surety does not commence performance thereof within ten (10) days from the date of the mailing to such Surety of notice of termination, the Owner may take over the work and prosecute the same to completion by contract or by force account for the account and at the expense of the Contractor and the Contractor and his Surety shall be liable to the Owner for any excess cost occasioned the Owner thereby, and in such event the Owner may take possession of and utilize in completing the work, such materials, appliances, and plant as may be on the site of the work and necessary thereof.

#### **24. Construction Schedule and Periodic Estimates**

Immediately after execution and delivery of the contract, and before the first partial payment is made, the Contractor shall deliver to the Owner an estimated construction progress schedule in form satisfactory to the Owner, showing the proposed dates of commencement and completion of each of the various subdivisions of work required under the Contract Documents and the anticipated amount of each monthly payment that will become due the Contractor in accordance with the progress schedule. The Contractor shall also furnish on forms to be supplied by the Owner (a) a detailed estimate giving a complete breakdown of the contract price and (b) periodic itemized estimates of work done for the purpose of making partial payments thereon. The costs employed in making up any of these schedules



will be used only for determining the basis of partial payments and will not be considered as fixing a basis for additions or deductions from the contract price.

## 25. Payments to Contractor

- (a) Not later than the 15<sup>th</sup> day of each calendar month the Owner shall make a progress payment to the Contractor on the basis of a duly certified and approved estimate of the work performed during the preceding calendar month under this contract, but to insure the proper performance of this contract, the Owner shall retain ten percent (10%) of the amount of each estimate until final completion and acceptance of all work covered by this contract; Provided, that the Contractor shall submit his estimate not later than the first day of the month; Provided, further, that the Owner at any time after fifty percent (50%) of the work has been completed, if it finds that satisfactory progress is being made, may make any of the remaining progress payments in full; Provided, further, that on completion and acceptance of each separate building, public work, or other division of the contract, on which the price is stated separately in the contract, payment may be made in full, including retained percentages thereon, less authorized deductions.
- (b) In preparing estimates the material delivered on the site and preparatory work done may be taken into consideration.
- (c) All material and work covered by partial payments made shall thereupon become the sole property of the Owner, but this provision shall not be construed as relieving the Contractor from the sole responsibility for the care and protection of materials and work upon which payments have been made or the restoration of any damaged work, or as a waiver of the right of the Owner to require the fulfillment of all of the terms of the contract.
- (d) Owner's Right to Withhold Certain Amounts and Make Application Thereof: The Contractor agrees that he will indemnify and save the Owner harmless from all claims growing out of the lawful demands of subcontractors, laborers, workmen, mechanics, materialmen, and furnishers of machinery and parts thereof, equipment, power tools, and all supplies, including commissary, incurred in the furtherance of the performance of this contract. The Contractor shall, at the Owner's request, furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged, or waived. If the Contractor fails so to do, then the Owner may, after having served written notice on the said Contractor, either pay unpaid bills, of which the Owner has notice, direct, or withhold from the Contractor's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the Contractor shall be resumed, in accordance with the terms of this contract, but in no event shall the provisions of this sentence be construed to impose any obligations upon the Owner to either the Contractor or his Surety. In paying any unpaid bills of the Contractor, the Owner shall be deemed the agent of the Contractor, and any payment so made by the Owner shall be considered as a payment made under the contract by the Owner to the Contractor and the Owner shall not be liable to the Contractor for any such payments made in good faith.

## 26. Acceptance of Final Payment Constitutes Release

The acceptance by the Contractor of final payment shall be and shall operate as a release to the Owner of all claims and all liability to the Contractor for all things done or furnished in connection with this work and for every act and neglect of the Owner and others relating to or arising out of this work. No payment, however, final or otherwise, shall operate to release the Contractor or his sureties from any obligations under this contract or the Performance and Payment Bond.

## 27. Payments by Contractor

The Contractor shall pay (a) for all transportation and utility services not later than the 20<sup>th</sup> day of the calendar month following that in which services are rendered, (b) for all materials, tools, and other expendable equipment to the extent of ninety percent (90%) of the cost thereof, not later than the 20<sup>th</sup> day of the calendar month following that in which such materials, tools, and equipment are delivered at the site of the project, and the balance of the cost thereof, not later than the 30<sup>th</sup> day following the completion of that part of the work in or on which such materials, tools, and equipment are incorporated or used, and (c) to each of his subcontractors, not later than the 5<sup>th</sup> day following each payment to the Contractor, the respective amounts allowed the Contractor on account of the work performed by his subcontractors to the extent of each subcontractor's interest therein.

## 28. Insurance

The Contractor shall not commence work under this contract until he has obtained all the insurance required under this paragraph and such insurance has been approved by the Owner, nor shall the Contractor allow any subcontractor to commence work on his subcontract until the insurance required of the subcontractor has been so obtained and approved.

- (a) Compensation Insurance: The Contractor shall procure and shall maintain during the life of this contract Workmen's Compensation Insurance as required by applicable State or territorial law for all of his employees to be engaged in work at the site of the project under this contract and, in case of any such work sublet, the Contractor shall require the subcontractor similarly to provide Workmen's Compensation Insurance for all of the latter's employees to be engaged in such work unless such employees are covered by the protection afforded by the Contractor's Workmen's Compensation Insurance. In case any class of employees engaged in hazardous work on the project under this contract is not protected under the Workmen's Compensation Statute, the Contractor shall provide and shall cause each subcontractor to provide adequate employer's liability insurance for the protection of such of his employees as are not otherwise protected.
- (b) Contractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance: The Contractor shall procure and shall maintain during the life of this contract Contractor's Public Liability Insurance, Contractor's Property Damage Insurance and Vehicle Liability Insurance in the amounts specified in the Supplemental General Conditions.
- (c) Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance: The Contractor shall either (1) require each of his subcontractors to procure and to maintain during the life of his subcontract, Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance of the type and in the amounts specified in the Supplemental General Conditions specified in subparagraph (b) hereof, or, (2) insure the activities of his policy, specified in subparagraph (b) hereof.

- (d) Scope of Insurance and Special Hazards: The insurance required under subparagraphs (b) and (c) hereof shall provide adequate protection for the Contractor and his subcontractors, respectively, against damage claims which may arise from operations under this contract, whether such operations be by the insured or by anyone directly or indirectly employed by him and, also against any of the special hazards which may be encountered in the performance of this contract as enumerated in the Supplemental General Conditions.
- (e) Builder's Risk Insurance (Fire and Extended Coverage): Until the project is completed and accepted by the Owner, the Owner, or Contractor (at the Owner's option as indicated in the Supplemental General Conditions, Form HUD-4238-N) is required to maintain Builder's Risk Insurance (fire and extended coverage) on a 100 percent completed value basis on the insurable portion of the project for the benefit of the Owner, the Contractor, subcontractors as their interests may appear. The Contractor shall not include any costs for Builder's Risk Insurance (fire and extended coverage) premiums during construction unless the Contractor is required to provide such insurance; however, this provision shall not release the Contractor from his obligation to complete, according to plans and specifications, the project covered by the contract, and the Contractor and his Surety shall be obligated to full performance of the Contractor's undertaking.
- (f) Proof of Carriage of Insurance: The Contractor shall furnish the Owner with certificates showing the type, amount, class of operations covered, effective dates and date of expiration of policies. Such certificates shall also contain substantially the following statement: "The insurance covered by this certificate will not be cancelled or materially altered, except after then (10) days written notice has been received by the Owner."

## **29. Contract Security**

The Contractor shall furnish a performance bond in an amount at least equal to one hundred percent (100%) of the contract prices as security for the faithful performance of this contract and also a payment bond in an amount not less than one hundred percent (100%) of the contract price or in a penal sum not less than that prescribed by State, territorial or local law, as security for the payment of all persons performing labor on the project under this contract and furnishing materials in connection with this contract. The performance bond and the payment bond may be in one or in separate instruments in accordance with local law.

## **30. Additional or Substitute Bond**

If at any time the Owner for justifiable cause shall be or become dissatisfied with any surety or sureties, then upon the Performance or Payment Bonds, the Contractor shall within five (5) days after notice from the Owner so to do, substitute an acceptable bond (or bonds) in such form and sum and signed by such other surety or sureties as may be satisfactory to the Owner. The premiums on such bond shall be paid by the Contractor. No further payments shall be deemed due nor shall be made until the new surety or sureties shall have furnished such an acceptable bond to the Owner.

## **31. Assignments**

The Contractor shall not assign the whole or any part of this contract or any moneys due or to become due hereunder without written consent of the Owner. In case the Contractor assigns all or any part of any moneys due or to become due under this contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any moneys due or to become due to the Contractor shall be subject to prior claims of all persons, firms and corporations of services rendered or materials supplied for the performance of the work called for in this

contract.

### **32. Mutual Responsibility of Contractors**

If, through acts of neglect on the part of the Contractor, any other Contractor or any subcontractor shall suffer loss or damage on the work, the Contractor agrees to settle with such other Contractor or subcontractor by agreement or arbitration if such other Contractor or subcontractors will so settle. If such other Contractor or subcontractor shall assert any claim against the Owner on account of any damage alleged to have been sustained, the Owner shall notify the Contractor, who shall indemnify and save harmless the Owner against any such claim.

### **33. Separate Contract**

The Contractor shall coordinate his operations with those of other Contractors. Cooperation will be required in the arrangement for the storage of materials and in the detailed execution of the work. The Contractor, including his subcontractors, shall keep informed of the progress and the detail work of other Contractors and shall notify the Architect/Engineer immediately of lack of progress or defective workmanship on the part of other Contractors. Failure of a contractor to keep informed of the work progressing on the site and failure to give notice of lack of progress or defective workmanship by others shall be construed as acceptance by him of the status of the work as being satisfactory for proper coordination with his own work.

### **34. Subcontracting**

- (a) The Contractor may utilize the services of approved specialty subcontractors on those parts of the work which, under normal contracting practices, are performed by specialty subcontractors.
- (b) The Contractor shall not award any work to any subcontractor without prior written approval of the Owner, which approval will not be given until the Contractor submits to the Owner a written statement concerning the proposed award to the subcontractor, which statement shall contain such information as the Owner may require.
- (c) The Contractor shall be as fully responsible to the Owner for the acts and omissions of his subcontractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.
- (d) The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractors to the Contractor by the terms of the General Conditions and other contract documents insofar as applicable to the work of subcontractors and to give the Contractor the same power as regards terminating any subcontract that the Owner may exercise over the Contractor under any provision of the contract documents.
- (e) Nothing contained in this contract shall create any contractual relation between any subcontractor and the Owner.

### **35. Architect/Engineer's Authority**

The Architect/Engineer shall give all orders and directions contemplated under this contract and specifications, relative to the execution of the work. The Architect/Engineer shall determine the amount, quality, acceptability, and fitness of the several kinds of work and materials which are to be paid for under this contract and shall decide all questions which may arise in relation to said work and the construction thereof. The Architect/Engineer's estimates and decisions shall be final and conclusive, except as herein otherwise expressly provided. In case any question shall arise between the parties hereto relative to said contract or specifications, the determination or decision of the Architect/Engineer shall be a condition precedent to the right of the Contractor to

receive any money or payment for work under this contract affected in any manner or to any extent by such question.

The Architect/Engineer shall decide the meaning and intent of any portion of the specifications and any plans or drawings where the same may be found obscure or be in dispute. Any differences or conflicts in regard to their work which may arise between the Contractor under this contract and other Contractors performing work for the Owner shall be adjusted and determined by the Architect/Engineer.

### **36. Stated Allowances**

The Contractor shall include in his proposal the cash allowances stated in the Supplemental General Conditions. The Contractor shall purchase the "Allowed Materials" as directed by the Owner on the basis of the lowest and best bid of at least three competitive bids. If the actual price for purchasing the "Allowed Materials" is more or less than the "Cash Allowance," the contract price shall be adjusted accordingly. The adjustment in contract price shall be made on the basis of the purchase price without additional charges for overhead, profit, insurance or any other incidental expenses. The cost of installation of the "Allowed Materials" shall be included in the applicable sections of the Contract Specifications covering this work.

### **37. Use of Premises and Removal of Debris**

The Contract expressly undertakes at his own expense:

- (a) to take every precaution against injuries to persons or damage to property;
- (b) to store his apparatus, materials, supplies and equipment in such orderly fashion at the site of the work as will not unduly interfere with the progress of his work or the work of any other contractors;
- (c) to place upon the work or any part thereof only such loads as are consistent with the safety of that position of the work;
- (d) to clean up frequently all refuse, rubbish, scrap materials, and debris caused by his operations, to the end that at all times the site of the work shall present a neat, orderly and workmanlike appearance;
- (e) before final payment to remove all surplus material, false-work, temporary structures, including foundations thereof, plant of any description and debris of every nature resulting from his operations, and to put the site in a neat, orderly condition;
- (f) to effect all cutting, fitting or patching of his work required to make the same to conform to the plans and specifications and, except with the consent of the Architect/Engineer, not to cut or otherwise alter the work of any other Contractor.

### **38. Quantities of Estimate**

Wherever the estimated quantities of work to be done and materials to be furnished under this contract are shown in any of the documents including the proposal, they are given for use in comparing bids and the right is especially reserved except as herein otherwise specifically limited, to increase or diminish them as may be deemed reasonably necessary or desirable by the Owner to complete the work contemplated by this contract, and such increase or diminution shall in no way vitiate this contract, nor shall any such increase or diminution give cause for claims or liability for damages.

### **39. Lands and Rights-of-Way**

Prior to the start of construction, the Owner shall obtain all lands and rights-of-way necessary for the carrying out and completion of work to be performed under this contract.

#### **40. General Guaranty**

Neither the final certificate of payment nor any provision in the Contract Documents, nor partial or entire occupancy of the premises by the Owner; shall constitute an acceptance of work not done in accordance with the Contract Documents or relieve the Contractor of liability in respect to any express warranties or responsibility for faulty materials or workmanship. The Contractor shall remedy any defects in the work and pay for any damage to other work resulting therefrom, which shall appear within a period of one year from the date of final acceptance of the work unless a longer period is specified. The Owner will give notice of observed defects with reasonable promptness.

#### **41. Conflicting Conditions**

Any provision in any of the Contract Documents which may be in conflict or inconsistent with any of the paragraphs in these General Conditions shall be void to the extent of such conflict or inconsistency.

#### **42. Notice and Service Thereof**

Any notice to any Contractor from the Owner relative to any part of this contract shall be in writing and considered delivered and the service thereof completed, when said notice is posted, by certified or registered mail, to the said Contractor at his last given address, or delivered in person to the said Contractor or his authorized representative on the work.

#### **43. Provisions Required by Law Deemed Inserted**

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

#### **44. Protection of Lives and Health**

"The Contractor shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all damages to person or property, either on or off the site, which occur as a result of his prosecution of the work. The safety provisions of applicable laws and building and construction codes, in addition to specific safety and health regulations described by Chapter XIII, Bureau of Labor Standards, Department of Labor, Part 1518, Safety and Health Regulations for Construction, as outlined in the Federal Register, Volume 36, No. 75, Saturday, April 17, 1971. Title 29-LABOR, shall be observed and the contractor shall take or cause to be taken, such additional safety and health measures as the Contracting Authority may determine to be reasonably necessary."

#### **45. Subcontracts**

"The Contractor will insert in any subcontracts the Federal Labor Standards Provisions contained herein and such other clauses as the Department of Housing and Urban Development may, by instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made."

#### **46. Interest of Member of or Delegate to Congress**

No member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

#### **47. Other Prohibited Interests**

No official of the Owner who is authorized in such capacity and on behalf of the Owner to negotiate, make, accept or approve, or to take part in negotiating, making, accepting, or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with the construction of the project, shall become directly or indirectly interested personally in this contract or in any part thereof. No officer, employee, architect, attorney, engineer or inspector of or for the Owner who is authorized in such capacity and on behalf of the Owner to exercise any legislative, executive, supervisory or other similar functions in connection with the construction of the project, shall become directly or indirectly interested personally in this contract or in any part thereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to the project.

#### **48. Use and Occupancy Prior to Acceptance by Owner**

The Contractor agrees to the use and occupancy of a portion or unit of the project before formal acceptance by the Owner, provided the Owner:

- (a) Secures written consent of the Contractor except in the event, in the opinion of the Architect/Engineer, the Contractor is chargeable with unwarranted delay in final cleanup of punch list items or other contract requirements.
- (b) Secures endorsement from the insurance-carrier and consent of the surety permitting occupancy of the building or use of the project during the remaining period of construction, or
- (c) When the project consists of more than one building, and one of the buildings is occupied, secures permanent fire and extended coverage insurance, including a permit to complete construction. Consent of the surety must also be obtained.

#### **49. Photographs of the Project**

If required by the Owner, the Contractor shall furnish photographs of the project, in the quantities and as described in the Supplemental General Condition.

#### **50. Suspension of Work**

Should the Owner be prevented or enjoined from proceeding with work either before or after the start of construction by reason of any litigation or other reason beyond the control of the Owner, the Contractor shall not be entitled to make or assert claim for damage by reason of said delay; but time for completion of the work will be extended to such reasonable time as the Owner may determine will compensate for time lost by such delay with such determination to be set forth in writing.

51. **Federal Labor Standards Provision**

The Federal Labor Standards Provision following this section as Exhibit L-2 shall apply to this contract.



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

**FEDERAL LABOR STANDARDS PROVISIONS**

**1. APPLICABILITY**

The Project or Program to which the work covered by this Contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

**2. MINIMUM WAGE RATES FOR LABORERS AND MECHANICS**

All laborers and mechanics employed upon the work covered by this Contract shall be paid unconditionally and not less often than once each week, and without subsequent deduction or rebate on any account (except such payroll deductions as are made mandatory by law and such other payroll deductions as are permitted by the applicable regulations issued by the Secretary of Labor, United States Department of Labor, pursuant to the Anti-Kickback Act hereinafter identified), the full amount due at time of payment computed at wage rates not less than those contained in the wage determination decision of said Secretary of Labor (a copy of which is attached and herein incorporated by reference), regardless of any contractual relationship which may be alleged to exist between the Contractor or any subcontractor and such laborers and mechanics. All laborers and mechanics employed upon such work shall be paid in cash, except that payment may be by check if the employer provides or secures satisfactory facilities approved by the Local Public Agency or Public Body for the cashing of the same without cost or expense to the employee. For the purpose of this clause, contributions made or costs reasonably anticipated under Section 1 (b) (2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section 5.5(a)(1)(iv) of Title 29, Code of Federal Regulations. Also for the purpose of this clause, regular contributions made or costs incurred for more than a weekly period under plans, funds, or programs, but covering the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

**3. UNDERPAYMENTS OF WAGES OR SALARIES**

In case of underpayment of wages by the Contractor or by any subcontractor to laborers or mechanics employed by the Contractor or subcontractor upon the work covered by this Contract, the Local Public Agency or Public Body in addition to such other rights as may be afforded it under this Contract shall withhold from the Contractor, out of any payments due the Contractor, so much thereof as the Local Public Agency or Public Body may consider necessary to pay such laborers or mechanics full amount of wages required by this Contract. The amount so withheld may be disbursed by the Local Public Agency or Public Body, for and on account of the Contractor or the subcontractor (as may be appropriate), to the respective laborers or mechanics to whom the same is due or on their behalf to plans, funds, or programs for any type of fringe benefit prescribed in the applicable wage determination.

**4. ANTICIPATED COSTS OF FRINGE BENEFITS**

If the Contractor does not make payments to a trustee or other third person, he may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing fringe benefits under a plan or program of a type expressly listed in the wage determination decision of the Secretary of Labor which is a part of this Contract: Provided, however, the Secretary of Labor has found, upon the

written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. A copy of any findings made by the Secretary of Labor in respect to fringe benefits being provided by the Contractor must be submitted to the Local Public Agency or Public Body with the first payroll filed by the Contractor subsequent to receipt of the findings.

**5. OVERTIME COMPENSATION REQUIRED BY CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (76 Stat. 357-360: Title 40 U.S.C., Sections 327-332)**

- (a) Overtime requirement. No contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics, including watchmen and guards, shall require or permit any laborer or mechanic in any workweek in which he is employed on such work to work in excess of 40 hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of 40 hours in such work week, as the case may be.
- (b) Violation: liability for unpaid wages liquidated damages. In the event of any violation of the clause set forth in paragraph (a), the Contractor and any subcontractor responsible therefore shall be liable to any affected employee for his unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violations of the clause set forth in paragraph (a), in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in paragraph (a).
- (c) Withholding for liquidated damages. The Local Public Agency or Public Body shall withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for liquidated damages as provided in the clause set forth in paragraph (b).
- (d) Subcontracts. The Contractor shall insert in any subcontracts the clauses set forth in paragraphs (a), (b), and (c) of this Section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made.

**6. EMPLOYMENT OF APPRENTICES/TRAINEES**

- (a) Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed and individually registered in a bona fide apprenticeship program registered with the U. S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program. Any employee

listed on a payroll at an apprentice wage rate, who is not a trainee as defined in subdivision (b) of this subparagraph or is not registered or otherwise employed as stated above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The contractor or subcontractor will be required to furnish to the contracting officer or a representative of the Wage-Hour Division of the U. S. Department of Labor written evidence of the registration of his program and apprentices as well as the appropriate ratios and wage rates (expressed in percentages of the journeyman hourly rates), for the area of construction prior to using any apprentices on the contract work. The wage rate paid apprentices shall be not less than the appropriate percentage of the journeyman's rate contained in the applicable wage determination.

- (b) Trainees. Except as provided in 29 CFR 5.15 trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification, by the U. S. Department of Labor, Manpower Administration, Bureau of Apprentice and Training. The ratio of trainees to journeymen shall not be greater than permitted under the plan approved by the Bureau of Apprenticeship and Training. Every trainee must be paid at not less than the rate specified in the approved program for his level of progress. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Bureau of Apprenticeship and Training shall be paid not less than the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The contractor or subcontractor will be required to furnish the contracting officer or a representative of the Wage-Hour Division of the U. S. Department of Labor written evidence of the certification of his program, the registration of the trainees, and the ratios and wage rates prescribed in that program. In the event the Bureau of Apprenticeship and Training withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (c) Equal Employment Opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

#### **7. EMPLOYMENT OF CERTAIN PERSONS PROHIBITED**

No person under the age of sixteen years and no person who, at the time, is serving sentence in a penal or correctional institution shall be employed on the work covered by this Contract.

#### **8. REGULATIONS PURSUANT TO SO-CALLED "ANTI-KICKBACK ACT"**

The Contractor shall comply with the applicable regulations (a copy of which is attached and herein incorporated by reference) of the Secretary of Labor, United States Department of Labor, made pursuant to the so-called "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 862; Title U.S.C., Section 874; and Title 40 U.S.C., Section 276c), and any amendments or modifications thereof, shall cause appropriate provisions to be inserted in subcontractors to insure compliance therewith by all subcontractors subject thereto, and shall be responsible for the submission of affidavits required by subcontractors thereunder, except as said Secretary of Labor may specifically provide for reasonable limitations, variations, tolerances, and exemptions from the requirements thereof.

**9. EMPLOYMENT OF LABORERS OR MECHANICS NOT LISTED IN AFORESAID WAGE DETERMINATION DECISION**

Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Contract will be classified or reclassified conformably to the wage determination by the Local Public Agency or Public Body, and a report of the action taken shall be submitted by the Local Public Agency or Public Body, through the Secretary of Housing and Urban Development, to the Secretary of Labor, United States Department of Labor. In the event the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics to be used, the question accompanied by the recommendation of the Local Public Agency or Public Body shall be referred, through the Secretary of Housing and Urban Development, to the Secretary of Labor for final determination.

**10. FRINGE BENEFITS NOT EXPRESSED AS HOURLY WAGE RATES**

The Local Public Agency or Public Body shall require, 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 wage rate and the Contractor is obligated to pay cash equivalent of such a fringe benefit, an hourly cash equivalent thereof to be established. In the event the interested parties cannot agree upon a cash equivalent of the fringe benefit, the question, accompanied by the recommendation of the Local Public Agency or Public Body, shall be referred, through the Secretary of Housing and Urban Development, to the Secretary of Labor for determination.

**11. POSTING WAGE DETERMINATION DECISIONS AND AUTHORIZED WAGE DEDUCTIONS**

The applicable wage poster of the Secretary of Labor, United States Department of Labor, and the applicable wage determination decisions of said Secretary of Labor with respect to the various classification of laborers and mechanics employed and to be employed upon the work covered by this Contract, and a statement showing all deductions, if any, in accordance with the provision of this Contract, to be made from wages actually earned by persons so employed or to be employed in such classifications, shall be posted at appropriate conspicuous points at the site of work.

**12. COMPLAINTS, PROCEEDINGS, OR TESTIMONY BY EMPLOYEES**

No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

**13. CLAIMS AND DISPUTES PERTAINING TO WAGE RATES**

Claims and disputes pertaining to wage rates or to classifications of laborers and mechanics employed upon the work covered by this Contract shall be promptly reported by the Contractor in writing to the Local Public Agency or Public Body for referral by the latter through the Secretary of Housing and Urban Development to the Secretary of Labor, United States Department of Labor, whose decision shall be final with respect thereto.

**14. QUESTIONS CONCERNING CERTAIN FEDERAL STATUTES AND REGULATIONS**

All questions arising under this Contract which relate to the application or

interpretation of (a) the aforesaid Anti-Kickback Act, (b) the Contract Work Hours and Safety Standards Act, (c) the aforesaid Davis-Bacon Act, (d) the regulations issued by the Secretary of Labor, United States Department of Labor, pursuant to said Acts, or (e) the labor standards provisions of any other pertinent Federal stature, shall be referred, through the Local Public Agency or Public Body and the Secretary of Housing and Urban Development, to the Secretary of Labor, United States Department of Labor, for said Secretary's appropriate ruling or interpretation which shall be authoritative and may be relied upon for the purposes of this Contract.

**15. PAYROLLS AND BASIC PAYROLL RECORDS OF CONTRACTOR AND SUBCONTRACTORS**

The Contractor and each subcontractor shall prepare his payrolls on forms satisfactory to and in accordance with instructions to be furnished by the Local Public Agency or Public Body. The Contractor shall submit weekly to the Local Public Agency or Public Body two certified copies of all payrolls of the Contractor and of the subcontractors, it being understood that the Contractor shall be responsible for the submission of copies of payrolls of all subcontractors. Each such payroll shall contain the "Weekly Statement of Compliance" set forth in Section 3.3 of Title 29, Code of Federal Regulations. The payrolls and basic payroll records of the Contractor and each subcontractor covering all laborers and mechanics employed upon the work covered by this Contract shall be maintained during the course of the work and preserved for a period of 3 years thereafter. Such payrolls and basic payroll records shall contain the name and address of each such employee, his correct classification, rate of pay (including rates of contributions or costs anticipated of the types described in Section 1 (b)(2) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. In addition, whenever the Secretary of Labor has found under Section 5.5(a)(1)(iv) of Title 29, Code of Federal Regulations, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)B of the Davis-Bacon Act, the Contractor or subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers and mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. The Contractor and each subcontractor shall make his employment records with respect to persons employed by him upon the work covered by this Contract available for inspection by authorized representatives of the Secretary of Housing and Urban Development, the Local Public Agency or Public Body, and the United States Department of Labor. Such representative shall be permitted to interview employees of the Contractor or of any subcontractor during working hours on the job.

**16. SPECIFIC COVERAGE OF CERTAIN TYPES OF WORK BY EMPLOYEES**

The transporting of materials and supplies to or from the site of the Project or Program to which this Contract pertains by the employees of the Contractor or of any subcontractor, and the manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the Project or Program to which this Contract pertains by person employed by the Contractor or by any subcontractor, shall, for the purposes of this Contract, and without limiting the generality of the foregoing provisions of this Contract, be deemed to be work to which these Federal Labor Standards Provisions are applicable.

**17. INELIGIBLE SUBCONTRACTORS**

The Contractor shall not subcontract any part of the work covered by this Contract or permit subcontracted work to be further subcontracted without the Local Public

Agency's or Public Body's prior written approval of the subcontractor. The Local Public Agency or Public Body will not approve any subcontractor for work covered by this Contract who is at the time ineligible under the provisions of any applicable regulations issued by the Secretary of Labor, United States Department of Labor or the Secretary of Housing and Urban Development, to receive an award of such subcontract.

**18. PROVISIONS TO BE INCLUDED IN CERTAIN SUBCONTRACTS**

The Contractor shall include or cause to be included to each subcontract covering any of the work covered by this Contract, provisions which are consistent with these Federal Labor Standard Provisions and also a clause requiring the subcontractors to include such provisions in any lower tier subcontracts which they may enter into, together with a clause requiring such insertion in any further subcontracts that may in turn be made.

**19. BREACH OF FOREGOING FEDERAL LABOR STANDARDS PROVISIONS**

In addition to the causes for termination of this Contract as herein elsewhere set forth, the Local Public Agency or Public Body reserves the right to terminate this Contract if the Contractor or any subcontractor whose subcontract covers any of the work covered by this Contract shall breach any of these Federal Labor Standards Provisions. A breach of these Federal Labor Standards Provisions may also be grounds for debarment as provided by the applicable regulations issued by the Secretary of Labor, United States Department of Labor.

## **Title 29-LABOR**

### **Subtitle A-Office of the Secretary of Labor**

#### **PART 3--CONTRACTORS AND SUBCONTRACTORS ON PUBLIC BUILDING OR PUBLIC WORK FINANCED IN WHOLE OR IN PART BY LOANS OR GRANTS FROM THE UNITED STATES**

##### **Section**

- 3.1 Purpose and scope.**
- 3.2 Definitions.**
- 3.3 Weekly statements with respect to payment of wages.**
- 3.4 Submission of weekly statements and preservation and inspection of weekly payroll records.**
- 3.5 Payroll deductions permissible without application to or approval of the Secretary of Labor.**
- 3.6 Payroll deductions permissible with the approval of the Secretary of Labor.**
- 3.7 Applications for the approval of the Secretary of Labor.**
- 3.8 Action taken by the Secretary of labor upon applications.**
- 3.9 Prohibited payroll deductions.**
- 3.10 Methods of payment of wages.**
- 3.11 Regulations part of contract.**

**Authority:** The provision of this Part 8 issued under R.S. 161, sec 2, 48 stat. 848; Reorg. Plan No. 14 of 1950, 64 Stat. 1267; 5 U.S.C. 801, 188a-15 note; 40 U.S.C. 276c.

**Source:** The provision of this Part 8 appear at 29 NR. 97, Jan 4, 1964, unless otherwise noted.

### **Section 3.1 Purpose and scope.**

This part prescribes “anti-kickback” regulations under section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c), popularly known as the Copeland Act. This part applies to any contract which is subject to Federal wage standards and which is for the construction, prosecution, completion, or repair of public buildings, public works or buildings or works financed in whole or in part by loans or grants from the United States. The part is intended to aid in the enforcement of the minimum wage provisions of the Davis-Bacon Act and the various statutes dealing with federally assisted construction that contain similar minimum wage provisions, including those provisions which are not subject to Reorganization Plan No. 14 (e.g., the College Housing Act of 1950, the Federal Water Pollution Control Act, and the Housing Act of 1959), and in the enforcement of the overtime provisions of the Contract Work Hours Standards Act whenever they are applicable to construction work. The part details the obligation of contractors and subcontractors relative to the weekly submission of statements regarding the wages paid on work covered thereby; sets forth the circumstances and procedures governing the making of payroll deductions from the wages of those employed on such work; and delineates the methods of payment permissible on such work.

### **Section 3.2 Definitions.**

As used in the regulations in this part:

(a) The terms building or work generally include construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include, without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, powerlines, pumping stations, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals; dredging, shoring, scaffolding, drilling, blasting, excavating, clearing, and landscaping. Unless conducted in connection with and at the site of such a building or work as is described in the foregoing sentence, the manufacture or furnishing of materials, articles, supplies, or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not a building or work within the meaning of the regulations in this part.

(b) The terms construction, prosecution, completion, or repair mean all types of work done on a particular building or work at the site thereof, including, without limitation, altering, remodeling, painting and decorating, the transporting of materials and supplies to or from the building or work by the employees of the construction contractor or construction subcontractor, and the manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work, by persons employed at the site by the contractor or subcontractor.

(c) The terms public building or public work include building or work for whose construction, prosecution, completion, or repair, as defined above, a Federal agency is a contracting party, regardless of whether title thereof is in a Federal agency.

(d) The term building or work financed in whole or in part by loans or grants from the United States



includes building or work for whose construction, prosecution, completion, or repair, as defined above, payment or part payment is made directly or indirectly from funds provided by loans or grants by a Federal agency. The term includes building or work for which the Federal assistance granted is in the form of loan guarantees or insurance.

(e) Every person paid by a contractor or subcontractor in any manner for his labor in the construction, prosecution, completion, or repair of a public building or public work or building or work financed in whole or in part by loans or grants from the United States is employed and receiving wages, regardless of any contractual relationship alleged to exist between him and the real employer.

(f) The term any affiliated person includes a spouse, child, parent, or other close relative of the contractor or subcontractor; a partner or officer of the contractor or subcontractor; a corporation closely connected with the contractor or subcontractor as parent, subsidiary, or otherwise, and an officer or agent of such corporation.

(g) The term Federal agency means the United States, the District of Columbia, and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States and of the District of Columbia, including corporations, all or substantially all of the stock of which is beneficially owned by the United States, by the District of Columbia, or any of the foregoing departments, establishments, agencies, and instrumentalities.

[29 FR 97, Jan. 4, 1964, as amended at 38 FR 32575, Nov. 27, 1973]

### **Section 3.3 Weekly statement with respect to payment of wages.**

(a) As used in this section, the term employee shall not apply to persons in classifications higher than that of laborer or mechanic and those who are the immediate supervisors of such employees.

(b) Each contractor or subcontractor engaged in the construction, prosecution, completion, or repair of any public building or public work, or building or work financed in whole or in part by loans or grants from the United States, shall furnish each week a statement with respect to the wages paid each of its employees engaged on work covered by this part 3 and part 5 of this title during the preceding weekly payroll period. This statement shall be executed by the contractor or subcontractor or by an authorized officer or employee of the contractor or subcontractor who supervises the payment of wages, and shall be on the back of Form WH 347, "Payroll (For Contractors Optional Use)" or on any form with identical wording. Copies of Form WH 347 may be obtained from the Government contracting or sponsoring agency or from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site.

(c) The requirements of this section shall not apply to any contract of \$2,000 or less.

(d) Upon a written finding by the head of a Federal agency, the Secretary of Labor may provide reasonable limitations, variations, tolerances, and exemptions from the requirements of this section subject to such conditions as the Secretary of Labor may specify.

[29 FR 97, Jan. 4, 1964, as amended at 33 FR 10186, July 17, 1968; 47 FR 23679, May 28, 1982; 73 FR 77511, Dec. 19, 2008]

### **Section 3.4 Submission of weekly statements and the preservation and inspection of weekly payroll records.**

(a) Each weekly statement required under Section 3.3 shall be delivered by the contractor or subcontractor, within seven days after the regular payment date of the payroll period, to a representative of a Federal or State agency in charge at the site of the building or work, or, if there is no representative of a Federal or State agency at the site of the building or work, the statement shall be mailed by the contractor or subcontractor, within such time, to a Federal or State agency contracting for or financing the building or work. After such examination and check as may be made, such statement, or a copy thereof, shall be kept available, or shall be transmitted together with a report of any violation, in accordance with applicable procedures prescribed by the United States Department of Labor.

(b) Each contractor or subcontractor shall preserve his weekly payroll records for a period of three years from date of completion of the contract. The payroll records shall set out accurately and completely the name and address of each laborer and mechanic, his correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid. Such payroll records shall be made available at all times for inspection by the contracting officer or his authorized representative, and by authorized representatives of the Department of Labor.

(Reporting and recordkeeping requirements in paragraph (b) have been approved by the Office of Management and Budget under control number 1215-0017)

[29 FR 97, Jan. 4, 1964, as amended at 47 FR 145, Jan. 5, 1982]

### **Section 3.5 Payroll deductions permissible without application to or approval of the Secretary of Labor.**

Deductions made under the circumstances or in the situations described in the paragraphs of this section may be made without application to and approval of the Secretary of Labor:

(a) Any deduction made in compliance with the requirements of Federal, State, or local law, such as Federal or State withholding income taxes and Federal social security taxes.

(b) Any deduction of sums previously paid to the employee as a bona fide prepayment of wages when such prepayment is made without discount or interest. A bona fide prepayment of wages is considered to have been made only when cash or its equivalent has been advanced to the person employed in such manner as to give him complete freedom of disposition of the advanced funds.

(c) Any deduction of amounts required by court process to be paid to another, unless the deduction is in favor of the contractor, subcontractor, or any affiliated person, or when collusion or collaboration exists.

(d) Any deduction constituting a contribution on behalf of the person employed to funds established by the employer or representatives of employees, or both, for the purpose of providing either from principal or income, or both, medical or hospital care, pensions or annuities on retirement, death benefits, compensation for injuries, illness, accidents, sickness, or disability, or for insurance to

provide any of the foregoing, or unemployment benefits, vacation pay, savings accounts, or similar payments for the benefit of employees, their families and dependents: Provided, however, That the following standards are met:

(1) The deduction is not otherwise prohibited by law;

(2) It is either:

(i) Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of or for the continuation of employment, or

(ii) provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees;

(3) No profit or other benefit is otherwise obtained, directly or indirectly, by the contractor or subcontractor or any affiliated person in the form of commission, dividend, or otherwise; and

(4) The deductions shall serve the convenience and interest of the employee.

(e) Any deduction contributing toward the purchase of United States Defense Stamps and Bonds when voluntarily authorized by the employee.

(f) Any deduction requested by the employee to enable him to repay loans to or to purchase shares in credit unions organized and operated in accordance with Federal and State credit union statutes.

(g) Any deduction voluntarily authorized by the employee for the making of contributions to governmental or quasi-governmental agencies, such as the American Red Cross.

(h) Any deduction voluntarily authorized by the employee for the making of contributions to Community Chests, United Givers Funds, and similar charitable organizations.

(i) Any deductions to pay regular union initiation fees and membership dues, not including fines or special assessments: Provided, however, That a collective bargaining agreement between the contractor or subcontractor and representatives of its employees provides for such deductions and the deductions are not otherwise prohibited by law.

(j) Any deduction not more than for the "reasonable cost" of board, lodging, or other facilities meeting the requirements of section 3(m) of the Fair Labor Standards Act of 1938, as amended, and part 531 of this title. When such a deduction is made the additional records required under Section 516.25(a) of this title shall be kept.

(k) Any deduction for the cost of safety equipment of nominal value purchased by the employee as his own property for his personal protection in his work, such as safety shoes, safety glasses, safety gloves, and hard hats, if such equipment is not required by law to be furnished by the employer, if such deduction is not violative of the Fair Labor Standards Act or prohibited by other law, if the cost on which the deduction is based does not exceed the actual cost to the employer where the equipment is purchased from him and does not include any direct or indirect monetary return to the employer where the equipment is purchased from a third person, and if the deduction is either

(1) Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of employment or its continuance; or

(2) Provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees.

[29 FR 97, Jan. 4, 1964, as amended at 36 FR 9770, May 28, 1971]

### **Section 3.6 Payroll deductions permissible with the approval of the Secretary of Labor.**

Any contractor or subcontractor may apply to the Secretary of Labor for permission to make any deduction not permitted under Section 3.5. The Secretary may grant permission whenever he finds that:

(a) The contractor, subcontractor, or any affiliated person does not make a profit or benefit directly or indirectly from the deduction either in the form of a commission, dividend, or otherwise;

(b) The deduction is not otherwise prohibited by law;

(c) The deduction is either (1) voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of employment or its continuance, or (2) provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees; and

(d) The deduction serves the convenience and interest of the employee.

### **Section 3.7 Applications for the approval of the Secretary of Labor.**

Any application for the making of payroll deductions under Section 3.6 shall comply with the requirements prescribed in the following paragraphs of this section:

(a) The application shall be in writing and shall be addressed to the Secretary of Labor.

(b) The application need not identify the contract or contracts under which the work in question is to be performed. Permission will be given for deductions on all current and future contracts of the applicant for a period of 1 year. A renewal of permission to make such payroll deduction will be granted upon the submission of an application which makes reference to the original application, recites the date of the Secretary of Labor's approval of such deductions, states affirmatively that there is continued compliance with the standards set forth in the provisions of Section 3.6, and specifies any conditions which have changed in regard to the payroll deductions.

(c) The application shall state affirmatively that there is compliance with the standards set forth in the provisions of Section 3.6. The affirmation shall be accompanied by a full statement of the facts indicating such compliance.

(d) The application shall include a description of the proposed deduction, the purpose to be served thereby, and the classes of laborers or mechanics from whose wages the proposed deduction would be made.

(e) The application shall state the name and business of any third person to whom any funds obtained from the proposed deductions are to be transmitted and the affiliation of such person, if any, with the applicant.

[29 FR 97, Jan. 4, 1964, as amended at 36 FR 9771, May 28, 1971]

### **Section 3.8 Action by the Secretary of Labor upon applications.**

The Secretary of Labor shall decide whether or not the requested deduction is permissible under provisions of Section 3.6; and shall notify the applicant in writing of his decision.

### **Section 3.9 Prohibited payroll deductions.**

Deductions not elsewhere provided for by this part and which are not found to be permissible under Section 3.6 are prohibited.

### **Section 3.10 Methods of payment of wages.**

The payment of wages shall be by cash, negotiable instruments payable on demand, or the additional forms of compensation for which deductions are permissible under this part. No other methods of payment shall be recognized on work subject to the Copeland Act.

### **Section 3.11 Regulations part of contract.**

All contracts made with respect to the construction, prosecution, completion, or repair of any public building or public work or building or work financed in whole or in part by loans or grants from the United States covered by the regulations in this part shall expressly bind the contractor or subcontractor to comply with such of the regulations in this part as may be applicable. In this regard, see Section 5.5(a) of this subtitle.

## SPECIAL CONDITIONS

### 1. PROJECT FINANCING

The Project is financed by a Community Development Block Grant and is subject to the rules and regulations thereof.

### 2. ENGINEER

The consulting engineering firm of Elliot & Britt Engineering, P.A., P.O. Box 308, Oxford, MS is the designated ENGINEER for the Project identified herein.

### 3. MANUFACTURERS' DIRECTIONS

All manufactured articles, materials and equipment shall be new and shall be applied, installed, connected, erected and used as directed by the manufacturers, used herein specified to the contrary. The Contractor shall furnish copies of all printed directions for the permanent items.

### 4. CONSTRUCTION STAKES

(See Technical Specifications) The Owner shall furnish all boundary surveys and establish all base lines for locating the principal component parts of the project together with a suitable number of bench marks adjacent to the project.

The Contractor shall carefully preserve bench marks, reference points and stakes and, in case of willful or careless destruction, he shall be charged with the resulting expense of replacement.

### 5. COMMENCEMENT OF CONTRACT TIME

Contract time will commence at the time set out in the Notice to Proceed.

### 6. COPIES OF DRAWINGS FURNISHED

The successful Contractor shall be furnished five (5) sets of construction plans and specifications for use in the work. Any other plans and specifications needed shall be supplied upon payment of the amount for plans as set out in Advertisement for Bids.

### 7. STANDARDS

The following words, symbols, letters, or abbreviations shall be deemed to have the following meaning and shall refer to the latest current revision of said standard or specification applicable in effect of the date of opening bids:

AASHTO	American Association of State Highway and Transportation Officials
ACI	-American Concrete Institute
AIA	-American Insurance Association (formerly National Board of Fire Underwriters)
ANSI	-American National Standards Institute
ASME	-American Society of Mechanical Engineers
ASTM	-American Society of Testing Materials
AWWA	-American Water Works Association
NEHA	-National Electrical Manufacturer's Association
SBH	-State Board of Health
SHD	-State Highway Department

### 8. SHOP DRAWINGS

In addition to the requirements of the General Conditions Section 4, the following apply:

Shop drawings shall consist of drawings, diagrams, illustrations, schedules, performance charts, brochures and other data, prepared for a portion of the work. Shop drawings shall

indicate the model numbers, all options, type, size, quantity, arrangement, location, mode of operation, component materials and/or material certification, utility connections, wiring and control diagrams, anchorages, supports, performance and test data, factory-applied coatings, and any other information necessary to insure satisfactory fabrication, installation and operation of the completed project. Shop drawings shall establish the actual detail of all manufactured or fabricated items, indicate proper relation to adjoining work, amplify design details of mechanical and electrical equipment in proper relation to physical spaces in the structure, and incorporate minor changes of design or construction to suit actual conditions.

All shop drawings shall be submitted by the Contractor to the Engineer. Drawings must be complete, properly identified with the name of the project, dated, and each lot submitted must be accompanied by a letter of transmittal referring to the name of the project and to the Specification and/or plan page number for identification of each item. Shop drawings for each type of work shall be numbered consecutively and the numbering system shall be retained throughout all revisions.

In the event a third submittal of shop drawings is required, due to previous submittals of incomplete or incorrect shop drawings not in accordance with the Drawings and Specifications, the Contractor will be charged one-half of the cost incurred by the Engineer for the review of the third submittal. The Contractor shall bear the total cost incurred by the Engineer for all subsequent reviews.

Where a shop drawing as submitted by the Contractor indicates a departure from the Contract which the Engineers deem to be a minor adjustment in the interest of the Owner not involving a change in contract price or extension of time, the Engineer may approve the drawing but the approval will be made with the understanding that it does not involve any change in the contract price or time and that it is subject generally to all contract stipulations and covenants.

If a shop drawing involves a change in structures, connections, etc., then the cost of changing plans and specifications to accommodate the item shall be borne by the Contractor.

#### **9. INSPECTION AND TESTING**

Article 7 of the General Conditions is amended to read: All materials and equipment used in the construction of the project shall be subject to adequate inspection and testing in accordance with generally accepted standards, as required and defined in the Contract Documents and Mississippi Standard Specifications for State Aid Road and Bridge Construction, current edition, if applicable. The Contractor shall provide all materials certifications stating that all materials incorporated into the project comply with requirements and materials specifications contained in these Contract Documents.

The Owner shall provide all inspection and testing services not required by the Contract Documents. The Contractor shall provide at his expense the testing and inspection services required by the Contract Documents.

If the Contract Documents, laws, ordinances, rules, regulations or orders or any public authority having jurisdiction require any work to specifically be inspected, tested, or approved by someone other than the Contractor, the Contractor will give the Engineer timely notice of readiness. The Contractor will then furnish the Engineer the required certificates of inspection, testing or approval.

Inspections, test or approvals by the Engineer or others shall not relieve the Contractor from his obligations to perform the work in accordance with the requirements of the Contract Documents.

The Engineer and his representatives will at all times have access to the work. In addition, authorized representatives and agents of any participating Federal or state agency shall be permitted to inspect all work. The Contractor will provide proper facilities for such access and observation of the work and also for any inspection, or testing thereof.

If any work is covered contrary to the written instructions of the Engineer it must, if requested by the Engineer, be uncovered for his observation and replaced at the Contractor's expense. If the Engineer considers it necessary or advisable that covered work be inspected or tested by others, the Contractor, at the Engineer's request, will uncover expose or otherwise make available for observation, inspection or testing as the Engineer may require, that portion of the work in question, furnishing all necessary labor, materials, tools, and equipment. If it is found that such work is defective, the Contractor will bear all expenses of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction. If, however, such work is not found to be defective, the Contractor will be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction and an appropriate Change Order shall be issued.

**10. ESTIMATE FORMS**

A Contractor's Payment "Application and Certificate" shall be used when estimating periodic payments due the Contractor. Contractor shall submit (6) copies to Engineers for review.

**11. EXISTING UTILITIES AND OBSTRUCTIONS**

The existence of, and location of some of the known utilities and obstructions are indicated on the plans but are not guaranteed. The Contractor shall make sufficient investigation and inspections, at the site of the work, to enable him to determine the existence of and exact nature and location of all such drainage structures, underground and overhead obstructions, fences, and public and private utilities that will be disturbed in the prosecution of the work. The Contractor shall repair or replace such utilities and improvements which are damaged by his operations so as to function properly, at his own expense and in a manner and condition equal to that of such utilities and improvements prior to damage. Fences must be crossed shall be repaired to an "as was" condition.

**12. CLEANING UP**

As each portion of the work is completed, the Contractor shall clean up and remove from the site all rubbish and old and unused materials and fill all holes and cavities made for his convenience, and shall leave the site in a neat, presentable and usable condition, restored to original or better condition.

Cleaning up is considered to be an integral, important and necessary function of each item of work. Where work on unit price items are substantially complete but lack clean-up and/or corrections ordered by the Engineer, amounts shall be deducted from unit prices in partial payment estimates to amply cover such clean-up and corrections.

When the above grounds are removed, payment shall be made for amounts withheld because of them.

**13. TIME FOR COMPLETION AND LIQUIDATION DAMAGES**

The date of beginning and the time for completion of the work are essential conditions of the contract documents and the work embraced shall be commenced on a date specified to the notice to proceed.



The Contractor will proceed with the work at such rate of progress to insure full completion within the contract time. It is expressly understood and agreed, by and between the Contractor and the Owner, that the contract time for the completion of the work described herein is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the work.

If the Contractor should fail to complete the work within the contract time, or extension of time granted by the Owner, the Contractor will pay to the Owner the amount for liquidated damages as specified in the bid for each calendar day or working day (as specified) that the Contractor shall be in default after the time stipulated in the contract documents.

The Contractor shall not be charged with liquidated damages or any excess cost when the delay in completion of the work is due to the following, and the Contractor has promptly given written notice of such delay to the Owner or Engineer:

To any preference, priority or allocation order duly issued by the Owner.

To unforeseeable causes beyond the control and without the fault or negligence of the contractor, including but not restricted to, acts of God, or of the public enemy, acts of the Owner, acts of another contractor in the performance of a contract with the owner, fires, abnormal floods, epidemics, quarantine restrictions, strikes, freight embargoes, and abnormal and unforeseeable weather; and

To any delays of subcontractors occasioned by any of the causes specified in the above paragraphs.

Request by the Contractor for time extensions due to abnormally bad weather shall also consider time gained due to abnormally good weather during the contract period.

#### 14. **RECORD DRAWINGS**

The Contractor shall make a record of all changes in the contract drawings and specifications and shall change the contract drawings and specs to reflect all changes made. The Engineers will furnish a set of reproducible drawings to the Contractor on which changes shall be made. Record drawings and specifications shall be completed and furnished to the Engineers prior to the submission of the request for final payment. Keep records current and do not cover or conceal any work until the required information has been recorded.

The following items shall be recorded on the record drawings:

1. Depths of various elements in relation to datum.
2. Horizontal and vertical location of underground utilities and appurtenances referenced to permanent surface improvements.
3. Location of internal appurtenances concealed in construction reference to visible and accessible features of the work.
4. Field changes of dimension and detail.
5. Changes made by Change Order.
6. Details not on original Contract Drawings
7. Locations of plugged openings for future connections.

Specifications and Addenda shall be legibly marked up to record:

1. Manufacturer, trade name, catalog number and supplier of each product and item of equipment actually installed.
2. Changes made by Change Order.
3. Other matters not originally specified.

Shop Drawings shall be maintained as record documents and legibly annotate drawings to record changes made after review.

**15. IDEMNIFICATION**

The Contractor shall indemnify, protect and hold harmless the Owner and the Engineer and their agents and employees from all suits, claims, and actions brought against them and all costs for any liability or claim to which they may be put, arising out of the performance of the work of this contract.

**16. CHANGES AND INCREASED OR DECREASED QUANTITIES OF WORK**

The quantities of Unit Pay Items listed in the Proposal forms are to be considered approximate only. The engineer reserves the right to make such alterations in the Plans or in the extent of the work as he may consider desirable or necessary during the progress of the work to satisfactorily complete the proposed construction.

The Owner may, under this reservation, increase or decrease any or all of the quantities of Pay Items as set forth in the Proposal, or delete certain items of work from the Contract. Increased or decreased quantities of items will be paid for at the unit bid price.

It is understood that variations in quantities, within the above limitations, shall not be considered as a waiver of any conditions of the Contract, nor invalidate the Contractor's Proposal and the Contractor shall perform the work as increased or decreased from the Unit Contract Prices as bid.

**17. CLAIMS FOR DELAY**

No claim for delay damages will be allowed the Contractor on account of change orders executed by him.

**18. FUEL, ENERGY AND WATER**

The Contractor shall furnish all fuels, electric power and other energies, water and other consumables used in the prosecution of the work including testing and trial operations until in the opinion of Engineers, the work or part thereof, is substantially complete and in use by the Owner, at which time the Owner will begin paying power bills for that part. Arrangements shall be made in advance of need with utilities involved.

**19. STREET MAINTENANCE**

The Contractor, at his own expense, shall be required to maintain the streets and thoroughfares disturbed, in a passable condition, providing means of ingress and egress to persons residing and conducting business thereon where possible.

The Contractor shall provide additional earth backfill or adding surfacing materials for excavation and/or trenches in streets or thoroughfares, if and when the shrinkage sets in, and shall shape and re-shape and grade and re-grade as in the opinion of the Engineers is necessary to maintain all thoroughfares disturbed in good condition from the time of initial excavation to the date of final acceptance. All streets and alleys shall be left in a good and satisfactory condition. In general, the Contractor shall not be required to construct or maintain detours, or to maintain streets disturbed beyond the date of final acceptance of the other work.

The Contractor shall provide facilities on a 24 hours, 7 day basis for pulling vehicles bogged down due to his operations.

The Contractor shall at location where streets and public thoroughfares have been disturbed by excavations, or his equipment or operations, at all times while the work is in progress, take precautions for the protection of the public by placing and maintaining adequate flagmen, barricades, red flags and/or lights.

**20. ACCESS TO RECORDS**

In accordance, with Attachment O, Circular Number A-102, the grantee, the Federal grantor agency, the Comptroller General of the United States or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to the contract, for the purpose of making audit, examinations, excerpts and transcripts. Contractors shall maintain all required records for three years after grantees make final payments and all other pending matters are closed.

U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SUPPLEMENTAL GENERAL CONDITIONS

1. Enumeration of Plans, Specifications and Addenda
2. Stated Allowances
3. Special Hazards
4. Public Liability and Property Damage Insurance
5. Photographs of Project
6. Schedule of Minimum Hourly Wage Rates
7. Builder's Risk Insurance
8. Civil Rights Regulations and Requirements
9. Certification of Compliance With Air and Water Acts
10. Special Conditions Pertaining to Hazards Safety Standards and Accident Prevention

1. **ENUMERATION OF PLANS, SPECIFICATIONS AND ADDENDA**

Following are the Plans, Specifications and Addenda which form a part of this contract, as set forth in Paragraph 1 of the General Conditions, "Contract and Contract Documents":

DRAWINGS

See Construction Plans B Bound Separately

SPECIFICATIONS

See "Assembly of Specifications and Contract Documents"

ADDENDA

No. \_\_\_\_\_ Date \_\_\_\_\_ No. \_\_\_\_\_ Date \_\_\_\_\_

No. \_\_\_\_\_ Date \_\_\_\_\_ No. \_\_\_\_\_ Date \_\_\_\_\_

2. **STATED ALLOWANCES      N/A**

Pursuant to paragraph 36 of the General Conditions, the Contractor shall include the following cash allowances in his proposal:

- (a) For \_\_\_\_\_ (Page \_\_\_\_\_ of Specifications) \$ \_\_\_\_\_
- (b) For \_\_\_\_\_ (Page \_\_\_\_\_ of Specifications) \$ \_\_\_\_\_
- (c) For \_\_\_\_\_ (Page \_\_\_\_\_ of Specifications) \$ \_\_\_\_\_
- (d) For \_\_\_\_\_ (Page \_\_\_\_\_ of Specifications) \$ \_\_\_\_\_
- (e) For \_\_\_\_\_ (Page \_\_\_\_\_ of Specifications) \$ \_\_\_\_\_
- (f) For \_\_\_\_\_ (Page \_\_\_\_\_ of Specifications) \$ \_\_\_\_\_

3. **SPECIAL HAZARDS**

The Contractor's and his Subcontractor's Public Liability and Property Damage Insurance shall provide adequate protection against the following special hazards:

None

4. **CONTRACTOR'S AND SUBCONTRACTOR'S PUBLIC LIABILITY, VEHICLE LIABILITY, AND PROPERTY DAMAGE INSURANCE**

As required under paragraph 28 of the General Conditions, the Contractor's Public Liability Insurance and Vehicle Liability Insurance shall be in an amount not less than \$500,000 for injuries, including accidental death, to any one person, and subject to the same limit of each person, in an amount not less than \$500,000 on account of one accident, and Contractor's Property Damage Insurance in an amount not less than \$500,000.

The Contractor shall either (1) require each of his subcontractors to procure and to maintain during the life of his subcontract, Subcontractor's Public Liability and Property Damage of the type and in the same amounts as specified in the preceding paragraph, or (2) insure the activities of his subcontractors in his own policy.

**5. PHOTOGRAPHS OF PROJECT**

As provided in paragraph 49 of the General Conditions, the Contractor will furnish photographs in the number, type, and stage as enumerated below:

Not Applicable

**6. SCHEDULE OF OCCUPATIONAL CLASSIFICATIONS AND MINIMUM HOURLY WAGE RATES AS REQUIRED**

Follows this Section.

**7. BUILDER'S RISK INSURANCE**

As provided in the General Conditions, paragraph 28(e), the Contractor will maintain Builder's Risk Insurance (fire and extended coverage) on a 100 percent completed value basis on the insurable portions of the project for the benefit of the Owner, the Contractor, and all subcontractors, as their interests may appear.

**8. CIVIL RIGHTS REGULATIONS AND REQUIREMENTS APPLICABLE TO MISSISSIPPI'S COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM**

Communities funded under the Mississippi Community Development Block Grant Program should familiarize themselves with the following civil rights regulations and/or requirements concerning Fair Housing and Equal Employment Opportunity. These issues included the handbook, "The Mississippi Housing and Community Development Minority Business Directory." This directory was prepared by the United States Department of Housing and Urban Development's Jackson Area Office. The purpose of the directory is to enable program participants to assure that small and minority businesses are utilized, when possible, as sources of supplies, equipment, construction and services.

Included in the packet of civil rights, regulations are the Fair Housing and Equal Employment Opportunity posters. Recipients are to display these posters where they will be visible around their offices and on or near job sites. Also included are the following regulations and requirements which communities are urged to familiarize themselves with:

- (1) Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352), and the regulations issued pursuant thereto (24 CFR Part 1), which provides that no person in the United States shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives federal financial assistance and will immediately take any measures necessary to effectuate this assurance. If any real property or structure thereon is provided or improved with the aid of federal financial assistance extended to the applicant, this assurance shall obligate the applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits.

- (2) Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284), as amended, administering all programs and activities relating to housing and community development in a manner to affirmatively further fair housing; and will take action to affirmatively further fair housing in the sale or rental of housing, the financing of housing, and the provision of brokerage services
- (3) Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u) requiring that to the greatest extent feasible opportunities for training and employment be given to lower-income residents of the project area and contracts for work in connection with the project be awarded to eligible business concerns which are located in, or owned in substantial part by persons residing in the area of the project.
- (4) Section 109 of the Housing and Community Development Act of 1974, as amended, which requires that no person in the United States shall on the ground of race, color, national origin or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activities funded in whole or in part with community development, funds made available pursuant to the Act. Section 109 further provides that any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. '6101 et seq) or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. ' 794) shall also apply to any such program or activity.
- (5) Executive Order 11063, as amended by Executive Order 12259, on equal opportunity in housing and nondiscrimination in the sale or rental of housing built with federal assistance.
- (6) Executive Order 11246, and the regulations issued pursuant thereto (24 CFR Part 130 and 41 CFR Chapter 60), which provides that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of federal or federally assisted construction contracts. Contractors and subcontractors on federal and federally assisted construction contracts shall take affirmative action to insure fair treatment in employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation and selection for training and apprenticeship.

9. **CERTIFICATION OF COMPLIANCE WITH AIR AND WATER ACTS**

(Applicable to Federally assisted construction contracts and related subcontracts exceeding \$100,000)

Compliance with Air and Water Acts

During the performance of this contract, the contractor and all subcontractors shall comply with the requirements of the Clean Air Act, as amended, 42 USC 1857 et seq., the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15, as amended.

In addition to the foregoing requirements, all nonexempt contractors and subcontractors shall furnish to the owner, the following:

- (1) A stipulation by the Contractor or subcontractors, that any facility to be

utilized in the performance of any nonexempt contract or subcontract, is not listed on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR 15.20.

- (2) Agreement by the contractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 USC 1857c-8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 USC 1318) relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
- (3) A stipulation that as a condition for the award of the contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized, or to be utilized for the contract, is under consideration to be listed on the EPA List of Violating Facilities.
- (4) Agreement by the Contractor that he will include, or cause to be included, the criteria and requirements in paragraph (1) through (4) of this section in every nonexempt subcontract and requiring that the Contractor will take such action as the Government may direct as a means of enforcing such provisions.

10. **SPECIAL CONDITIONS PERTAINING TO HAZARDS SAFETY STANDARDS AND ACCIDENT PREVENTION**

A. Lead-Based Paint Hazards

(Applicable to contracts for construction or rehabilitation of residential structures)

The construction or rehabilitation of residential structures is subject to the HUD Lead-Based Paint regulations, 24 CFR Part 35. The Contractor and Subcontractor shall comply with the provisions for the elimination of lead-base paint hazards under subpart B of said regulations. The Owner will be responsible for the inspections and certifications required under Section 35.14(f) thereof.

B. Use of Explosives

When the use of explosives is necessary for the prosecution of the work, the Contractor shall observe all local, state and federal laws in purchasing and handling explosives. The Contractor shall take all necessary precautions to protect completed work, neighboring property, water lines, or other underground structures. Where there is danger to structures or property from blasting, the charges shall be reduced and the material shall be covered with suitable timber, steel or rope mats.

The Contractor shall notify all owners of public utility property of intention to use explosives at least eight hours before blasting is done, close to such property. Any supervision or direction of use of explosives by the Engineer, does not in any way reduce the responsibility of the Contractor or his Surety for damages that may be caused by such use.



C. Danger Signals and Safety Devices

The Contractor shall make all necessary precautions to guard against damages to property and injury to persons. He shall put up and maintain in good condition, sufficient red or warning lights at night, suitable barricades and other devices necessary to protect the public. In case the Contractor fails or neglects to take such precautions, the Owner may have such lights and barricades installed and charge the cost of this work to the Contractor. Such action by the Owner does not relieve the Contractor of any liability incurred under these specifications or contract.

## PROJECT SIGN 4' X 6'

**APPALACHIAN REGIONAL COMMISSION (ARC)  
PROJECT NUMBER MS-2138 PROJECT NUMBER MS-21383  
MARTINTOWN NORTH INDUSTRIAL PARK  
Union County, Mississippi**



**GOVERNOR TATE REEVES  
STATE OF MISSISSIPPI  
MISSISSIPPI DEVELOPMENT AUTHORITY  
Bill Cork, Executive Director**

**BOARD MEMBERS  
Sam Taylor, President  
Chad Coffey  
CJ Bright, Vice-President  
Randy Owen  
Steve Johnson**

**U.S. Department of Housing and Urban Development**



Superseded General Decision Number: MS20230138

State: Mississippi

Construction Type: Highway

County: Marshall County in Mississippi.

HIGHWAY CONSTRUCTION PROJECTS

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	<ul style="list-style-type: none"><li>Executive Order 14026 generally applies to the contract.</li><li>The contractor must pay all covered workers at least \$17.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2024.</li></ul>
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	<ul style="list-style-type: none"><li>Executive Order 13658 generally applies to the contract.</li><li>The contractor must pay all covered workers at least \$12.90 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2024.</li></ul>

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Modification Number      Publication Date  
0                              01/05/2024

	Rates	Fringes
CARPENTER (Form Work Only).....	\$ 13.75 **	0.39
CEMENT MASON/CONCRETE FINISHER...	\$ 12.85 **	0.39
ELECTRICIAN.....	\$ 23.78	7.38
FENCE ERECTOR (Barbed Wire, Wood, Silt).....	\$ 9.04 **	0.90
HIGHWAY/PARKING LOT STRIPING: Truck Driver (Line Striping Truck).....	\$ 18.39	0.00
INSTALLER - GUARDRAIL.....	\$ 12.00 **	0.00
IRONWORKER, REINFORCING.....	\$ 15.57 **	0.00
LABORER: Common or General, Including Asphalt Raking, Shoveling, Spreading; Concrete Work; Grade Checking; and Mason Tending - Cement/Concrete.....	\$ 10.88 **	0.00
LABORER: Flagger.....	\$ 9.59 **	0.00
LABORER: Landscape.....	\$ 8.73 **	0.00
LABORER: Luteman.....	\$ 12.88 **	0.00
LABORER: Pipelayer.....	\$ 12.93 **	0.00
LABORER: Laborer-Cones/ Barricades/Barrels - Setter/Mover/Sweeper.....	\$ 10.25 **	0.00
OPERATOR: Asphalt Spreader.....	\$ 14.71 **	0.00
OPERATOR: Backhoe/Excavator/Trackhoe.....	\$ 14.76 **	0.00
OPERATOR: Bobcat/Skid Steer/Skid Loader.....	\$ 11.64 **	0.00
OPERATOR: Broom/Sweeper.....	\$ 12.82 **	0.00
OPERATOR: Bulldozer.....	\$ 14.21 **	0.00
OPERATOR: Crane.....	\$ 19.97	0.00
OPERATOR: Grader/Blade.....	\$ 15.00 **	0.00
OPERATOR: Loader.....	\$ 13.54 **	0.00
OPERATOR: Mechanic.....	\$ 20.92	0.00
OPERATOR: Milling Machine.....	\$ 16.20 **	0.00
OPERATOR: Oiler.....	\$ 9.50 **	0.00
OPERATOR: Paver (Asphalt, Aggregate, and Concrete).....	\$ 11.78 **	0.00

OPERATOR: Roller (All Types)....	\$ 13.07 **	0.00
OPERATOR: Scraper.....	\$ 12.25 **	0.00
OPERATOR: Tractor.....	\$ 10.78 **	0.00
PILEDRIVERMAN.....	\$ 12.50 **	1.23
TRUCK DRIVER: Flatbed Truck.....	\$ 13.00 **	0.00
TRUCK DRIVER: Lowboy Truck.....	\$ 12.43 **	0.00
TRUCK DRIVER: Mechanic.....	\$ 13.00 **	0.00
TRUCK DRIVER: Water Truck.....	\$ 14.49 **	0.00
TRUCK DRIVER: Dump Truck (All Types).....	\$ 13.08 **	0.00
TRUCK DRIVER: Semi/Trailer Truck.....	\$ 15.22 **	0.00

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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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\*\* Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$17.20) or 13658 (\$12.90). Please see the Note at the top of the wage determination for more information. Please also note that the minimum wage requirements of Executive Order 14026 are not currently being enforced as to any contract or subcontract to which the states of Texas, Louisiana, or Mississippi, including their agencies, are a party.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (iii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

#### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is

based.

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WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION"

## **TECHNICAL SPECIFICATIONS**

**Please see the notes on Sheet L-102 for all specifications regarding tree planting.**



## TECHNICAL SPECIFICATIONS

All material requirements and construction requirements shall be accomplished in strict compliance with Mississippi Standard Specifications for State Aid Road and Bridge Construction, 2004 Edition, adopted by the Office of State Aid Road Construction of the Mississippi Department of Transportation and the Federal Highway Administration. Said 2004 Specifications are made a part hereof fully and completely as if attached hereto, except where superseded by Special Provisions or amended by revisions. Contractor is responsible for and can obtain copies of Specifications from the Office of State Aid Road Construction or the Mississippi Department of Transportation, respectively.

All Special Provisions and revised Specifications adopted and approved are made a part hereof fully and completely as if attached hereto.

The Engineer, for the Owner, will set all control points and construction stakes deemed necessary by the Engineer to construct the work in accordance with the Construction Plans. These stakes and marks shall constitute the field control by and in accordance with which the Contractor shall establish and maintain all other necessary controls and construction stakes required to perform the work in full accordance with the Contract Drawings.

The Contractor shall be held responsible for the preservation of all control points and benchmarks and if any of these control points are carelessly or willfully destroyed or disturbed by the Contractor, the cost of replacing them will be charged against him and will be deducted from the payment for the work.

The following exception to the 2004 Standard Specifications is as follows: The Engineer, for the Owner, will perform all quality control testing of soils and concrete required by the Technical Specifications. The Engineer, for the Owner, will perform all quality assurance testing of asphalt required by the Technical Specifications. Contractor will be responsible for quality control testing of asphalt required by the Technical Specifications. Frequency of tests shall be at the discretion of the Engineer.

The Contractor, at no additional cost to the Owner, shall be responsible for furnishing manufacturer's certifications that all materials incorporated into construction of this project meet the specifications.

Fuel Adjustment does not apply to this Contract. Contractor shall maintain all records and documents required on site as per the Contract Documents and Specifications.