



**CONTRACT DOCUMENTS  
AND  
SPECIFICATIONS**

**DIVISION OF WATER QUALITY**

**FOR**

**2019 CAPACITY ASSURANCE PROGRAM  
FLOW MONITORING FIELD SERVICES**

**Bid No. 158-2018**

**PREPARED BY:**

**DIVISION OF WATER QUALITY  
LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**



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**2019 CAPACITY ASSURANCE PROGRAM FLOW MONITORING FIELD SERVICES**

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**PART I**

**ADVERTISEMENT FOR BIDS**

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## ADVERTISEMENT FOR BIDS

### 1. INVITATION

Sealed proposals for the following work will be received by the Lexington-Fayette Urban County Government until **2:00 p.m.**, local time, **Monday, December 10** for furnishing all labor and/or materials and performing all work as set forth by this advertisement, conditions (general and special), specifications, and/or the drawings prepared by and for Lexington-Fayette Urban County Government, Division of Water Quality. Immediately following the scheduled closing time for reception of bids, all proposals which have been submitted in accordance with the above will be publicly opened and read aloud.

### 2. DESCRIPTION OF WORK

The project includes providing all construction supervision, labor, materials, tools, test equipment necessary for Bid #158-2018 **2019 Capacity Assurance Program Temporary Flow Monitoring**.

### 3. OBTAINING PLANS, SPECIFICATIONS, AND BID DOCUMENTS

Plans, Specifications, and Contract Documents may be obtained from <https://lexingtonky.ionwave.net>.

### 4. METHOD OF RECEIVING BIDS

Bids will be received from Prime Contracting firms on a **Line Item Unit Price Basis**, for total Project Area. Bids shall be submitted in the manner and subject to the conditions as set forth and described in the Instruction to Bidders and Special Conditions.

Sealed bids shall be clearly marked on the outside of the container as follows: Company Name and Address, Bid Invitation Number, and the Project Name. Bids are to remain sealed until official Bid closure time.

Mailed bids/proposals should be sent to the Director, Division of Central Purchasing, 200 East Main Street, Lexington, KY 40507.

### 5. METHOD OF AWARD

The Contract, if awarded, will be to the lowest, qualified responsible bidder for the total project whose qualifications indicate the award will be in the best interest of the OWNER and whose bid/proposal complies with all the prescribed requirements. No Notice of Award will be given until the OWNER has concluded such investigation as deemed necessary to establish the responsibility, qualifications and financial ability of Bidders to do the work in accordance with the Contract Documents to the satisfaction of the OWNER within the time prescribed. The OWNER reserves the right to reject the Bid of any Bidder who does not pass such investigation to the OWNER's satisfaction. In analyzing Bids, the OWNER may take into consideration alternate and unit prices, if requested by the Bid forms.

**6. BID WITHDRAWAL**

No bidder may withdraw his bid for a period of sixty (60) calendar days after the closing date for receipt of bids. Errors and omissions will not be cause for withdrawal of bid without forfeit of bid bond. Bids may be withdrawn in person prior to the closing date of receipt of bids.

**7. BID SECURITY**

If the bid is \$50,000 or greater, bid shall be accompanied by a certified / cashier's check or bid bond payable to the Lexington-Fayette Urban County Government in an amount not less than Five Percent (5%) of the base bid. Bid bond shall be executed by a Surety Company authorized to do business in the Commonwealth of Kentucky and countersigned by a licensed Kentucky Resident Agent, representing the Surety Company. Bid Bonds are not required for bids under \$50,000. A certified check or cashier's check is also acceptable forms of bid security.

**8. SUBMISSION OF BIDS**

CONTRACTORS shall submit their bids to the Lexington-Fayette Urban County Government, Division of Purchasing, Third Floor, 200 East Main Street, Lexington, Kentucky 40507. Bids shall be submitted in a sealed envelope not later than 2:00 p.m., local time Monday, **December 10**. Sealed proposals shall be clearly marked on the outside of the container as follows: Company Name and Address, Bid Invitation Number, and Project Name to be opened at 2:00 p.m. local time **Monday, December 10**. Bids received after the scheduled closing time for receipt of bids will not be considered and will be returned unopened.

**9. RIGHT TO REJECT**

The Purchasing Agent for the Lexington-Fayette Urban County Government reserves the right to reject any and all bids and to waive all informalities and/or technicalities where the best interest of the Lexington-Fayette Urban County Government may be served.

**10. NOTIFICATION TO THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT FOR AFFIRMATIVE ACTION PLAN AND CURRENT WORKFORCE**

The successful bidder must submit with their bid the following items to the Lexington-Fayette Urban County Government:

1. Affirmative Action Plan for his/her firm.
2. Current Workforce Analysis Form.

Failure to submit these items as required herein may result in disqualification of the Bidder from the award of the contract.

All submissions should be directed to:

Lexington-Fayette Urban County Government  
Division of Purchasing  
200 East Main Street, 3<sup>rd</sup> Floor, Room 338  
Lexington, Kentucky 40507

**11. NOTICE CONCERNING MWDBE GOAL**

Notice of requirement for Affirmative Action to ensure Equal Employment Opportunities and Disadvantaged Business Enterprises (DBE) Contract participation. Disadvantaged Business Enterprises (DBE) consists of Minority-Owned Business Enterprises (MBE), **Veteran-Owned Small Businesses (VOSB)** and Woman-Owned Business Enterprises (WBE).

The Lexington-Fayette Urban County Government has set a goal that not less than ten percent (10%) of the total value of this Contract be subcontracted to Disadvantaged Business Enterprises, which is made up of MBEs and WBEs. The Lexington Fayette Urban County Government also has set a goal that not less than three percent (3%) of the total value of this Contract be subcontracted to Veteran-Owned Small Businesses. The goal for the utilization of Disadvantaged Business Enterprises as well as Veteran-Owned Small Businesses as subcontractors is a recommended goal. Contractor(s) who fail to meet such goal will be expected to provide written explanations to the Director of the Division of Purchasing of efforts they have made to accomplish the recommended goal, and the extent to which they are successful in accomplishing the recommended goal will be a consideration in the procurement process. Depending on the funding source, other DBE goals may apply.

For assistance in locating Disadvantaged Business Enterprises Subcontractors contact:

Sherita Miller, Minority Business Enterprise Liaison  
Division of Central Purchasing  
Lexington-Fayette Urban County Government  
200 East Main Street, 3rd Floor, Room 338  
Lexington, Kentucky 40507  
[smiller@lexingtonky.gov](mailto:smiller@lexingtonky.gov)

**12. PRE-BID MEETING**

A non-mandatory pre-bid meeting will be held at \_\_\_\_\_ AM/PM local time on \_\_\_\_\_ at \_\_\_\_\_.  
(date) (location)

**13. CONSENT DECREE REQUIREMENTS**

The work to be provided through this bid will assist the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT** (the “**OWNER**”) in successfully implementing the **PROJECT** and complying with any requirements which are related to the Consent Decree entered in a case styled *United States & Commonwealth of Kentucky v. Lexington Fayette Urban County Government*, United States District Court for the Eastern District of Kentucky, Civil Action No. 5:06-cv-386-KSF (the “**CONSENT DECREE**”). The services provided through this bid are hereinafter referred to as the **PROJECT**. **The primary goal of the PROJECT is to provide the OWNER with the technical support and/or construction services necessary to successfully meet the obligations and deadlines of the CONSENT DECREE.**

The **BIDDER** shall familiarize itself with and shall at all times comply with the **CONSENT**



**DECREE**, and all federal, state and local laws, ordinances, and regulations that in any manner affect the **PROJECT**. Time is of the essence in the performance of this **PROJECT**. **BIDDER** is aware that the **OWNER** is subject to penalties for non-compliance with the **CONSENT DECREE** deadlines.

If delays result solely by reason of acts of the **BIDDER**, the **BIDDER** shall be held liable for any financial penalties incurred by the **OWNER** as a result of the delay, **including but not limited to those assessed pursuant to the CONSENT DECREE**. In the event the parties cannot mutually agree upon the cause(s) associated with delays in completing project deliverables. The **BIDDER** must immediately notify the **OWNER** in the event of such delay, and provide the **OWNER** a written action plan within five (5) business days on how it will attempt to resolve the delay.

In the event that **Bidder's** delay or other nonperformance of its obligations hereunder results in the imposition of penalties against the **OWNER** pursuant to the **CONSENT DECREE**, or the **OWNER** otherwise suffers damage as a result of such delay or nonperformance, **BIDDER** shall be solely liable to **OWNER** for any and all such damages, including any costs and attorney's fees.

An electronic version of the Consent Decree is available on the LFUCG web page for review or to print a copy at no charge.

#### 14. **STATE REVOLVING LOAN REQUIREMENTS**

This project may be partially or entirely funded by the Kentucky Infrastructure Revolving Loan Fund.

Bidders must comply with Title VI of the Civil Rights Act of 1964, the Anti-Kickback Act, and the Contract Work Hours Standard Act.

Bidders must comply with the President's Executive Order No. 11246 as amended, which prohibits discrimination in employment regarding race, creed, color, sex, or national origin.

Successful bidder shall comply with 41 CFR 60-4, in regard to affirmative action, to insure equal opportunity to females and minorities and will apply the time tables and goal set forth in 40 CFR 60-4.

Successful bidder shall make positive efforts to use small, minority, women-owned, and disadvantaged businesses.

Attention of bidders is particularly called to the conditions of employment to be observed and minimum wage rates to be paid under the Contract, Section 3, Segregated Facility, Section 109 and E.O. 11246 and Title VI. Minority bidders are encouraged to bid.

**Successful bidder is required to employ the six "Good Faith Efforts" as listed in EPA's Disadvantaged Business Enterprise Program when soliciting subcontractors and**

**suppliers. Documentation of these efforts will be a required submittal prior to Contract Award.**

The Contract Award will be made in writing to the lowest responsive and responsible bidder whose qualifications indicate the award will be in the best interest of the OWNER and whose bid/proposal complies with all the prescribed requirements. No Notice of Award will be given until the OWNER has concluded such investigation as deemed necessary to establish and responsibility, qualifications and financial ability of Bidders to do the work in accordance with the Contract Documents to the satisfactions of the OWNER within the time prescribed. The OWNER reserves the right to reject the Bid of any Bidder who does not pass such investigation to the OWNER's satisfaction. In analyzing Bids, the OWNER may take into consideration alternate and unit prices, if requested by the Bid forms.

END OF SECTION

**PART II**  
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## PART II

### INFORMATION FOR BIDDERS

#### **1. RECEIPT AND OPENING OF BIDS**

The Lexington-Fayette Urban County Government (herein called the OWNER) invites bids from firms on the project described in the Advertisement for Bids. The OWNER will receive bids at the Division of Purchasing, at the time and in the manner set forth in the Advertisement for Bids, and the Bids will then be publicly opened and read aloud. 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 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 60 days after the actual time and date of the bid opening, but OWNER may, in its sole discretion, release any bid and return the Bid Security prior to that date.

The Lexington-Fayette Urban County Government assumes no responsibility for bids that are not addressed and delivered as indicated above. Bids that are not delivered to the Division of Central Purchasing by the stated time and date will be rejected.

#### **2. PREPARATION OF BID**

Each bid must be submitted on the prescribed Form of Proposal. All blank spaces for the bid prices must be filled in, either in ink or typewritten, for both unit prices and extensions. Totals for each bid item must be added to show the total amount of the bid. Each bid must be submitted in a sealed envelope bearing on the outside the name of the bidder, their address, the name of the project, the invitation number and time and date for which the bid is submitted. Bids must be addressed to the Director of Purchasing, Lexington-Fayette Urban County Government, Third Floor, 200 East Main Street, Lexington, Kentucky 40507. If forwarded by mail, the sealed envelope containing the bid must be enclosed in another envelope addressed as specified above.

#### **3. SUBCONTRACTS**

The bidder is specifically advised that any person, firm, or other party to whom it is proposed to award a subcontract under this Contract must be acceptable to the OWNER. All proposed subcontractors must be identified on the Form of Proposal. Prior to the award of Contract, the OWNER or the OWNER'S representative will advise the CONTRACTOR of the acceptance and approval thereof or of any action necessary to be taken. Should any Subcontractor be rejected by the OWNER, the CONTRACTOR shall present a new name and/or firm to the OWNER at no change in the Contract Price.

#### 4. QUALIFICATION OF BIDDER

The OWNER may make such investigations as the OWNER deems necessary to determine the ability of the bidder to perform the 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.

In evaluating Bids, OWNER shall consider the qualifications of the BIDDERS, whether or not the Bids comply with the prescribed requirements, and alternatives and unit prices, as requested. OWNER may consider maintenance requirements, performance data, and disruption or damage to private property. It is OWNER'S intent to accept alternatives, if requested by the bid forms, in the order in which they are listed in the Bid Form but OWNER may accept or decline them in any order or combination. The contract, if awarded, will be awarded to the lowest, qualified, responsible BIDDER based upon OWNER'S evaluation which indicates that the award will be in the best interest of OWNER and the general public.

In the event there is any question as to the bidder's qualifications and ability to complete the work, a final determination will be made in accordance with a fair evaluation by the Urban County Government of the above listed elements.

- A. If the OWNER requires filling out a detailed financial statement, the bidder may provide its current certified financial statement(s) for the required time interval.
- B. Corporate firms are required to be registered and in good standing with the requirements and provisions of the Office of the Secretary of State, Commonwealth of Kentucky.
- C. Good standing with Public Works Act - any CONTRACTOR and/or subcontractors in violation of any wage or work act provisions (KRS 337.510 to KRS 337.550) are prohibited by Statutory Act (KRS 337.990) from bidding on or working on any and all public works contracts, either in their name or in the name of any other company, firm or other entity in which he might be interested. No bid from a prime contractor in violation of the Act can be considered, nor will any subcontractor in violation of the Act be approved and/or accepted. The responsibility for the qualifications of the subcontractor is solely that of the prime contractor.
- D. Documents Required of CONTRACTOR - (1) A sworn statement signed by the President or owner of the Company regarding all current work in progress anywhere; (2) A document showing the percent of completion of each project and the total worth of each project; and (3) Documentation showing the percentage of the DBE employment levels on each project of the Bidder's current work force, and DBE participation levels for Subcontractors.

- E. Optional OWNER Requirements - The OWNER, at its discretion, may require the BIDDER/CONTRACTOR to provide: (1) a current detailed financial statement for a period including up to 3 prior years; (2) financial security or insurance in amounts and kinds acceptable to the OWNER to meet the financial responsibility requirements for the CONTRACTOR to indemnify the OWNER. (3) Additional information and/or DBE work force data, as well as DBE participation data.

**Each bidder agrees to waive any claim it has or may have against the Owner, the Architect/Engineer, and their respective employees, arising out of or in connection with the administration, evaluation, or recommendation of any bid.**

**5. BID SECURITY**

- A. Each bid must be accompanied by a bid bond prepared on a Form of Bid Bond and attached hereto, duly executed by the bidder as principal and having as surety thereon a surety company approved by the OWNER, in the amount of 5% of the bid. Such bid bond will be returned to the unsuccessful bidder(s) only upon written request to the Director of Central Purchasing within seven (7) days of opening of bids. Bid bond shall be made payable to the Lexington-Fayette Urban County Government. Bid security is not required for projects under \$50,000.
- B. Bonds shall be placed with an agent licensed in Kentucky with surety authorized to do business within the state. When the premium is paid for such coverage, the full commission payable shall be paid to such local agent who shall not divide such commission with any person other than a duly licensed resident local agent.

**6. 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.

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

Bidder must agree to commence work on or before a date to be specified in a written "Notice to Proceed" from the OWNER and to fully complete the Project within the time as specified in the Contract. Bidder must agree also to pay \$ 400 per day as liquidated damages, or the sum as specified in the Contract for each consecutive calendar day thereafter as hereinafter provided in the General Conditions.

**8. EXAMINATION OF CONTRACT DOCUMENTS AND SITE**

- A. It is the responsibility of each Bidder before submitting a Bid, to (a) examine the Contract Documents thoroughly, (b) visit the site(s) to become familiar with local conditions that may affect cost, progress, performance or furnishing of the work, (c) consider Federal, State and Local laws and regulations that may affect cost, progress, performance or furnishing of the work, (d) study and carefully correlate Bidder's observations with the Contract Documents, and (e) notify Engineer of all conflicts, errors or discrepancies in the Contract Documents.
  
- B. Bidders should examine the requirements of section 4 of the General Conditions for information pertaining to subsurface conditions, underground structures, underground facilities, and availability of lands, easements, and rights-of-way. The completeness of data, presented in the Contract Documents, pertaining to subsurface conditions, underground structures, and underground facilities for the purposes of bidding or construction is not assured. The Bidder will, at Bidder's own expense, make or obtain any additional examinations, investigations, explorations, tests and studies and obtain any additional information and data which pertain to the physical conditions (surface and subsurface) which may affect cost, progress, performance or furnishing of the Work and which Bidder deems necessary to determine its Bid for performing and furnishing the Work in accordance with the time, price, and other terms and conditions of the Contract Documents. On request in advance, OWNER will provide access to the site to conduct such explorations and tests as each Bidder deems necessary for submission of a bid. Bidder shall fill all holes, clean up and restore the site to its former condition upon completion of such explorations.
  
- C. The submission of a Bid will constitute an incontrovertible representation by the Bidder that Bidder has complied with every requirement of this paragraph 8; that without exception the Bid is premised upon furnishing and performing the Work required by the Contract Documents and such means, methods, techniques, sequences or procedures of construction as may be indicated in or required by the Contract Documents; and that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

**9. ADDENDA AND INTERPRETATIONS**

No interpretation of the meaning of the Contract Documents will be made to any bidder orally. Every request for such interpretation should be in writing addressed to the Director of Central Purchasing, who in turn will have an Addendum issued for the Lexington-Fayette Urban County Government, and to be given consideration must be received 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. Acknowledgement of the receipt of addenda must be included with all submitted bids. Failure of any bidder to receive any such addendum or 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.

**10. SECURITY FOR FAITHFUL PERFORMANCE**

- A. Simultaneously with his delivery of the executed Contracts, the CONTRACTOR shall furnish a surety bond or bonds as security for the faithful performance of this Contract and for payment of all persons performing labor on the Project under this Contract and furnishing materials in connection with this Contract, as specified in the General Conditions. The surety on such bond or bonds shall be a duly authorized surety company satisfactory to the OWNER and authorized to do business in the Commonwealth of Kentucky.
- B. All bonds required by this Contract and laws of this State shall be placed with agents licensed in the State of Kentucky. When the premium is paid for such coverage's, the full commission shall be paid to such local agent who shall not divide such commission with any person other than a duly licensed resident local agent.
- C. **Contractor shall use standard Performance and Payment Bond forms such as documents provided with this contract book or AIA form A312-1984 (or later). Each document will be for 100% of the Contract Bid Amount.**

**11. POWER OF ATTORNEY**

Attorney-in-fact who signs bid bonds or contract bonds must file with each bond a certified and effectively dated copy of their power of attorney.

**12. TAXES AND WORKMEN'S COMPENSATION**

The CONTRACTOR and subcontractor will be required to accept liability for payment of all payroll taxes, sales and use tax, and all other taxes or deductions required by local, state or federal law, such as old age pension, social security, or annuities measured by wages. Each shall carry Workmen's Compensation Insurance to the full amounts as required by Statutes and shall include the cost of all foregoing items in the proposal. The CONTRACTOR will not otherwise be reimbursed or compensated for such tax payments. The CONTRACTOR is urged to ascertain at his own risk his actual tax liability in connection with the execution or performance of his Contract.

**13. 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 herein written out in full.



**14. EROSION AND SEDIMENT CONTROL AND PERMITS**

The CONTRACTOR and Subcontractors performing work on projects on behalf of the OWNER shall also comply with all applicable federal, state, and local environmental regulations and all requirements and conditions set forth in "special" permits including but not limited to Corp of Engineers 404 permits, 401 Water Quality Certifications, Stream Crossing and Floodplain Encroachment Permits as described in Part 4 General Conditions Paragraph 5.17.

**15. PREVAILING WAGE LAW AND MINIMUM HOURLY RATES**

Federal or state wage rates and regulations, if required for this Project, will be as described in the Special Conditions.

**16. AFFIRMATIVE ACTION PLAN**

The successful Bidder must submit with their bid, the following items to the Urban County Government:

1. Affirmative Action Plan of the firm
2. Current Work Force Analysis Form
3. Good Faith Effort Documentation
4. List of Disadvantaged Business Enterprise Subcontractors and the Dollar Value of each Subcontract

A Work Force Analysis Form shall be submitted for each Contract. Failure to submit these items as required herein may result in disqualification of the Bidder from award of the Contract.

All submissions should be directed to:

Director, Division of Central Purchasing  
Lexington-Fayette Urban County Government  
200 East Main Street, Third Floor  
Lexington, KY 40507

**17. CONTRACT TIME**

The number of calendar days within which the Work is to be substantially completed and ready for final payment (the Contract Time) is set forth in the Form of Proposal and the Agreement.

**18. SUBSTITUTE OR "OR-EQUAL" ITEMS**

The Contract, if awarded, will be on the basis of materials and equipment described in the Drawings or specified in the Specifications without consideration of possible substitute or "or-equal" items. Whenever it is indicated in the Drawings or specified in the Specifications that a substitute or "or-equal" item of material or equipment may be furnished or used by the CONTRACTOR if acceptable to the ENGINEER and OWNER, application for such acceptance will not be considered by the ENGINEER and OWNER until after the effective date of the Agreement. The procedure for submission of any such application by the CONTRACTOR and consideration by the ENGINEER and OWNER is set forth in the General Conditions.

**19. ALTERNATE BIDS**

**Bidders shall submit alternate bids/proposals only if and when such alternate bids/proposals have been specifically requested in an Invitation for Bids.** If alternate bids/proposals are requested in an Invitation for Bids, the form of submission of such alternate bid and the conditions under which such alternate bids will be considered for award of a contract will be established in the Invitation.

Any Bidder who submits a bid incorporating an alternate proposal when alternate bids/proposals have not been requested in the Invitation for Bids shall have his/her bid rejected as non-responsive.

Any Bidder who submits a bid incorporating two (2) or more prices for an item or groups of items (unless such method of pricing is requested in the Invitation for Bids), or which imposes conditions for acceptance other than those established in the Invitation for Bids, shall have their bid rejected as non-responsive.

**20. SIGNING OF AGREEMENT**

When OWNER gives a Notice of Award to the successful Bidder, it will be accompanied by the required number of unsigned counterparts of the Agreement with all other written Contract Documents attached. Within ten days thereafter, CONTRACTOR shall sign and deliver the required number of counterparts of the Agreement and attached documents to OWNER with the required Bonds, Certificate of Insurance, and Power of Attorney. The OWNER will deliver one fully signed counterpart to CONTRACTOR at such time as it has been signed by the Mayor.

**21. ASSISTANCE TO BE OFFERED TO DISADVANTAGED BUSINESS ENTERPRISE (MWD BE) CONTRACTORS**

A. Outreach for MWD BE(s)

The Lexington-Fayette Urban County Government (LFUCG) maintains a database of MWDBE contractors and organizations. When a LFUCG construction project is advertised for bidding, notices are sent to companies registered at <https://lexingtonky.gov/wa/e.net>. The notices describe the project and indicate the deadline for submitting bids.

If you wish to be added to the LFUCG MWDBE contractor database, please contact:

Sherita Miller, Minority Business Enterprise Liaison  
Division of Central Purchasing  
Lexington-Fayette Urban County Government  
200 East Main Street, Room 338  
Lexington, Kentucky 40507  
[smiller@lexingtonky.gov](mailto:smiller@lexingtonky.gov)

B. Bid Bond Assistance for MWDBE(s)

For those MWDBE contractors who wish to bid on LFUCG project, bid bond assistance is available. This bid bond assistance is in the form of a “Letter of Certification” which is accepted by the LFUCG’s Division of Purchasing, in lieu of a bid bond. The “Letter of Certification” must be included in the bid package when it is submitted to the Division of Purchasing. The “Letter of Certification” will reference the specific project for which the bid is being submitted, and the time and date on which the bid is due. Bid bond assistance must be requested from the Lexington-Fayette Urban County Government’s Division of Central Purchasing.

C. Eligibility for Bid Bond Assistance for MWDBE(s)

In order to be eligible for any Bid bonding assistance, a MWDBE construction company must be owned or controlled at the level of 51% or more by a member or members of a minority group or females. Prior to receiving assistance, a statement providing evidence of ownership and control of the company by a member or members of a minority group or females must be signed by the Owner or corporate officer and by an attorney or accountant submitted to:

Sherita Miller, Minority Business Enterprise Liaison  
Division of Central Purchasing  
Lexington-Fayette Urban County Government  
200 East Main Street, Room 338  
Lexington, Kentucky 40507  
[smiller@lexingtonky.gov](mailto:smiller@lexingtonky.gov)

D. MWDBE and Veteran Subcontractors

The LFUCG will, upon request, assist prime contractors in the procurement of eligible DBE subcontractors in an effort to achieve 10% minimum MWDBE and 3% minimum veteran goal.

For a list of eligible subcontractors, please contact:

Sherita Miller, Minority Business Enterprise Liaison  
Division of Central Purchasing  
Lexington-Fayette Urban County Government  
200 East Main Street, Room 338  
Lexington, Kentucky 40507  
[smiller@lexingtonky.gov](mailto:smiller@lexingtonky.gov)

**PART III**

**Invitation to Bid No. 158-2018**

**2019 Capacity Assurance Program Flow Monitoring Field Services**

**1. FORM OF PROPOSAL**

Place: Lexington, Kentucky

Date: December 6, 2018

The following Form of Proposal shall be followed exactly in submitting a proposal for this Work.

This Proposal Submitted by ADS LLC

340 The Bridge Street, Suite 204, Huntsville, AL 35806

(Name and Address of Bidding Contractor)

(Hereinafter called "Bidder"), organized and existing under the laws of the State of DE, doing business as ADS Environmental Services Corporation "a corporation," "a partnership," or an "individual" as applicable.

To: Lexington-Fayette Urban County Government  
(Hereinafter called "OWNER")  
Office of the Director of Purchasing  
200 East Main Street, 3rd Floor  
Lexington, KY 40507

Gentlemen:

The Bidder, in compliance with your Invitation for Bids for Flow Monitoring Field Services having examined the Plans and Specifications with related documents, having examined the site for 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, and supplies, and to construct the Project in accordance with the Contract Documents, within the time set forth therein, and at the lump sum and/or unit prices stated hereinafter. 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 OWNER will issue work orders for work to be performed under this Contract.

BIDDER hereby agrees to commence work under this contract on or before a date to be specified in the Notice to Proceed and to fully complete the project within the time provided in the Purchase Order or Work Orders issued by the OWNER. BIDDER further agrees to pay liquidated damages, the sum of \$ 400 for each consecutive calendar day thereafter.

The Bidder hereby acknowledges receipt of the following addenda:

Addendum No. \_\_\_\_ Date NONE  
Addendum No. \_\_\_\_ Date \_\_\_\_\_  
Addendum No. \_\_\_\_ Date \_\_\_\_\_  
Addendum No. \_\_\_\_ Date \_\_\_\_\_  
Addendum No. \_\_\_\_ Date \_\_\_\_\_  
Addendum No. \_\_\_\_ Date \_\_\_\_\_  
Addendum No. \_\_\_\_ Date \_\_\_\_\_  
Addendum No. \_\_\_\_ Date \_\_\_\_\_

Insert above the number and the date of any Addendum issued and received. If none has been issued and received, the word "NONE" should be inserted.

**2. LEGAL STATUS OF BIDDER**

Bidder ADS LLC

Date December 6, 2018

\* 1. A corporation duly organized and doing business under the laws of the State of DE, for whom Joseph J. Goustin, bearing the official title of Assistant Treasurer, whose signature is affixed to this Bid/Proposal, is duly authorized to execute contracts.

~~\* 2. A Partnership, all of the members of which, with addresses are: (Designate general partners as such)~~

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~~\* 3. An individual, whose signature is affixed to this Bid/Proposal (please print name)~~

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\*(The Bidder shall fill out the appropriate form and strike out the other two.)

3. **BIDDERS AFFIDAVIT**

Comes the Affiant, Joseph J. Goustin, Asst. Treasurer, and after being first duly sworn, states under penalty of perjury as follows:

1. His/her name is Joseph J. Goustin and he/she is the individual submitting the bid or is the authorized representative of ADS LLC, the entity submitting the bid (hereinafter referred to as "Bidder").
  2. Bidder will pay all taxes and fees, which are owed to the Lexington-Fayette Urban County Government at the time the bid is submitted, prior to award of the contract and will maintain a "current" status in regard to those taxes and fees during the life of the contract.
  3. Bidder will obtain a Lexington-Fayette Urban County Government business license, if applicable, prior to award of the contract.
  4. Bidder has authorized the Division of Central Purchasing to verify the above-mentioned information with the Division of Revenue and to disclose to the Urban County Council that taxes and/or fees are delinquent or that a business license has not been obtained.
  5. Bidder has not knowingly violated any provision of the campaign finance laws of the Commonwealth of Kentucky within the past five (5) years and the award of a contract to the Bidder will not violate any provision of the campaign finance laws of the Commonwealth.
  6. Bidder has not knowingly violated any provision of Chapter 25 of the Lexington-Fayette Urban County Government Code of Ordinances, known as the "Ethics Act."
  7. Bidder acknowledges that "knowingly" for purposes of this Affidavit means, with respect to conduct or to circumstances described by a statute or ordinance defining an offense, that a person is aware or should have been aware that his conduct is of that nature or that the circumstance exists.
- Further, Affiant sayeth naught.

Joseph J. Goustin  
(Affiant)

STATE OF Alabama

COUNTY OF Madison

The foregoing instrument was subscribed, sworn to and acknowledged before me by

Joseph J. Goustin on this the 6th day of December, 2018.

My Commission expires: August 23, 2022

Katherine Lynn McAuley  
NOTARY PUBLIC, STATE AT LARGE





**4. BID SCHEDULE – SCHEDULE OF VALUES**

The Bidder agrees to perform all the Work described in the Specifications and shown on the Plans for the following proposed lump sum and/or unit prices, if applicable, which shall include the furnishing of all labor, materials, supplies, equipment and/or vehicle usage, services, all items of cost, overhead, taxes (federal, state, local), and profit for the Contractor and any Subcontractor involved, within the time set forth herein. If unit prices are applicable, Bidder must make the extensions and additions showing the total amount of bid.

Form of proposal must include unit bid prices written in words, unit price written in numbers and total amount bid (unit price x quantity) per line item OR bid may be considered non-responsive. In case of price discrepancy, unit bid price written in words will prevail followed by unit price written in numbers then total amount bid per line item.

If a discrepancy between the unit price and the item total exists, the unit price prevails except:

If the unit price is illegible, omitted, or the same as the item total, item total prevails and the unit price is the quotient of the item total and the quantity.

If the unit price and the item total are illegible or are omitted, the bid may be determined nonresponsive. If a lump sum total price is illegible or is omitted, the bid may be determined nonresponsive.

For a lump sum based bid, the item total is the bid amount the Division uses for bid comparison.

For a unit price based bid, the sum of the item totals is the bid amount the Division uses for bid comparison.

The LFUCG's decision on the bid amount is final.

The contract, if awarded, will be on the basis of materials and equipment specified in the specifications without consideration of possible substitute or "or equal" items.

The estimated quantities of items of unit price work are not guaranteed and are solely for the purpose of comparison of bids and determining an initial Contract price. Determination of the actual quantities and classification of unit price work performed by the Contractor will be made by the Engineer in accordance with the General Conditions.

<b>Item No.</b>	<b>Description w/Unit Bid Price Written in Words</b>	<b>Estimated Quantity</b>	<b>Unit</b>	<b>Unit Price</b>	<b>Total Bid Amount</b>
1.	Installation, Removal & Calibration of Temporary Flow Meter for <div style="text-align: right; padding-right: 20px;">five hundred Dollars and zero Cents (per Each)</div>	93	Each	\$ <u>500.00</u>	\$ <u>46,500.00</u>
2.	Operation & Maintenance of Temporary Flow Meter for <div style="text-align: right; padding-right: 20px;">six hundred ninety-five Dollars and zero Cents (per Meter-month)</div>	372	Meter-month	\$ <u>695.00</u>	\$ <u>258,540.00</u>
3.	Installation, Removal & Calibration of Temporary Rain Gage for <div style="text-align: right; padding-right: 20px;">two hundred seventy-five Dollars and zero Cents (per Each)</div>	12	Each	\$ <u>275.00</u>	\$ <u>3,300.00</u>

Item No.	Description w/Unit Bid Price Written in Words	Estimated Quantity	Unit	Unit Price	Total Bid Amount
4.	Operation & Maintenance of Temporary Rain Gage for two hundred Dollars and zero Cents (per Gage-month)	48	Gage-month	\$ 200.00	\$ 9,600.00
5.	Monthly Data Packet for one thousand two hundred seventy-five Dollars and zero Cents (per Each)	4	Each	\$ 1,275.00	\$ 5,100.00
6.	Final Report for one thousand nine hundred fifty Dollars and zero Cents (per Each)	1	Each	\$ 1,950.00	\$ 1,950.00
7.	Kickoff/Progress Meetings for zero Dollars and zero Cents (per Each)	4	Each	\$ 0	\$ 0

TOTAL OF ALL BID PRICES FOR 158-2018 Project (Items 1 through 30) in words and figures.  
In case of discrepancy, the amount shown in words will govern.  
three hundred twenty-five thousand, nine hundred dollars and zero cents.

( \$ 325,900.00 ).

The quantities indicated in the Bid Schedule reflect those anticipated for the 2019 monitoring season. Estimated quantities may change after the contract is awarded. Final quantities will be at the OWNER's discretion. The CONTRACTOR shall specify the unit price for each item in the Bid Schedule without regard to quantity. The CONTRACTOR will not be permitted to alter the unit price identified in the Bid Schedule for changes in estimated quantities for any Item No.

Additional information regarding the preliminary monitoring sites for 2019 is provided in Section 4.06 of the Technical Specifications.

Monitoring equipment used to perform the work shall be furnished by the CONTRACTOR. Ownership of monitoring equipment remains with the CONTRACTOR. No equipment is to be provided to the OWNER as part of this contract.

Submitted by:

ADS LLC

*Firm*

340 The Bridge Street, Suite 204

*Address*

Huntsville, AL 35806

*City, State & Zip*

***Bid must be signed:  
(original signature)***

*J. J. Goustin* Assistant Treasurer

***Signature of Authorized Company Representative – Title***

Joseph J. Goustin

*Representative/s Name (Typed or Printed)*

256-430-3366

*Area Code – Phone – Extension*

256-430-8633

*Fax #*

jgoustin@ldexcorp.com

*E-Mail Address*

**OFFICIAL ADDRESS:**

ADS LLC

340 The Bridge Street, Suite 204

Huntsville, AL 35806

(Seal if Bid is by Corporation)



**By signing this form you agree to ALL terms, conditions, and associated forms in this bid package**

5. STATEMENT OF BIDDER'S QUALIFICATIONS

The following statement of the Bidder's qualifications is required to be filled in, executed, and submitted with the Proposal:

- 1. Name of Bidder: ADS LLC
- 2. Permanent Place of Business: 340 The Bridge Street, Suite 204, Huntsville, AL 35806
- 3. When Organized: July 1975
- 4. Where Incorporated: Delaware (as of 1990)
- 5. Construction Plant and Equipment Available for this Project:

150 Area/Velccity Flow Meters  
40 Rain Gauge Data loggers  
5 fully equipped trucks for flow monitoring  
All necessary safety equipment

(Attach Separate Sheet If Necessary)

6. Financial Condition:

If specifically requested by the OWNER, the apparent low Bidder is required to submit its latest three (3) years audited financial statements to the OWNER'S Division of Central Purchasing within seven (7) calendar days following the bid opening.

7. In the event the Contract is awarded to the undersigned, surety bonds will be furnished by:

Liberty Mutual Insurance Company (Surety)

Signed: Renee A. Kolpacki (Representative of Surety)  
Renee A. Kolpacki

8. The following is a list of similar projects performed by the Bidder: (Attach separate sheet if necessary).

<u>NAME</u>	<u>LOCATION</u>	<u>CONTRACT SUM</u>
LFUCG-PO 00149931	Lexington, KY	~\$86,184
MSDGC-Flow Monitoring Services	Cincinnati, OH	~\$2,100,000
Terrace Villa Metering	Montgomery Co, OH	~\$30,000
Beaver Creek Master Plan	Greene County, OH	~\$107,000
Flow Monitoring Study	Pittsburgh, PA	~\$1,500,000

9. The Bidder has now under contract and bonded the following projects:

<u>NAME</u>	<u>LOCATION</u>	<u>CONTRACT SUM</u>
None		

10. List Key Bidder Personnel who will work on this Project.

<u>NAME</u>	<u>POSITION DESCRIPTION</u>	<u>NO. OF YEARS WITH BIDDER</u>
Tim Calder, P.E.	Project Manager	32
Pam Good	Sr. Data Analyst	16+
Scott Warren	Field Manager	30
Jay Merck	Crew Leader	12

11. DBE Participation on current bonded projects under contract:

<u>SUBCONTRACTORS</u> <u>(LIST)</u>	<u>PROJECT</u> <u>(SPECIFIC TYPE)</u>	<u>DBE</u>	<u>% of WORK</u>
None			

(USE ADDITIONAL SHEETS IF NECESSARY)

12. We acknowledge that, if we are the apparent low Bidder, we may be required to submit to the OWNER within 7 calendar days following the Bid Opening, a sworn statement regarding all current work on hand and under contract, and a statement on the OWNER'S form of the experience of our officers, office management and field management personnel. Additionally, if requested by the OWNER, we will within 7 days following the request submit audited financial statements and loss history for insurance claims for the 3 most recent years (or a lesser period stipulated by the OWNER).

**6. LIST OF PROPOSED SUBCONTRACTORS**

The following list of proposed subcontractors is required by the OWNER to be executed, completed and submitted with the BIDDER'S FORM OF PROPOSAL. All subcontractors are subject to approval of the Lexington-Fayette Urban County Government. Failure to submit this list completely filled out may be cause for rejection of bid.

<b><u>BRANCH OF WORK - LIST EACH Work</u></b>	<b><u>SUBCONTRACTOR</u></b>	<b><u>DBE</u></b>	<b><u>% of</u></b>
<b><u>MAJOR ITEM</u> Such as: Grading, bituminous paving, concrete, seeding and protection, construction staking, etc.</b>		<b><u>Yes/No</u></b>	
1. <u>field labor</u>	Name: <u>Environmental and Safety Solutions Inc.</u> Address: <u>10045 Springfield Pike, Ste 7 Cincinnati, OH 45215</u>	N	10%
2. _____	Name: _____	_____	_____
_____	Address: _____	_____	_____
3. _____	Name: _____	_____	_____
_____	Address: _____	_____	_____
4. _____	Name: _____	_____	_____
_____	Address: _____	_____	_____
5. _____	Name: _____	_____	_____
_____	Address: _____	_____	_____
6. _____	Name: _____	_____	_____
_____	Address: _____	_____	_____
7. _____	Name: _____	_____	_____
_____	Address: _____	_____	_____

(Attach additional sheet(s) if necessary.)

**7. LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT MWDBE PARTICIPATION GOALS, FORMS, AND GOOD FAITH EFFORTS**

**A. GENERAL**

- 1) The LFUCG request all potential contractors to make a concerted effort to include Minority-Owned (MBE), Woman-Owned (WBE), Disadvantaged (DBE) Business Enterprises and Veteran-Owned Small Businesses [REDACTED] as subcontractors or suppliers in their bids.
- 2) Toward that end, the LFUCG has established 10% of total procurement costs as a Goal for participation of Minority-Owned, Woman-Owned and Disadvantaged Businesses on this contract.
- 3) The LFUCG has also established a 3% of total procurement costs as a Goal for participation of Veteran-Owned Small Businesses.
- 4) **It is therefore a request of each Bidder to include in its bid, the same goal (10%) for MWDBE participation, the same goal (3%) veteran participation and other requirements as outlined in this section.**

**B. PROCEDURES**

- 1) The successful bidder will be required to report to the LFUCG, the dollar amounts of all payments submitted to Minority-Owned, Veteran-Owned and Woman-Owned subcontractors and suppliers for work done or materials purchased for this contract. (See Subcontractor Monthly Payment Report)
- 2) Replacement of a Minority-Owned, Veteran-Owned or Woman-Owned subcontractor or supplier listed in the original submittal must be requested in writing and must be accompanied by documentation of Good Faith Efforts to replace the subcontractor / supplier with another MWDBE Firm; this is subject to approval by the LFUCG. (See LFUCG MWDBE Substitution Form)
- 3) For assistance in identifying qualified, certified businesses to solicit for potential contracting opportunities, bidders may contact:
  - a) The Lexington-Fayette Urban County Government, Division of Central Purchasing (859-258-3320)
- 4) The LFUCG will make every effort to notify interested MWDBE and veteran subcontractors and suppliers of each Bid Package, including information on the scope of work, the pre-bid meeting time and location, the bid date, and all other pertinent information regarding the project.

**C. DEFINITIONS**

- 1) A Minority-Owned Business Enterprise (MBE) is defined as a business which is certified as being at least 51% owned and operated by persons of African American, Hispanic, Asian, Pacific Islander, American Indian or Alaskan Native Heritage.



- 2) A Woman-Owned Business Enterprise (WBE) is defined as a business which is certified as being at least 51% owned and operated by one or more Non-Minority Females.
- 3) A Disadvantaged Business (DBE) is defined as a business which is certified as being at least 51% owned and operated by a person(s) that are economically and socially disadvantaged.
- 4) A Veteran-Owned Small Business [REDACTED] is defined as a business which is certified as being at least 51% owned and operated by a veteran and/or a service disabled veteran.
- 5) Good Faith Efforts are efforts that, given all relevant circumstances, a bidder or proposer actively and aggressively seeking to meet the goals, can reasonably be expected to make. In evaluating good faith efforts made toward achieving the goals, whether the bidder or proposer has performed the efforts outlined in the Obligations of Bidder for Good Faith Efforts outlined in this document will be considered, along with any other relevant factors.

#### D. OBLIGATION OF BIDDER FOR GOOD FAITH EFFORTS

- 1) **The bidder shall make a Good Faith Effort to achieve the Participation Goal for MWDBE and Veteran subcontractors/suppliers. The failure to meet the goal shall not necessarily be cause for disqualification of the bidder; however, bidders not meeting the goal are required to furnish with their bids written documentation of their Good Faith Efforts to do so.**
- 2) Award of Contract shall be conditioned upon satisfaction of the requirements set forth herein.
- 3) The Form of Proposal includes a section entitled "MWDBE Participation Form". The applicable information must be completed and submitted as outlined below.
- 4) **Failure to submit this information as requested may be cause for rejection of bid.**

#### E. DOCUMENTATION REQUIRED FOR GOOD FAITH EFFORTS

- 1) Bidders reaching the Goal are required to submit only the MWDBE Participation Form." The form must be fully completed including names and telephone number of participating MWDBE firm(s); type of work to be performed; estimated value of the contract and value expressed as a percentage of the total Lump Sum Bid Price. The form must be signed and dated, and is to be submitted with the bid.
- 2) Bidders not reaching the Goal must submit the "MWDBE Participation Form", the "Quote Summary Form" and a written statement documenting their Good Faith Effort to do so. If bid includes no MWDBE participation, bidder shall enter "None" on the subcontractor / supplier form). In addition, the bidder must submit written proof of their Good Faith Efforts to meet the Participation Goal:

- a. Advertised opportunities to participate in the contract in at least two (2) publications of general circulation media; trade and professional association publications; small and minority business or trade publications; and publications or trades targeting minority, women and disadvantaged businesses not less than fifteen (15) days prior to the deadline for submission of bids to allow MWDBE firms and Veteran-Owned businesses to participate.
- b. Included documentation of advertising in the above publications with the bidders good faith efforts package
- c. Attended LFUCG Central Purchasing Economic Inclusion Outreach event
- d. Attended pre-bid meetings that were scheduled by LFUCG to inform MWDBEs and/or Veteran-Owned businesses of subcontracting opportunities
- e. Sponsored Economic Inclusion event to provide networking opportunities for prime contractors and MWDBE firms and Veteran-Owned businesses.
- f. Requested a list of MWDBE and/or Veteran subcontractors or suppliers from LFUCG and showed evidence of contacting the companies on the list(s).
- g. Contacted organizations that work with MWDBE companies for assistance in finding certified MWDBE firms and Veteran-Owned businesses to work on this project. Those contacted and their responses should be a part of the bidder's good faith efforts documentation.
- h. Sent written notices, by certified mail, email or facsimile, to qualified, certified MWDBEs soliciting their participation in the contract not less than seven (7) days prior to the deadline for submission of bids to allow them to participate effectively.
- i. Followed up initial solicitations by contacting MWDBEs and Veteran-Owned Businesses to determine their level of interest.
- j. Provided the interested MWDBE firm and/or Veteran-Owned business with adequate and timely information about the plans, specifications, and requirements of the contract.
- k. Selected portions of the work to be performed by MWDBE firms and Veteran-Owned businesses in order to increase the likelihood of meeting the contract goals. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate MWDBE and Veteran participation, even when the prime contractor may otherwise perform these work items with its own workforce
- l. Negotiated in good faith with interested MWDBE firms and Veteran-Owned not rejecting them as unqualified without sound reasons based on a

thorough investigation of their capabilities. Any rejection should be so noted in writing with a description as to why an agreement could not be reached.

m. Included documentation of quotations received from interested MWDBE firms and Veteran-Owned businesses which were not used due to uncompetitive pricing or were rejected as unacceptable and/or copies of responses from firms indicating that they would not be submitting a bid.

n. Bidder has to submit sound reasons why the quotations were considered unacceptable. The fact that the bidder has the ability and/or desire to perform the contract work with its own forces will not be considered a sound reason for rejecting a MWDBE and/or Veteran-Owned business's quote. Nothing in this provision shall be construed to require the bidder to accept unreasonable quotes in order to satisfy MWDBE and Veteran goals.

o. Made an effort to offer assistance to or refer interested MWDBE firms and Veteran-Owned businesses to obtain the necessary equipment, supplies, materials, insurance and/or bonding to satisfy the work requirements of the bid proposal

p. Made efforts to expand the search for MWBE firms and Veteran-Owned beyond the usual geographic boundaries.

q. Other--any other evidence that the bidder submits which may show that the bidder has made reasonable good faith efforts to include MWDBE and Veteran participation.

**Note:** Failure to submit any of the documentation requested in this section may be cause for rejection of bid. Bidders may include any other documentation deemed relevant to this requirement which is subject to review by the MBE Liaison. Documentation of Good Faith Efforts must be submitted with the Bid, if the participation Goal is not met.



## MINORITY BUSINESS ENTERPRISE PROGRAM

Sherita Miller, MPA  
Minority Business Enterprise Liaison  
Division of Central Purchasing  
Lexington-Fayette Urban County Government  
200 East Main Street  
Lexington, KY 40507  
[smiller@lexingtonky.gov](mailto:smiller@lexingtonky.gov)  
859-258-3323

**OUR MISSION:** The mission of the Minority Business Enterprise Program is to facilitate the full participation of minority and women owned businesses in the procurement process and to promote economic inclusion as a business imperative essential to the long term economic viability of Lexington-Fayette Urban County Government.

To that end the city council adopted and implemented resolution 167-91—Disadvantaged Business Enterprise (DBE) 10% Goal Plan in July of 1991. The resolution states in part (a full copy is available in Central Purchasing):

*“A Resolution supporting adoption of the administrative plan for a ten percent (10%) Minimum goal for disadvantaged business enterprise participation in Lexington-Fayette Urban County Government construction and professional services contracts; Providing that as part of their bids on LFUCG construction contracts, general Contractors shall make a good faith effort to award at least ten percent (10%) of All subcontracts to disadvantaged business enterprises; providing that divisions of LFUCG shall make a good faith effort to award at least ten percent of their Professional services and other contracts to disadvantaged business enterprises...”*

A Disadvantaged Business Enterprise is defined as a business that has been certified as being at least 51% owned, operated and managed by a U.S. Citizen of the following groups:

- African-American
- Hispanic-American
- Asian/Pacific Islander
- Native American/Native Alaskan
- Non-Minority Female
- Economically and Socially Disadvantaged

In addition, to that end the city council also adopted and implemented resolution 167-91—Veteran-owned Businesses, 3% Goal Plan in July of 2015. The resolution states in part (a full copy is available in Central Purchasing):

*“A resolution adopting a three percent (3%) minimum goal for certified veteran-owned small businesses and service disabled veteran-owned businesses for certain of those Lexington-Fayette Urban County contracts related to*

*construction for professional services, and authorizing the Division of Purchasing to adopt and implement guidelines and/or policies consistent with the provisions and intent of this resolution by no later than July 1, 2015."*

We have compiled the list below to help you locate certified MBE, WBE and DBE certified businesses. Below is a listing of contacts for LFUCG Certified MWDBEs and Veteran-Owned Small Businesses in

<b>Business</b>	<b>Contact</b>	<b>Email Address</b>	<b>Phone</b>
<b>LFUCG</b>	Sherita Miller	<a href="mailto:smiller@lexingtonky.gov">smiller@lexingtonky.gov</a>	859-258-3323
<b>Commerce Lexington – Minority Business Development</b>	Tyrone Tyra	<a href="mailto:ttyra@commercelexington.com">ttyra@commercelexington.com</a>	859-226-1625
<b>Tri-State Minority Supplier Diversity Council</b>	Susan Marston	<a href="mailto:smarston@tsmcd.com">smarston@tsmcd.com</a>	502-365-9762
<b>Small Business Development Council</b>	Shirle Hawkins UK SDDC	<a href="mailto:shirle@uk-sddc.com">shirle@uk-sddc.com</a>	859-257-7666
<b>Community Ventures Corporation</b>	Phyllis Alcorn	<a href="mailto:palcorn@cvcorp.com">palcorn@cvcorp.com</a>	859-231-0054
<b>KY Transportation Cabinet (KYTC)</b>	Melvin Bynes	<a href="mailto:Melvin.bynes2@ky.gov">Melvin.bynes2@ky.gov</a>	502-564-3601
<b>KYTC Pre-Qualification</b>	Shella Eagle	<a href="mailto:Shella.Eagle@ky.gov">Shella.Eagle@ky.gov</a>	502-782-4815
<b>Ohio River Valley Women's Business Council (WBENC)</b>	Sheila Mison	<a href="mailto:smison@wbenc.org">smison@wbenc.org</a>	613-487-6537
<b>Kentucky MWBE Certification Program</b>	Yvette Smith, Kentucky Finance Cabinet	<a href="mailto:Yvette.Smith@ky.gov">Yvette.Smith@ky.gov</a>	502-564-8099
<b>National Women Business Owner's Council (NWBOC)</b>	Janet Harris-Lange	<a href="mailto:janet@nwbo.org">janet@nwbo.org</a>	800-675-5066
<b>Small Business Administration</b>	Robert Coffey	<a href="mailto:robertcoffey@sba.gov">robertcoffey@sba.gov</a>	502-582-5971
<b>LaVoz de Kentucky</b>	Andres Cruz	<a href="mailto:lavozeckv@yahoo.com">lavozeckv@yahoo.com</a>	859-621-2106
<b>The Key News Journal</b>	Patrice Muhammad	<a href="mailto:paatricem@keynewsjournal.com">paatricem@keynewsjournal.com</a>	859-373-9428



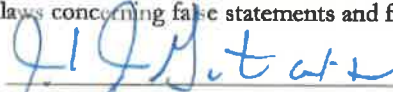
**LFUCG MWDBE PARTICIPATION FORM**  
**Bid/RFP/Quote Reference # 158-2018**

The MWDBE and/or Veteran subcontractors listed have agreed to participate on this Bid/RFP/Quote. If any substitution is made or the total value of the work is changed prior to or after the job is in progress, it is understood that those substitutions must be submitted to Central Purchasing for approval immediately. **Failure to submit a completed form may cause rejection of the bid.**

MWDBE Company, Name, Address, Phone, Email	Work to be Performed	Total Dollar Value of the Work	% Value of Total Contract
1. Environmental and Safety Solutions, Inc. 10045 Springfield Pike Suite 7 Cincinnati, OH 45215	field labor	TBD	10%
2.			
3.			
4.			

The undersigned company representative submits the above list of MWDBE firms to be used in accomplishing the work contained in this Bid/RFP/Quote. Any misrepresentation may result in the termination of the contract and/or be subject to applicable Federal and State laws concerning false statements and false claims.

**ADS LLC**  
 \_\_\_\_\_  
**Company**  
  
**December 6, 2018**  
 \_\_\_\_\_  
**Date**

  
 \_\_\_\_\_  
**Company Representative**  
  
**Joseph J. Goustin, Asst. Treasurer**  
 \_\_\_\_\_  
**Title**



**LFUCG MWDBE SUBSTITUTION FORM**

Bid/RFP/Quote Reference # 158-2018

The substituted MWDBE and/or Veteran subcontractors listed below have agreed to participate on this Bid/RFP/Quote. These substitutions were made prior to or after the job was in progress. These substitutions were made for reasons stated below and are now being submitted to Central Purchasing for approval. By the authorized signature of a representative of our company, we understand that this information will be entered into our file for this project.

SUBSTITUTED MWDBE Company Name, Address, Phone, Email	MWDBE Formally Contracted/ Name, Address, Phone, Email	Work to Be Performed	Reason for the Substitution	Total Dollar Value of the Work	% Value of Total Contract
1.					
2.					
3.					
4.					

The undersigned acknowledges that any misrepresentation may result in termination of the contract and/or be subject to applicable Federal and State laws concerning false statements and false claims.

\_\_\_\_\_  
Company

\_\_\_\_\_  
Company Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title



**MWDBE QUOTE SUMMARY FORM**

Bid/RFP/Quote Reference # 158-2018

The undersigned acknowledges that the minority and/or veteran subcontractors listed on this form did submit a quote to participate on this project. **Failure to submit a completed form may cause rejection of the bid.**

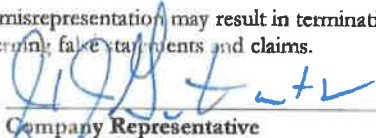
Company Name <b>ADS LLC</b>	Contact Person <b>Rob Grob 859-512-8204</b>
Address/Phone/Email <b>340 The Bridge St., Suite 204 Huntsville, AL 35806 rgrob@idexcorp.com</b>	Bid Package / Bid Date <b>12/10/2018</b>

MWDBE Company Address	Contact Person	Contact Information (work phone, Email, cell)	Date Contacted	Services to be performed	Method of Communication (email, phone meeting, ad, event etc)	Total dollars \$\$ Do Not Leave Blank (Attach Documentation)	MBE * AA HA AS NA Female	Veteran
Environmental and Safety Solutions, Inc.	Lonnie Grayson	513-825-2885	12/3/2018	field labor	phone	TBD 10% of total bid	AA	

(MBE designation / AA=African American / HA= Hispanic American/AS = Asian American/Pacific Islander/ NA= Native American)

The undersigned acknowledges that all information is accurate. Any misrepresentation may result in termination of the contract and/or be subject to applicable Federal and State laws concerning false statements and claims.

ADS LLC  
Company  
December 6, 2018  
Date

  
Company Representative  
Joseph J. Goustin, Asst. Treasurer  
Title





## LFUCG SUBCONTRACTOR MONTHLY PAYMENT REPORT

The LFUCG has a 10% goal plan adopted by city council to increase the participation of minority and women owned businesses in the procurement process. The LFUCG also has a 3% goal plan adopted by cited council to increase the participation of veteran owned businesses in the procurement process. In order to measure that goal LFUCG will track spending with MWDBE vendors on a monthly basis. By the signature below of an authorized company representative, you certify that the information is correct, and that each of the representations set forth below is true. Any misrepresentation may result in termination of the contract and/or prosecution under applicable Federal and State laws concerning false statements and false claims. Please submit this form monthly to the Division of Central Purchasing/ 200 East Main Street / Room 338 / Lexington, KY 40507.

**Bid/RFP/Quote #** \_\_\_\_\_  
**Total Contract Amount Awarded to Prime Contractor for this Project** \_\_\_\_\_

<b>Project Name/ Contract #</b>	<b>Work Period/ From:</b> _____ <b>To:</b> _____
<b>Company Name:</b>	<b>Address:</b>
<b>Federal Tax ID:</b>	<b>Contact Person:</b>

Subcontractor Vendor ID (name, address, phone, email)	Description of Work	Total Subcontract Amount	% of Total Contract Awarded to Prime for this Project	Total Amount Paid for this Period	Purchase Order number for subcontractor work (please attach PO)	Scheduled Project Start Date	Scheduled Project End Date

By the signature below of an authorized company representative, you certify that the information is correct, and that each of the representations set forth below is true. Any misrepresentations may result in the termination of the contract and/or prosecution under applicable Federal and State laws concerning false statements and false claims.

\_\_\_\_\_  
**Company**

\_\_\_\_\_  
**Company Representative**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Title**

**LFUCG STATEMENT OF GOOD FAITH EFFORTS**

Bid/RFP/Quote # N/A

By the signature below of an authorized company representative, we certify that we have utilized the following Good Faith Efforts to obtain the maximum participation by MWDBE ~~and Veteran-Owned business enterprises~~ on the project and can supply the appropriate documentation.

\_\_\_\_\_ Advertised opportunities to participate in the contract in at least two (2) publications of general circulation media; trade and professional association publications; small and minority business or trade publications; and publications or trades targeting minority, women and disadvantaged businesses not less than fifteen (15) days prior to the deadline for submission of bids to allow MWDBE firms ~~and Veteran-Owned businesses~~ to participate.

\_\_\_\_\_ Included documentation of advertising in the above publications with the bidders good faith efforts package

\_\_\_\_\_ Attended LFUCG Central Purchasing Economic Inclusion Outreach event

\_\_\_\_\_ Attended pre-bid meetings that were scheduled by LFUCG to inform MWDBEs ~~and/or Veteran-Owned Businesses~~ of subcontracting opportunities

\_\_\_\_\_ Sponsored Economic Inclusion event to provide networking opportunities for prime contractors and MWDBE firms ~~and Veteran-Owned businesses~~

\_\_\_\_\_ Requested a list of MWDBE ~~and/or Veteran subcontractors~~ or suppliers from LFUCG and showed evidence of contacting the companies on the list(s).

\_\_\_\_\_ Contacted organizations that work with MWDBE companies for assistance in finding certified MWBDE firms ~~and Veteran-Owned businesses~~ to work on this project. Those contacted and their responses should be a part of the bidder's good faith efforts documentation.

\_\_\_\_\_ Sent written notices, by certified mail, email or facsimile, to qualified, certified MWDBEs soliciting their participation in the contract not less than seven (7) days prior to the deadline for submission of bids to allow them to participate effectively.

\_\_\_\_\_ Followed up initial solicitations by contacting MWDBEs ~~and Veteran-~~ [REDACTED] to determine their level of interest.

\_\_\_\_\_ Provided the interested MWBDE firm ~~and/or Veteran-Owned business~~ with adequate and timely information about the plans, specifications, and requirements of the contract.

\_\_\_\_\_ Selected portions of the work to be performed by MWDBE firms [REDACTED] ~~Veteran-Owned businesses~~ in order to increase the likelihood of meeting the contract goals. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate MWDBE and Veteran

participation, even when the prime contractor may otherwise perform these work items with its own workforce

\_\_\_\_ Negotiated in good faith with interested MWDBE firms and Veteran-Owned businesses not rejecting them as unqualified without sound reasons based on a thorough investigation of their capabilities. Any rejection should be so noted in writing with a description as to why an agreement could not be reached.

\_\_\_\_ Included documentation of quotations received from interested MWDBE firms and Veteran-Owned businesses which were not used due to uncompetitive pricing or were rejected as unacceptable and/or copies of responses from firms indicating that they would not be submitting a bid.

\_\_\_\_ Bidder has to submit sound reasons why the quotations were considered unacceptable. The fact that the bidder has the ability and/or desire to perform the contract work with its own forces will not be considered a sound reason for rejecting a MWDBE and/or Veteran-Owned business's quote. Nothing in this provision shall be construed to require the bidder to accept unreasonable quotes in order to satisfy MWDBE and Veteran goals.

\_\_\_\_ Made an effort to offer assistance to or refer interested MWDBE firms and Veteran-Owned businesses to obtain the necessary equipment, supplies, materials, insurance and/or bonding to satisfy the work requirements of the bid proposal


\_\_\_\_ Made efforts to expand the search for MWBE firms and Veteran-Owned businesses beyond the usual geographic boundaries.

\_\_\_\_ Other--any other evidence that the bidder submits which may show that the bidder has made reasonable good faith efforts to include MWDBE and Veteran participation.

**NOTE:** Failure to submit any of the documentation requested in this section may be cause for rejection of bid. Bidders may include any other documentation deemed relevant to this requirement which is subject to approval by the MBE Liaison. Documentation of Good Faith Efforts must be submitted with the Bid, if the participation Goal is not met.

The undersigned acknowledges that all information is accurate. Any misrepresentations may result in termination of the contract and/or be subject to applicable Federal and State laws concerning false statements and claims.

ADS LLC  
\_\_\_\_\_  
Company  
December 6, 2018  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Company Representative  
Joseph J. Goustin, Asst. Treasurer  
\_\_\_\_\_  
Title

**8. AUTHENTICATION OF BID AND STATEMENT OF NON-COLLUSION AND CONFLICT OF INTEREST**

I hereby swear (or affirm) under the penalty for false swearing:

1. That I am the Bidder (if the Bidder is an individual), a partner of the Bidder (if the Bidder is a partnership), or an officer or employee of the bidding corporation having authority to sign on its behalf (if the Bidder is a corporation);
2. That the attached bid has been arrived at by the Bidder independently, and has been submitted without collusion with, and without any agreement, understanding or planned common course of action, with any other contractor, vendor of materials, supplies, equipment or services described in the Invitation to Bid, designed to limit independent bidding or competition;
3. That the contents of the bid or bids have not been communicated by the Bidder or its employees or agents to any person not an employee or agent of the Bidder or its surety on any bond furnished, with the bid or bids, and will not be communicated to any such person, prior to the official opening of the bid or bids;
4. That the Bidder is legally entitled to enter into the contracts with the Lexington-Fayette Urban County Government, and is not in violation of any prohibited conflict of interest;
5. (Applicable to corporation only) That as a foreign corporation, we are registered with the Secretary of State, Commonwealth of Kentucky, and authorized to do business in the State X or, that as a domestic corporation, we are in good standing with the Secretary of State, Commonwealth of Kentucky \_\_\_\_\_. Check the statement applicable.
6. This offer is for 60 calendar days from the date this bid is opened. In submitting the above, it is expressly agreed that, upon proper acceptance by the Lexington-Fayette Urban County Government of any or all items bid above, a contract shall thereby be created with respect to the items accepted.
7. That I have fully informed myself regarding the accuracy of the statements made in this statement.
8. That I certify that Subcontractors have not and will not be awarded to any firm(s) that have been debarred from noncompliance with the Federal Labor Standards, Title VI of the Civil Rights Act of 1964 As Amended, Executive Order 11246 As Amended or any other Federal Law.

9. **STATEMENT OF EXPERIENCE**

NAME OF INDIVIDUAL: Dean George

POSITION/TITLE: Region Manager

STATEMENT OF EXPERIENCE: Mr. George has been working in the water and wastewater industry for over 22 years. He is currently ADS Region Manager for EPA Regions 5 and 7 and has direct oversight for all projects in this area.

NAME OF INDIVIDUAL: Tim Calder, P.E.

POSITION/TITLE: Sr. Project Manager

STATEMENT OF EXPERIENCE: Over 32 years experience working out of the Erlanger, KY office on many of our flow monitoring and SSES projects including a 200 meter project for the MSDGC in Cincinnati, OH

NAME OF INDIVIDUAL: Pam Good

POSITION/TITLE: Sr. Data Analyst

STATEMENT OF EXPERIENCE: Working in the sanitary and wastewater field for over 16 years with primary data analyst experience for projects including Indianapolis, IN and Anderson, IN

NAME OF INDIVIDUAL: Scott Warren

POSITION/TITLE: Field Manager

STATEMENT OF EXPERIENCE: Over 30 years experience installing and maintaining  
flow monitoring equipment and SSES related projects in the Midwest.

NAME OF INDIVIDUAL: Jay Merck

POSITION/TITLE: Crew Leader

STATEMENT OF EXPERIENCE: 12 years experience in the sanitary and wastewater field

NAME OF INDIVIDUAL: Joseph J. Goustin/Treasurer

POSITION/TITLE: Hal Kimbrough/V.P. and General Manager

STATEMENT OF EXPERIENCE: Florian Pfefferle, President

Denise Cade, Secretary

Ramona Bolden-Fether, AAO

\* Include all officers, office management's, Affirmative Action officials, and field management personnel. (Attach separate sheets if necessary.)

**10. EQUAL OPPORTUNITY AGREEMENT**

**The Law**

- \* Title VII of the Civil Rights Act of 1964 (amended 1972) states that it is unlawful for an employer to discriminate in employment because of race, color, religion, sex, age (40-70 years) or national origin.
- \* Executive Order No. 11246 on Nondiscrimination under Federal contract prohibits employment discrimination by contractor and subcontractor doing business with the Federal Government or recipients of Federal funds. This order was later amended by Executive Order No. 11375 to prohibit discrimination on the basis of sex.
- \* Section 503 of the Rehabilitation Act of 1973 States:

*The Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap.*

- \* Section 2012 of the Vietnam Era Veterans Readjustment Act of 1973 requires Affirmative Action on behalf of disabled veterans and veterans of the Vietnam Era by contractors having Federal Contracts.
- \* Section 206 (A) of Executive Order 12086, Consolidation of Contract Compliance Functions for Equal Employment Opportunity, states:

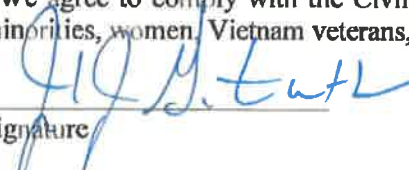
*The Secretary of Labor may investigate the employment practices of any Government contractor or sub-contractor to determine whether or not the contractual provisions specified in Section 202 of this order have been violated.*

The Lexington-Fayette Urban County Government practices Equal Opportunity in recruiting, hiring and promoting. It is the Government's intent to affirmatively provide employment opportunities for those individuals who have previously not been allowed to enter into the mainstream of society. Because of its importance to the local Government, this policy carries the full endorsement of the Mayor, Commissioners, Directors, and all supervisory personnel. In following this commitment to Equal Employment Opportunity and because the Government is the benefactor of the Federal funds, it is both against the Urban County Government policy and illegal for the Government to let contracts to companies which knowingly or unknowingly practice discrimination in their employment practices. Violation of the above mentioned ordinances may cause a contract to be canceled and the contractor may be declared ineligible for future consideration.

Please sign this statement in the appropriate space acknowledging that you have read and understand the provisions contained herein. Return this document as part of your application packet.

**Bidders**

I/We agree to comply with the Civil Rights Laws listed above that govern employment rights of minorities, women, Vietnam veterans, handicapped, and aged persons.

 ADS LLC  
\_\_\_\_\_  
Signature Name of Business

The Entity (regardless of whether construction contractor, non-construction contractor or supplier) agrees to provide equal opportunity in employment for all qualified persons, to prohibit discrimination in employment because of race, color, creed, national origin, sex or age, and to promote equal employment through a positive, continuing program from itself and each of its sub-contracting agents. This program of equal employment opportunity shall apply to every aspect of its employment policies and practices.

The Kentucky equal Employment Opportunity Act of 1978 (KRS 45.560-45.640) requires that any count, city, town, school district, water district, hospital district, or other political subdivision of the state shall include in directly or indirectly publicly funded contracts for supplies, materials, services, or equipment hereinafter entered into the following provisions:

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

- (1) *The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age or national origin;*
- (2) *The contractor will state in all solicitations or advertisements for employees placed by or on behalf of the contractors that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age or national origin;*
- (3) *The contract will post notices in conspicuous places, available to employees and applicants for employment, setting forth the provisions of the non-discrimination clauses required by this section; and*
- (4) *The contractor will send a notice to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding advising the labor union or workers' representative of the contractor's commitments under the nondiscrimination clauses.*

The Act further provides:

**KRS 45.610. Hiring minorities – Information required**

- (1) *For the length of the contract, each contractor shall hire minorities from other sources within the drawing area, should the union with which he has collective bargaining agreements be unwilling to supply sufficient minorities to satisfy the agreed upon goals and timetable.*
- (2) *Each contractor shall, for the length of the contract, furnish such information as required by KRS 45.560 to KRS 45.640 and by such rules, regulations and orders issued pursuant thereto and will permit access to all books and records pertaining to his employment practices and work sites by the contracting agency and the department for purposes of investigation to ascertain compliance with KRS 45.560 to 45.640 and such rules, regulations and orders issued pursuant thereto.*

**KRS 45.620. Action against contractor – Hiring of minority contractor or subcontractor**



- (1) *If any contractor is found by the department to have engaged in an unlawful practice under this chapter during the course of performing under a contract or subcontract covered under KRS 45.560 to 45.640, the department shall so certify to the contracting agency and such certification shall be binding upon the contracting agency unless it is reversed in the course of judicial review.*
- (2) *If the contractor is found to have committed an unlawful practice under KRS 45.560 to 45.640, the contracting agency may cancel or terminate the contract, conditioned upon a program for future compliance approved by the contracting agency and the department. The contracting agency may declare such a contractor ineligible to bid on further contracts with that agency until such time as the contractor complies in full with the requirements of KRS 45.560 – 45.640.*
- (3) *The equal employment provisions of KRS 45.560 to 45.640 may be met in part by a contractor by subcontracting to a minority contractor or subcontractor. For the provisions of KRS 45.560 to 45.640, a minority contractor or subcontractor shall mean a business that is owned and controlled by one or more persons disadvantaged by racial or ethnic circumstances.*

**KRS 45.630 Termination of existing employee not required, when**

*Any provision of KRS 45.560 to 45.640 notwithstanding, no contractor shall be required to terminate an existing employee upon proof that that employee was employed prior to the date of the contract.*

**KRS 45.640 Minimum skills**

*Nothing in KRS 45.560 to 45.640 shall require a contractor to hire anyone who fails to demonstrate the minimum skills required to perform a particular job.*

It is recommended that all of the provisions quoted above to be included as special conditions in each contract. In the case of a contract exceeding \$250,000, the contractor is required to furnish evidence that his work-force in Kentucky is representative of the available work-force in the area from which he draws employees, or to supply an Affirmative Action plan which will achieve such representation during the life of the contract.

11. **EQUAL EMPLOYMENT OPPORTUNITY AFFIRMATIVE ACTION POLICY**

It is the policy of ADS LLC

to assure that all applicants for employment and all employees are treated on a fair and equitable basis without regard to their race, religion, sex, color, handicap, natural origin or age.

Such action shall include employment, promotion, demotion, recruitment or recruitment advertising, layoff or termination, rates of pay and other forms of compensation, and selection for training, whether apprenticeship and/or on-the-job-training.

Furthermore, this company agrees to make special recruitment efforts to hire the protected class whenever feasible. This company also agrees to adhere to all applicable federal, state, and local laws relating to Equal Employment Opportunity for all individuals.

**12. WORKFORCE ANALYSIS FORM**

Name of Organization: ADS LLC

Categories	Total	White (Not Hispanic or Latino)		Hispanic or Latino		Black or African-American (Not Hispanic or Latino)		Native Hawaiian and Other Pacific Islander (Not Hispanic or Latino)		Asian (Not Hispanic or Latino)		American Indian or Alaskan Native (not Hispanic or Latino)		Two or more races (Not Hispanic or Latino)		Total	
		M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Administrators	7	6					1										
Professionals	55	25	16	1	3	9				1							
Superintendents																	
Supervisors	54	37	9	2	4	2											
Foremen																	
Technicians	4	3			1												
Protective Service																	
Para-Professionals																	
Office/Clerical	24*	12	8	2		1				1							
Skilled Craft	69	37		11	1	17	1					1		1			
Service/Maintenance	1	1															
<b>Total:</b>	<b>214</b>	<b>121</b>	<b>33</b>	<b>16</b>	<b>1</b>	<b>25</b>	<b>14</b>			<b>2</b>		<b>1</b>		<b>1</b>			

Prepared by: Marion Beach, HIR Representative / Katherine McAuley, Sales Administrator  
(Name and Title)

Date: 12 / 6 / 2018

\* - this number includes Sales

**13. EVIDENCE OF INSURABILITY**

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT CONSTRUCTION PROJECT  
(Use separate form for each Agency or Brokerage agreeing to provide coverage)

Names Insured: ADS LLC Employee ID: \_\_\_\_\_  
 Address: 340 The Bridge Street, Suite 204, Huntsville, AL 35806 Phone: (256)430-3366

Project to be insured: 2019 Capacity Assurance Program Flow Monitoring Field Services Bid No. 158-2018

In lieu of obtaining certificates of insurance at this time, the undersigned agrees to provide the above Named Insured with the minimum coverage listed below. These are outlined in the Insurance and Risk Management of Part V (Special Conditions), including all requirements, and conditions:

Section Items	Coverage	Minimum Limits and Policy Requirements	Limits Provided To Insured	Name of Insurer	A.M. Best's Code	Rating
SC-3, Section 2, Part 4.1 - see provisions	CGL	\$1,000,000 per occ. And \$2,000,000 aggregate	\$ 2,000,000 and 4,000,000	Liberty Mutual Fire Insurance Company	23035	
SC-3, Section 2, Part 4.1 - see provisions	AUTO	\$2,000,000/per occ.	\$ 2,000,000	Liberty Mutual Fire Insurance Company	23035	
SC-3, Section 2, Part 4.1 - see provisions	WC	Statutory w/endorsement as noted	\$ 2,000,000	Liberty Insurance Corporation	42404	

Section 2 includes required provisions, statements regarding insurance requirements, and the undersigned agrees to abide by all provisions for the coverage's checked above unless stated otherwise when submitting:  
Marsh USA Inc.

Aashish Chauhan

Agency or Brokerage \_\_\_\_\_ Name of Authorized Representative

540 W. Madison \_\_\_\_\_ **Senior Vice President**

Street Address \_\_\_\_\_ Title \_\_\_\_\_

Chicago IL 60661 \_\_\_\_\_ Authorized Signature

City State Zip \_\_\_\_\_ Date

312-627-6000 \_\_\_\_\_

Telephone Number \_\_\_\_\_

NOTE: Authorized signatures may be the agent's if agent has placed insurance through an agency agreement with the insurer. If insurance is brokered, authorized signature must be that of authorized representative of insurer.

**IMPORTANT:** Contract may not be awarded if a completed and signed copy of this form for all coverage's listed above is not provided with the bid.

**14. DEBARRED FIRMS**

**PROJECT NAME:** 2019 CAPACITY ASSURANCE PROGRAM  
FLOW MONITORING FIELD SERVICES

**BID NUMBER:** 158-2018

**LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT  
LEXINGTON, KY**

All prime Contractors shall certify that Subcontractors have not and will not be awarded to any firms that has been debarred for noncompliance with the Federal Labor Standards, Title VI of the Civil Rights Act of 1964 As Amended, Executive Order 11246 As Amended or any other Federal Law.

All bidders shall complete the attached certification in duplicate and submit both copies to the Owner with the bid proposal. The Owner (grantee) shall transmit one copy to the Lexington-Fayette Urban County Government, Division of Community Development, within fourteen (14) days after bid opening.

The undersigned hereby certifies that the firm of ADS LLC has not and will not award a subcontract, in connection with any contract award to it as the result of this bid, to any firm that has been debarred for noncompliance with the Federal labor Standards, Title VI of the civil Rights Act of 1964, Executive Order 11246 as amended or any Federal Law.

ADS LLC

Name of Firm Submitting Bid

  
Signature of Authorized Official

Assistant Treasurer

Title

December 6, 2018

Date

**14. DEBARRED FIRMS**

**PROJECT NAME:** 2019 CAPACITY ASSURANCE PROGRAM  
FLOW MONITORING FIELD SERVICES

**BID NUMBER:** 158-2018

**LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT  
LEXINGTON, KY**

All prime Contractors shall certify that Subcontractors have not and will not be awarded to any firms that has been debarred for noncompliance with the Federal Labor Standards, Title VI of the Civil Rights Act of 1964 As Amended, Executive Order 11246 As Amended or any other Federal Law.

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ADS LLC

Name of Firm Submitting Bid



Signature of Authorized Official

Assistant Treasurer

Title

December 6, 2018

Date

**15. DEBARMENT CERTIFICATION**

All contractors/subcontractors shall complete the following certification and submit it with the bid proposal.

The contractor/subcontractor certifies in accordance with Executive Order 12549 (Debarment and Suspension 2/18/86) that to the best of its knowledge and belief, that it and its principals:

- 1) Are not presently debarred, suspended, proposed for debarment, declared negligible, or voluntarily excluded from covered transactions or contract by any Federal department or agency for noncompliance with the Federal Labor Standards, Title VI of the Civil Rights Act of 1964 as amended, Executive Order 11246 as amended or any other Federal law;
  - a) Have not within a three year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - b) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(a) of this certification; and
  - c) Have not within a three year period preceding this bid has one or more public (Federal, State or local) transactions or contracts terminated for cause or default.
  
- 2) Where the contractor is unable to certify to any of the statements in this certification, such prospective contractors shall attach an explanation to this certification form.

Firm Name: ADS LLC

Project: 158-2018

Printed Name and Title of Authorized Representative: Joseph J. Goustin, Asst. Treasurer

Signature: 

Date: December 6, 2018

END OF SECTION



**15. DEBARMENT CERTIFICATION**

All contractors/subcontractors shall complete the following certification and submit it with the bid proposal.

The contractor/subcontractor certifies in accordance with Executive Order 12549 (Debarment and Suspension 2/18/86) that to the best of its knowledge and belief, that it and its principals:

- 1) Are not presently debarred, suspended, proposed for debarment, declared negligible, or voluntarily excluded from covered transactions or contract by any Federal department or agency for noncompliance with the Federal Labor Standards, Title VI of the Civil Rights Act of 1964 as amended, Executive Order 11246 as amended or any other Federal law;
  - a) Have not within a three year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - b) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(a) of this certification; and
  - c) Have not within a three year period preceding this bid has one or more public (Federal, State or local) transactions or contracts terminated for cause or default.
- 2) Where the contractor is unable to certify to any of the statements in this certification, such prospective contractors shall attach an explanation to this certification form.

Firm Name: Environmental and Safety Solutions, Inc

Project: ADS

Printed Name and Title of Authorized Representative: Lonnie C. Grayson, President and CEO

Signature: 

Date: 12/06/2018

END OF SECTION



Liberty Mutual Insurance Company  
175 Berkeley Street  
Boston MA 02117

**BID BOND**

Bond Number: N/A

KNOW ALL MEN BY THESE PRESENTS, that we ADS LLC

340 The Bridge Street, Suite 204, Huntsville AL 35806, as principal (the "Principal"), and LIBERTY MUTUAL INSURANCE COMPANY, a Massachusetts stock insurance company, as surety (the "Surety"), are held and firmly bound unto Lexington-Fayette Urban County Government Division of Purchasing, Third Floor, 200 East Main Street, Lexington KY 40507, as obligee (the "Obligee"), in the penal sum of Five percent of amount bid

         Dollars (\$5% of bid         ), for the payment of which sum well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for: 2019 Capacity Assurance Program Flow Monitoring Field Services Bid no. 158-2018

NOW, THEREFORE, if the Obligee shall accept the bid of the Principal within the period specified therein, or, if no period be specified, within sixty (60) days after opening, and the Principal shall enter into a contract with the Obligee in accordance with the terms of such bid, and give such bond or bonds as may be specified in the bidding or contract documents, or in the event of the failure of the Principal to enter into such contract and give such bond or bonds, if the Principal shall pay to the Obligee the difference in money not to exceed the penal sum hereof between the amount specified in said bid and such larger amount for which the Obligee may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void; otherwise to remain in full force and effect. In no event shall the liability hereunder exceed the penal sum thereof.

PROVIDED AND SUBJECT TO THE CONDITION PRECEDENT, that any claim by Obligee under this bond must be submitted in writing by registered mail, to the attention of the Surety Law Department at the address above, within 120 days of the date of this bond. Any suit under this bond must be instituted before the expiration of one (1) year from the date of this bond. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall apply.

DATED as of this 10th day of December, 2018.

WITNESS / ATTEST

ADS LLC  
\_\_\_\_\_  
(Principal)

By: \_\_\_\_\_ (Seal)  
Name:  
Title:

LIBERTY MUTUAL INSURANCE COMPANY  
(Surety)

By: Renee A. Kolpacki (Seal)  
Attorney-in-Fact  
Renee A. Kolpacki

Notarial Acknowledgement – Attorney in Fact

STATE OF Wisconsin }  
County of Marathon } S.S.

On this 10th day of December, 2018, before me, Crystal Duberstein  
Marathon a Notary Public in and for said  
County, State aforesaid, residing therein, duly  
commissioned and sworn, personally appeared Renee A. Kolpacki

know to me to be the person whose name is subscribed to the within instrument as the attorney in fact of  
Liberty Mutual Insurance Company

and acknowledged to me that he subscribed the name of Liberty Mutual Insurance Company thereto as surety, and his own as attorney in fact.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in said county of  
Marathon the day and year in this certificate first above written.

*Crystal Duberstein*

Notary Public in and for the county of Marathon

State of Wisconsin

My commission expires 9-28-19

CRYSTAL DUBERSTEIN  
Notary Public  
State of Wisconsin

**THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.**

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Certificate No. 8188316

Liberty Mutual Insurance Company  
The Ohio Casualty Insurance Company West American Insurance Company

**POWER OF ATTORNEY**

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Crystal Duberstein; Pam Fromm; Renee A. Kolpack; Phil Lazarski; Derek Menard; Marc Sacia

all of the city of Wausau, state of WI each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surely and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 24th day of August, 2018.



The Ohio Casualty Insurance Company  
Liberty Mutual Insurance Company  
West American Insurance Company

By: David M. Carey  
David M. Carey, Assistant Secretary

STATE OF PENNSYLVANIA ss  
COUNTY OF MONTGOMERY

On this 24th day of August, 2018 before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written



COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal:  
Teresa Pastella, Notary Public  
Upper Merion Twp - Montgomery County  
My Commission Expires March 28, 2021  
Member, Pennsylvania Association of Notaries

By: Teresa Pastella  
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

**ARTICLE IV – OFFICERS** – Section 12. Power of Attorney. Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surely any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

**ARTICLE XIII – Execution of Contracts – SECTION 5. Surety Bonds and Undertakings.** Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surely any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

**Certificate of Designation** – The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surely any and all undertakings; bonds, recognizances and other surety obligations.

**Authorization** – By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 10th day of December, 2018



By: Renee C. Llewellyn  
Renee C. Llewellyn, Assistant Secretary

Not valid for mortgage, note, currency rate, interest rate or other financial value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.

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**GENERAL CONDITIONS**  
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## PART IV

### GENERAL CONDITIONS

#### 1. DEFINITIONS

Wherever used in these General Conditions or the other Contract Documents, the following terms have the meanings indicated which are applicable to both the singular and plural thereof.

##### 1.1 Addenda

Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bid Documents or the Contract Documents.

##### 1.2 Agreement

The written agreement between OWNER and CONTRACTOR covering the Work to be performed; other Contract Documents are attached to the Agreement and made a part thereof as provided therein.

##### 1.3 Application for Payment

The form accepted by ENGINEER which is to be used by CONTRACTOR in requesting progress or final payments and which is to include such supporting documentation as is required by the Contract Documents.

##### 1.4 Bid

The offer or proposal of the Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

##### 1.5 Bidder

An individual, partnership, or corporation, who submit a Bid for a prime contract with the OWNER, for the Work described in the proposed Contract Documents.

##### 1.6 Bonds

Bid, performance and payment bonds and other instruments of security.

##### 1.7 Calendar Day

A calendar day of twenty-four hours measured from midnight to the next midnight shall constitute a day.

##### 1.8 Change Order

A document recommended by ENGINEER, which is signed by CONTRACTOR and OWNER and authorizes an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Time, issued on or after the Effective Date of the Agreement.

**1.9 Contract Documents**

The Advertisement for Bidders, Information for Bidders, Agreement, Addenda (which pertain to the Contract Documents), CONTRACTOR'S Bid (including documentation accompanying the Bid and any post-bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Bonds, these General Conditions, the Special Conditions, the Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all amendments, modifications and supplements.

**1.10 Contract Unit Price**

The monies payable by OWNER to CONTRACTOR under the Contract Documents as stated in the Agreement. Unit Prices are to be firm for the term of this Contract.

**1.11 Contract Time**

The number of consecutive calendar days between the date of issuance of the Notice to Proceed and the contract completion date.

**1.12 CONTRACTOR**

The person, firm or corporation with whom OWNER has entered into the Agreement.

**1.13 Defective**

An adjective which when modifying the word Work refers to Work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to ENGINEER'S recommendation of final payment (unless responsibility for the protection thereof has been assumed by OWNER).

**1.14 Drawings**

The drawings which show the character and scope of the Work to be performed and which have been prepared or approved by ENGINEER and are referred to in the Contract Documents.

**1.15 Effective Date of the Agreement**

The date indicated in the Agreement on which it becomes effective.

**1.16 ENGINEER**

The Lexington-Fayette Urban County Government Division of Water Quality or its authorized representative.

**1.17 Field Order**

A documented order issued by ENGINEER which orders minor changes in the Work, but which does not involve a change in the Contract Price or the Contract Time.

- 1.18 Giving Notice**  
Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.
- 1.19 Laws and Regulations**  
Laws, rules, regulations, ordinances, codes and/or orders.
- 1.20 Notice of Award**  
The written notice by OWNER to the apparent successful bidder stating that upon compliance by the apparent successful bidder with the conditions enumerated therein, within the time specified, OWNER will sign and deliver the Agreement.
- 1.21 Notice to Proceed**  
A written notice given by OWNER to CONTRACTOR fixing the date on which the Contract Time will commence to run and on which CONTRACTOR shall start to perform CONTRACTOR'S obligations under the Contract Documents.
- 1.22 OWNER**  
The Lexington-Fayette Urban County Government.
- 1.23 Partial Utilization**  
Placing a portion of the Work in service for the purpose for which it is intended (or related purpose) before reaching Completion for all the Work.
- 1.24 Project**  
The total construction of which the Work to be provided under the Contract Documents may be the whole, or a part as indicated elsewhere in the Contract Documents.
- 1.25 Inspector**  
The authorized representative of the ENGINEER who is assigned to the site or any part thereof.
- 1.26 Shop Drawings**  
All drawings, diagrams, illustrations, schedules and other data which are specifically prepared by or for CONTRACTOR to illustrate some portion of the Work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a Supplier and submitted by CONTRACTOR to illustrate material or equipment for some portion of the Work.
- 1.27 Specifications**  
Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and

workmanship as applied to the Work and certain administrative details applicable thereto.

**1.28 Standard Specifications**

The "Standard Specifications for Road and Bridge Construction", Transportation Cabinet, Department of Highways, Commonwealth of Kentucky, current edition. MUTCD shall refer to the "Manual of Uniform Traffic Control Devices.

**1.29 Subcontractor**

An individual, firm or corporation having a direct contract with CONTRACTOR or with any other Subcontractor for the performance of a part of the Work at the site.

**1.30 Special Conditions**

The part of the Contract Documents which amends or supplements these General Conditions.

**1.31 Supplier**

A manufacturer, fabricator, supplier, distributor, materialman or vendor.

**1.32 Underground Facilities**

All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems or water.

**1.33 Unit Price Work**

Not applicable

**1.34 Work**

The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work is the result of performing services, furnishing labor and furnishing and incorporating materials and equipment into the construction, all as required by the Contract Documents.

**1.35 Time Period**

When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

## **2. PRELIMINARY MATTERS**

### **2.1 Delivery of Bonds**

When the CONTRACTOR delivers the executed Agreements to OWNER, CONTRACTOR shall also deliver to OWNER, such Bonds, Insurance Certificate, and Power of Attorney as CONTRACTOR may be required to furnish.

### **2.2 Copies of Documents**

Owner shall furnish to CONTRACTOR up to three copies (unless otherwise specified in the Special Conditions) of the Contract Documents as are reasonably necessary for the execution of the Work. Additional copies will be furnished, upon request, at the cost of reproduction.

### **2.3 Commencement of Contract Time; Notice to Proceed**

The Contract Time will commence to run on the day specified in the Notice to Proceed.

### **2.4 Starting the Project**

CONTRACTOR shall start to perform the Work on the date when the Contract Time commences to run, but no Work shall be done at the site prior to the date on which the Contract Time commences to run.

### **2.5 Before Starting Construction**

Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. CONTRACTOR shall promptly report in writing to ENGINEER any conflict, error or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from ENGINEER before proceeding with any Work affected thereby; however, CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any conflict, error or discrepancy in the Contract Documents, unless CONTRACTOR had actual knowledge thereof or should reasonably have known thereof.

### **2.6 Submittal of Schedules**

Within ten days after the effective date of the Agreement (unless otherwise specified) CONTRACTOR shall submit to ENGINEER for review:

**2.6.1** an estimated progress schedule indicating the starting and completion dates of the various stages of the Work;

**2.6.2** a preliminary schedule of Shop Drawing submissions; and

**2.6.3** a preliminary schedule of values for all of the Work which will include quantities and prices of items aggregating the Contract Price and will subdivide the Work into component parts in sufficient detail to serve as the

basis for progress payments during construction. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work which will be confirmed in writing by CONTRACTOR at the time of submission.

**2.7 Preconstruction Conference**

Before CONTRACTOR starts the Work at the proposed site, a conference attended by CONTRACTOR, ENGINEER, EEO-Affirmative Action Officer, and other appropriate parties will be held to discuss the following issues: (1) The scheduling of the Work to be completed; (2) The procedures for handling shop drawings and other submittals; (3) The processing of applications for payment; (4) The establishment of an understanding among the involved parties in regard to the proposed project; and (5) The establishment of procedures for effectively implementing the LFUCG's 10% minimum DBE goals.

**2.8 Finalizing Schedules**

At least ten days before submission of the first Application for Payment a conference attended by CONTRACTOR, ENGINEER and others as appropriate will be held to finalize the schedules submitted in accordance with paragraph 2.6. The finalized progress schedule will be acceptable to ENGINEER as providing orderly progression of the Work to completion within the Contract Time, but such acceptance will neither impose on ENGINEER responsibility for the progress or scheduling of the Work nor relieve CONTRACTOR from full responsibility thereof. The finalized schedule of Shop Drawing submissions will be acceptable to ENGINEER as providing a workable arrangement for processing the submissions. The finalized schedule of values will be acceptable to ENGINEER as to form and substance.

**3. CONTRACT DOCUMENTS: INTENT, CONFLICTS, AMENDING AND REUSE**

**3.1 General**

The Contract Documents comprise the entire agreement between OWNER and CONTRACTOR concerning the Work. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. The Contract Documents will be construed in accordance with the law of the place of the Project.

**3.2 Intent**

It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result will be supplied whether or not specifically called for. When words which have a well-known technical or trade meaning are used to describe Work, materials or equipment such words shall be interpreted in accordance with that meaning. Reference to standard specifications,

manuals or codes of any technical society, organization or association, or to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or laws or regulations in effect at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties and responsibilities of OWNER, CONTRACTOR or ENGINEER, or any of their consultants, agents or employees from those set forth in the Contract Documents, nor shall it be effective to assign to ENGINEER, or any of ENGINEER'S consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 8.12.3 or 8.12.4. Clarifications and interpretations of the Contract Documents shall be issued by ENGINEER as provided in paragraph 8.4.

### **3.3 Conflicts**

If, during the performance of the Work, CONTRACTOR finds a conflict, error or discrepancy in the Contract Documents, CONTRACTOR shall so report to ENGINEER in writing at once and before proceeding with the Work affected thereby shall obtain a written interpretation or clarification from ENGINEER; however, CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any conflict, error or discrepancy in the Contract Documents unless CONTRACTOR had actual knowledge thereof or should reasonably have known thereof.

In resolving such conflicts, errors and discrepancies, the documents shall be given precedence in the following order:

1. Agreement
2. Field and Change Orders
3. Addenda
4. Special Conditions
5. Instruction to Bidders
6. General Conditions
7. Specifications and Drawings

Figure dimension on drawings shall govern over scale dimensions and detailed Drawings shall govern over general Drawings.

### **3.4 Amending and Supplementing Contract Documents**

The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof by means of a Change Order or a Field Order. Contract Price and Contract Time may only be changed by a Change Order.



### **3.5 Reuse of Documents**

Neither CONTRACTOR nor any Subcontractor or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with OWNER shall have or acquire any title to or ownership rights in any of the Drawings, Specifications or other documents (or copies of any thereof) prepared by or bearing the seal of ENGINEER; and they shall not reuse any of them on extensions of the Project or any other project without written consent of OWNER and ENGINEER and specific written verification or adaptation by ENGINEER.

## **4. AVAILABILITY OF LANDS; PHYSICAL CONDITIONS, REFERENCE POINTS**

### **4.1 Availability of Lands**

OWNER shall furnish, as indicated in the Contract Documents, the lands upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands which are designated for the use of CONTRACTOR. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by OWNER, unless otherwise provided in the Contract Documents. If CONTRACTOR believes that any delay in OWNER'S furnishing these lands, rights-of-way or easements entitles CONTRACTOR to an extension of the Contract Time, CONTRACTOR may make a claim therefor as provided in Article 11. ENGINEER shall determine if the claim is legitimate or not. CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

### **4.2 Physical Conditions**

#### **4.2.1 Explorations and Reports**

Reference is made to the Special Conditions for identification of those reports of explorations and tests of subsurface conditions at the site that have been utilized by ENGINEER in preparation of the Contract Documents. CONTRACTOR may rely upon the accuracy of the technical data contained in such reports, but not upon non-technical data, interpretations or opinions contained therein or for the completeness thereof for CONTRACTOR'S purposes. Except as indicated in the immediately preceding sentence and in paragraph 4.2.6, CONTRACTOR shall have full responsibility with respect to subsurface conditions at the site.

#### **4.2.2 Existing Structures**

Reference is made to the Special Conditions for identification of those drawings of physical conditions in or relating to existing surface and subsurface structures (except Underground Facilities referred to in paragraph 4.3 which are at or contiguous to the site that have been utilized by ENGINEER in preparation of the Contract Documents. CONTRACTOR may rely upon the accuracy of the technical data contained in such drawings, but not for the completeness thereof for CONTRACTOR'S purposes. Except as indicated in the immediately preceding sentence and in paragraph 4.2.6, CONTRACTOR shall have full responsibility with respect to physical conditions in or relating to such structures.

4.2.3 Report of Differing Conditions

If CONTRACTOR believes that:

4.2.3.1 any technical data on which CONTRACTOR is entitled to rely as provided in paragraphs 4.2.1 and 4.2.2 is inaccurate, or

4.2.3.2 any physical conditions uncovered or revealed at the site differ materially from that indicated, reflected or referred to in the Contract Documents,

CONTRACTOR shall, promptly after becoming aware thereof and before performing and WORK in connection therewith (except in an emergency) notify OWNER and ENGINEER in writing about the inaccuracy or difference.

4.2.4 ENGINEER'S Review

Engineer will promptly review the pertinent conditions, determine the necessity of obtaining additional explorations or tests with respect thereto and advise CONTRACTOR of ENGINEER'S findings and conclusions.

4.2.5 Possible Document Change

If ENGINEER concludes that there is a material error in the Contract Documents or that because of newly discovered conditions a change in the Contract Documents is required, a Change Order will be issued as provided in Article 10 to reflect and document the consequences of the inaccuracy or difference.

4.2.6 Possible Price and Time Adjustments

In each such case, an increase or decrease in the Contract Price or an extension or shortening of the Contract Time, or any combination thereof, will be allowable to the extent that they are attributable to any such inaccuracy or difference.

**4.3 Physical Conditions-Underground Facilities**

4.3.1 Shown or Indicated

The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the site is based on information and data furnished to OWNER or ENGINEER by the owners of such underground facilities or by others. Unless it is otherwise expressly provided in the Special Conditions:

4.3.1.1 OWNER and ENGINEER shall not be responsible for the accuracy or completeness of any such information or data; and,

4.3.1.2 CONTRACTOR shall have full responsibility for reviewing and checking all such information and data; for locating all underground

facilities shown or indicated in the Contract Documents; for coordination of the Work with the owners of such underground facilities during construction; and for the safety and protection thereof and repairing any damage thereto resulting from the Work, the cost of all of which will be considered as having been included in the Contract Price.

4.3.2 Not Shown or Indicated

If an underground facility is uncovered or revealed at or contiguous to the site which was not shown or indicated in the Contract Documents and which CONTRACTOR could not reasonably have been expected to be aware of, CONTRACTOR shall, promptly after becoming aware thereof and before performing any Work affected thereby (except in an emergency), identify the owner of such Underground Facility and give written notice thereof to that owner and to OWNER and ENGINEER. ENGINEER will promptly review the underground facility to determine the extent to which the Contract Documents should be modified to reflect and document the consequences of the existence of the Underground Facility, and the Contract Documents will be amended or supplemented to the extent necessary. During such time, CONTRACTOR shall be responsible for the safety and protection of such underground facility. CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, to the extent that they are attributable to the existence of any underground facility that was not shown or indicated in the Contract Documents and which CONTRACTOR could not reasonably have been expected to be aware of.

**4.4 Reference Points**

OWNER shall provide engineering surveys to establish reference points for construction which in ENGINEER'S judgment are necessary to enable CONTRACTOR to proceed with the Work. CONTRACTOR shall be responsible for laying out the Work (unless otherwise specified), shall protect and preserve the established reference points and shall make no changes or relocations without the prior written approval of OWNER. CONTRACTOR shall report to ENGINEER whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points by a Registered Land Surveyor.

**5. CONTRACTOR'S RESPONSIBILITIES**

**5.1 Supervision**

CONTRACTOR shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CONTRACTOR shall assure that all CONTRACTOR personnel (including subcontractors, etc.) conduct themselves in a courteous and respectful manner toward the ENGINEER and the general public. Failure to comply with this condition of the Contract will result in immediate suspension of the Work. Following a review by the Commissioner of Public Works, the Contract may be

terminated (see GC section 14). CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences and procedures of construction, but CONTRACTOR shall not be responsible for the negligence of others in the design or selection of a specific means, method, technique, sequence or procedure of construction which is indicated in and required by the Contract Documents. CONTRACTOR shall be responsible to see that the finished Work complies accurately with the Contract Documents.

**5.2 Superintendence**

CONTRACTOR shall keep on the Work at all times during its progress a competent resident superintendent, who shall not be replaced without written notice to OWNER and ENGINEER except under extraordinary circumstances. The superintendent will be CONTRACTOR'S representative at the site and shall have authority to act on behalf of CONTRACTOR. All communications given to the superintendent shall be as binding as if given to CONTRACTOR.

**5.3 Labor**

CONTRACTOR shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the site. Except in connection with the safety or protection of persons or the Work or property at the site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all Work at the site shall be performed during regular working hours, and CONTRACTOR will not permit overtime work or the performance of Work on Saturday, Sunday or any legal holiday without OWNER'S written consent given after prior written notice to ENGINEER.

**5.4 Start-Up and Completion of Work**

Unless otherwise specified, CONTRACTOR shall furnish and assume full responsibility for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and completion of the Work.

**5.5 Materials and Equipment**

All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. If required by ENGINEER, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable supplier except as otherwise provided in the Contract Documents; but no provision of any such instructions will be effective to assign to ENGINEER, or any of ENGINEER'S consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the

Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 8.12.3 or 8.12.4.

**5.5.1 Not Clearly Specified or Indicated**

In all instances where materials specified are obtainable in different sizes, weights, trade grades, qualities or finishes, etc., whose weights, trade grades, qualities or finishes, etc., are not clearly specified or indicated on the Drawings, the CONTRACTOR shall notify the ENGINEER of all such instances at least five (5) days in advance of receiving the proposals. The Engineer will then determine which size, weight, trade grade, quality, finish, etc., is required.

**5.5.2 Coordination of Work**

The CONTRACTOR shall see that for his own Work and for the work of each subcontractor, proper templates and patterns necessary for the coordination of the various parts of the Work are prepared. The CONTRACTOR shall furnish or require the Subcontractor to furnish such duplicates as will enable the Subcontractors to fit together and execute fully their respective portions of the Work.

**5.6 Adjusting Progress Schedule**

CONTRACTOR shall submit to ENGINEER for acceptance (to the extent indicated in paragraph 2.8) adjustments in the progress schedule to reflect the impact thereon of new developments; these will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the Contract Documents applicable thereto.

**5.7 Substitutes or "Or-Equal" Items**

**5.7.1 General**

Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular supplier, the naming of the item is intended to establish the type, function, and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of other Suppliers may be accepted by OWNER/ENGINEER if sufficient information is submitted by CONTRACTOR to allow OWNER/ENGINEER to determine that the material or equipment proposed is equivalent or equal to that named. The procedure for review by OWNER/ENGINEER will include the following. Requests for review of substitute items of material and equipment will not be accepted by OWNER/ENGINEER from anyone, other than CONTRACTOR. If CONTRACTOR wishes to furnish or use a substitute item of material or equipment, CONTRACTOR shall make written application to OWNER/ENGINEER for acceptance thereof, certifying that the proposed substitute will perform adequately the functions and achieve the results

called for by the general design, be similar and of equal substance to that specified and be suited to the same use as that specified. The application will state that the evaluation and acceptance of the proposed substitute will not prejudice CONTRACTOR'S achievement of completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) to adapt the design to the proposed substitute and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service will be indicated. The application will also contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other contractors affected by the resulting change, all of which shall be considered by OWNER/ENGINEER in evaluating the proposed substitute. OWNER/ENGINEER may require CONTRACTOR to furnish at CONTRACTOR'S expense additional data about the proposed substitute.

#### 5.7.2 Substitutes

If a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents, CONTRACTOR may furnish or utilize a substitute means, method, sequence, technique or procedure of construction acceptable to OWNER/ENGINEER, if CONTRACTOR submits sufficient information to allow OWNER/ENGINEER to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedure for review by OWNER/ENGINEER will be similar to that provided in paragraph 5.7.1 as applied by OWNER/ENGINEER.

#### 5.7.3 OWNER/ENGINEER'S Approval

OWNER/ENGINEER will be allowed a reasonable time within which to evaluate each proposed substitute. OWNER/ENGINEER will be the sole judge of acceptability, and no substitute will be ordered, installed or utilized without OWNER/ENGINEER'S prior written acceptance which will be evidenced by either a Change Order or an approved Shop Drawing. OWNER may require CONTRACTOR to furnish at CONTRACTOR'S expense a special performance guarantee or other surety with respect to any substitute. OWNER/ENGINEER will record time required by OWNER/ENGINEER and OWNER/ENGINEER'S consultants in evaluating substitutions proposed by CONTRACTOR and in making changes in the Contract Documents occasioned thereby. Whether or not OWNER/ENGINEER accepts a proposed substitute, CONTRACTOR shall reimburse OWNER for the charges of OWNER/ENGINEER and OWNER/ENGINEER'S consultants for evaluating each proposed substitute.

## 5.8 Subcontractors, Suppliers, and Others

### 5.8.1 Acceptable to ENGINEER

CONTRACTOR shall not employ any Subcontractor, Supplier or other person or organization (including those acceptable to OWNER and ENGINEER as indicated in paragraph 5.8.2), whether initially or as a substitute, against whom OWNER or ENGINEER may have reasonable objection. CONTRACTOR shall not be required to employ any Subcontractor, Supplier or other person or organization to furnish or perform any of the Work against whom CONTRACTOR has reasonable objection.

### 5.8.2 Objection After Due Investigation

If the Contract Documents require the identity of certain Subcontractors, Suppliers or other persons or organizations (including those who are to furnish the principal items of materials and equipment) to be submitted to OWNER in advance of the specified date prior to the Effective Date of the Agreement for acceptance by OWNER and ENGINEER and if CONTRACTOR has submitted a list thereof, OWNER'S or ENGINEER'S acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the bidding documents or the Contract Documents) of any such Subcontractor, Supplier or other person or organization so identified may be revoked on the basis of reasonable objection after due investigation, in which case CONTRACTOR shall submit an acceptable substitute. No acceptance by OWNER or ENGINEER of any such Subcontractor, Supplier or other person or organization shall constitute a waiver of any right of OWNER or ENGINEER to reject defective Work.

### 5.8.3 Contractor Responsible for Acts of Subcontractors

The CONTRACTOR shall perform on the site, and with its own organization, work equivalent to at least fifty (50) percent of the total amount of Work to be performed under the Contract. This percentage may be reduced by a supplemental agreement to this Contract if, during performing the Work, the CONTRACTOR requests a reduction and the Urban County Engineer determines that the reduction would be to the advantage of the Urban County Government.

The CONTRACTOR shall, at the time he submits his proposal for the Contract, notify the OWNER in writing of the names of Subcontractors proposed for the Work. He shall not employ any Subcontractor without the prior written approval of the OWNER.

CONTRACTOR shall be fully responsible to OWNER and ENGINEER for all acts and omissions of the Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or

indirect contract with CONTRACTOR just as CONTRACTOR is responsible for CONTRACTOR'S own acts and omissions. Nothing in the Contract Documents shall create any contractual relationship between OWNER or ENGINEER and any such Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of OWNER or ENGINEER to pay or to see to the payment of any moneys due any such Subcontractor, Supplier or other person or organization except as may otherwise be required by Laws and Regulations.

5.8.4 Division of Specifications

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

5.8.5 Agreement Between Contractor and Subcontractors

All Work performed for CONTRACTOR by a Subcontractor will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of OWNER and ENGINEER.

5.8.6 Statements and Comments by CONTRACTOR

Neither the CONTRACTOR, his employees, nor his subcontractors shall at any time make any statement or comment as to the project scope, nature, intention, design, or construction method to any third party or parties without the explicit written consent of the OWNER.

Any third party requesting such information shall be referred to the OWNER or his representative.

Should there be any change from the original intent of the project as a result of any statement or comment by the contractor, his employees or subcontractors, contractor shall be held liable for any change in the scope, nature, design, or construction method and shall bear the full cost for the previously mentioned changes.

**5.9 Patent Fees and Royalties**

CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others.



## **5.10 Permits**

Unless otherwise provided in the Special conditions, CONTRACTOR shall obtain and pay for all construction permits and licenses. OWNER shall assist CONTRACTOR, when necessary, in obtaining such permits and licenses. CONTRACTOR shall pay all governmental charges and inspection fees necessary for the prosecution of the Work, which are applicable at the time of opening of Bids, or if there are no Bids on the Effective Date of the Agreement. CONTRACTOR shall pay all charges of utility owners for connections to the Work, and OWNER shall pay all charges of such utility owners for capital costs related thereto such as plant investment fees.

## **5.11 Laws and Regulations**

### **5.11.1 CONTRACTOR to Comply**

CONTRACTOR shall give all notices and comply with all Laws and Regulations applicable to furnishing and performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither OWNER nor ENGINEER shall be responsible for monitoring CONTRACTOR'S compliance with any Laws and Regulations.

### **5.11.2 Specifications and Drawings at Variance**

If CONTRACTOR observes that the Specifications or Drawings are at variance with any Laws or Regulations, CONTRACTOR shall give ENGINEER prompt written notice thereof, and any necessary changes will be authorized by one of the methods indicated in paragraph 3.4. If CONTRACTOR performs any Work knowing or having reason to know that it is contrary to such Laws, or Regulations, and without such notice to ENGINEER, CONTRACTOR shall bear all costs arising therefrom; however, it shall not be CONTRACTOR'S primary responsibility to make certain that the Specifications and Drawings are in accordance with such Laws and Regulations.

## **5.12 Taxes**

CONTRACTOR shall pay all sales, consumer, use and other similar taxes required to be paid by CONTRACTOR in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work. Any party, firm or individual submitting a proposal pursuant to invitation must have paid all taxes owed to the Lexington-Fayette Urban County Government at the time the proposal is submitted, and must maintain a "current" status in regard to those taxes throughout the Contract. If applicable, business must be licensed in Fayette County.

## **5.13 Use of Premises**

### **5.13.1 Project Site**

CONTRACTOR shall confine construction equipment, the storage of materials and equipment and the operations of workers to the staging areas

or work site areas identified in and permitted by the Contract Documents and other land and areas permitted by Laws and Regulations, rights-of-way, permits and easements, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any land or areas contiguous thereto, resulting from the performance of the Work. Should any claim be made against OWNER or ENGINEER by any such owner or occupant because of the performance of the Work, CONTRACTOR shall promptly attempt to settle with such other party by agreement or otherwise resolve the claim by arbitration or at law. CONTRACTOR shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold OWNER and ENGINEER harmless from and against all claims, damages, losses and expenses (including, but not limited to, fees of engineers, architects, attorneys and other professionals and court and arbitration costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any such other party against OWNER or ENGINEER to the extent based on a claim arising out of CONTRACTOR'S performance of the Work.

#### 5.13.2 Clean UP

During the progress of the Work, CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work, CONTRACTOR shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy by OWNER. CONTRACTOR shall restore to original condition all property not designated for alteration by the Contract Documents.

#### 5.13.1 Loading of Structures

CONTRACTOR shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall CONTRACTOR subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

### 5.14 **Record Drawings**

CONTRACTOR shall maintain in a safe place at the site one record copy of all Drawings, Specifications, Addenda, Change Orders, Field Orders and written interpretations and clarifications (issued pursuant to paragraph 9.4) in good order and annotated to show all changes made during construction. These record documents together with all approved samples and a counterpart of all approved Shop Drawings will be available to ENGINEER for reference. Upon completion of the Work, these record documents, samples and Shop Drawings will be delivered to ENGINEER for OWNER.

## 5.15 Shop Drawings and Samples

### 5.15.1 Shop Drawing Submittals

After checking and verifying all field measurements and after complying with applicable procedures specified, CONTRACTOR shall submit to ENGINEER for review and approval in accordance with the accepted schedule of Shop Drawing submissions (see paragraph 2.8), or for other appropriate action if so indicated in the Special Conditions, five copies (unless otherwise specified) of all Shop Drawings, which will bear a stamp or specific written indication that CONTRACTOR has satisfied CONTRACTOR'S responsibilities under the Contract Documents with respect to the review of the submission. All submissions will be identified as ENGINEER may require. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to enable ENGINEER to review the information as required.

### 5.15.2 Sample Submittals

CONTRACTOR shall also submit to ENGINEER for review and approval with such promptness as to cause no delay in Work, all samples required by the Contract Documents. All samples will have been checked by and accompanied by a specific written indication that CONTRACTOR has satisfied CONTRACTOR'S responsibilities under the Contract Documents with respect to the review of the submission and will be identified clearly as to material, Supplier, pertinent data such as catalog numbers and the use for which intended.

### 5.15.3 Review by CONTRACTOR

Before submission of each Shop Drawing or sample CONTRACTOR shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar data with respect thereto and reviewed or coordinated each Shop Drawing or sample with other Shop Drawings and samples and with the requirements of the Work and the Contract Documents.

### 5.15.4 Notice of Variation

At the time of each submission, CONTRACTOR shall give ENGINEER specific written notice of each variation that the Shop Drawings or samples may have from the requirements of the Contract Documents, and, in addition, shall cause a specific notation to be made on each Shop Drawing submitted to ENGINEER for review and approval of each such variation.

### 5.15.5 ENGINEER'S Approval

ENGINEER will review and approve with reasonable promptness Shop Drawings and samples, but ENGINEER'S review and approval will be only for conformance with the design concept of the Project and for compliance

with the information given in the Contract Documents and shall not extend to means, methods, techniques, sequences or procedures of construction (except where a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. CONTRACTOR shall make corrections required by ENGINEER, and shall return the required number of corrected copies of Shop Drawings and submit, as required, new samples for review and approval. CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by ENGINEER on previous submittals.

**5.15.6 Responsibility for Errors and Omissions**

ENGINEER'S review and approval of Shop Drawings or samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called ENGINEER'S attention to each such variation at the time of submission as required by paragraph 5.15.4 and ENGINEER has given written approval of each such variation by a specific written notation thereof incorporated in or accompanying the Shop Drawing or sample approval; nor will any approval by ENGINEER relieve CONTRACTOR from responsibility for errors or omissions in the Shop Drawings or from responsibility for having complied with the provisions of paragraph 5.15.3.

**5.15.7 Cost of Related Work**

Where a Shop or sample is required by the Specifications, any related Work performed prior to ENGINEER'S review and approval of the pertinent submission will be the sole expense and responsibility of CONTRACTOR.

**5.16 Continuing the Work**

CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with OWNER. No Work shall be delayed or postponed pending resolutions of any disputes or disagreements, except as permitted by paragraph 14.5 or as CONTRACTOR and OWNER may otherwise agree in writing.

**5.17 Erosion and Sediment Control**

**5.17.1 General Environmental Requirements**

The CONTRACTOR and Subcontractors performing work on projects on behalf of the OWNER shall comply with all applicable federal, state, and local environmental regulations and all requirements and conditions set forth in "special" permits including but not limited to Corp of Engineers 404 permits, 401 Water Quality Certifications, Stream Crossing and Floodplain Encroachment Permits.

Any fines or penalties resulting from the failure to comply with the terms of the federal, state or local permits or perform necessary corrective action are solely the obligation of the CONTRACTOR.

5.17.2 Storm Water Pollution Prevention

A. The CONTRACTOR shall exercise due care to prevent or minimize any damage to any stream or wetland from pollution by debris, sediment or other material. The operation of equipment and/or materials in a jurisdictional wetland is expressly prohibited. Water that has been used for washing or processing, or that contains oils, sediments or other pollutants shall not be discharged from the job site. Such waters shall be collected and properly disposed of by the CONTRACTOR in accordance with applicable local, state and federal law.

B. The CONTRACTOR is solely responsible for securing all required State and local permits associated with storm water discharges from the project including, but not necessarily limited to the KY Notice of Intent to Disturb (NOI) for Coverage of Storm Water Discharges Associated with Construction Activities under the KPDES Storm Water General Permit KYR100000 and the LFUCG, Land Disturbance Permit. Permit application preparation and all required documentation are the responsibility of the CONTRACTOR. The CONTRACTOR is solely responsible for maintaining compliance with the storm water pollution prevention plan or erosion and sediment control plan and ensuring the following:

- a. That the Storm water Pollution Prevention Plan (SWPPP) or erosion control plan is current and available for review on site;
- b. That any and all storm water inspection reports required by the permit are conducted by qualified personnel and are available for review onsite; and
- c. That all best management practices (BMPs) are adequately maintained and effective at controlling erosion and preventing sediment from leaving the site.

C. The CONTRACTOR shall provide the necessary equipment and personnel to perform any and all emergency measures that may be required to contain any spillage or leakage and to remove materials, soils or liquids that become contaminated. The collected spill material shall be properly disposed at the CONTRACTOR's expense.

D. Upon completion of the work and with the concurrence of the OWNER, the CONTRACTOR must file a Notice of Termination (NOT) of Coverage Under the KPDES General Permit for Storm Water Discharges Associated with Construction Activity with the appropriate local and state authorities.

E. Any fines or penalties resulting from the failure to comply with the terms of the state or local storm water permits or perform necessary corrective action are solely the obligation of the CONTRACTOR.

## **6. OTHER WORK**

### **6.1 Related Work at Site**

OWNER may perform other work related to the Project at the site by OWNER'S own forces, have other work performed by utility owners or let other direct contracts therefor which shall contain General Conditions similar to these. If the fact that such other work is to be performed was not noted in the Contract Documents, written notice thereof will be given to CONTRACTOR prior to starting any such other work; and, if such performance will involve additional expense to CONTRACTOR or requires additional time, a Change Order to the Contract will be negotiated.

### **6.2 Other Contractors or Utility Owners**

CONTRACTOR shall afford each utility owner and other contractor who is a party to such a direct contract (or OWNER, if OWNER is performing the additional work with OWNER'S employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such work, and shall properly connect and coordinate the Work with theirs. CONTRACTOR shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. CONTRACTOR shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of ENGINEER and the others whose work will be affected. The duties and responsibilities of CONTRACTOR under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of CONTRACTOR in said direct contracts between OWNER and such utility owners and other contractors.

### **6.3 Delays Caused by Others**

If any part of CONTRACTOR'S Work depends for proper execution or results upon the work of any such other contractor or utility owner (or OWNER), CONTRACTOR shall inspect and promptly report to ENGINEER in writing any delays, defects or deficiencies in such work that render it unavailable or unsuitable for such proper execution and results. CONTRACTOR'S failure so to report will constitute an acceptance of the other work as fit and proper for integration with CONTRACTOR'S Work except for latent or non-apparent defects and deficiencies in the other work.

### **6.4 Coordination**

If OWNER contracts with others for the performance of other work on the Project at the site, the person or organization who will have authority and responsibility for coordination of the activities among the various prime contractors will be identified in the Special Conditions, and the specific matters to be covered by such authority and

responsibility will be itemized, and the extent of such authority and responsibilities will be provided, in the Special Conditions.

## **7. OWNER'S RESPONSIBILITIES**

### **7.1 Communications**

OWNER shall issue all communications to CONTRACTOR through ENGINEER.

### **7.2 Data and Payments**

OWNER shall furnish the data required of OWNER under the Contract Documents promptly after they are due.

### **7.3 Lands, Easements, and Surveys**

OWNER'S duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in paragraphs 4.1 and 4.4. Paragraph 4.2 refers to OWNER'S identifying and making available to CONTRACTOR copies of reports of explorations and tests of subsurface conditions at the site and in existing structures which have been utilized by ENGINEER in preparing the Drawings and Specifications.

### **7.4 Change Orders**

OWNER is obligated to execute Change Orders as indicated in paragraph 9.4.

### **7.5 Inspections, Tests and Approvals**

OWNER'S responsibility in respect to certain inspections, tests and approvals is set forth in paragraph 13.3.

### **7.6 Stop or Suspend Work**

In connection with OWNER'S right to stop Work or suspend Work, see paragraph 12.4 and 14.1 Paragraph 14.2 deals with OWNER'S rights to terminate services of CONTRACTOR under certain circumstances.

## **8. ENGINEER'S STATUS DURING CONSTRUCTION**

### **8.1 OWNER'S Representative**

ENGINEER will be OWNER'S representative during the construction period. The duties and responsibilities and the limitations of authority of ENGINEER as OWNER'S representative during construction are set forth in the Contract Documents and shall not be extended without written consent of OWNER and ENGINEER.

### **8.2 Visits to Site**

ENGINEER will make visits to the site at intervals appropriate to the various stages of construction to observe the progress and quality of the executed Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. ENGINEER will not be required to make exhaustive or

continuous on-site inspections to check the quality or quantity of the Work. ENGINEER'S efforts will be directed toward providing for OWNER a greater degree of confidence that the completed Work will conform to the Contract Documents. On the basis of such visits and on-site observations, ENGINEER will keep OWNER informed of the progress of the Work and will endeavor to guard OWNER against defects and deficiencies in the Work.

**8.3 Project Representation**

ENGINEER will provide an Inspector to assist ENGINEER in observing the performance of the Work. If OWNER designates another agent to represent OWNER at the site who is not ENGINEER'S agent or employee, the duties, responsibilities and limitations of authority of such other person will be as provided in the Special Conditions.

**8.4 Clarifications and Interpretations**

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

**8.5 Authorized Variations in Work**

ENGINEER may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Time and are consistent with the overall intent of the Contract Documents. These may be accomplished by a Field Order.

**8.6 Rejecting Defective Work**

ENGINEER will have authority to disapprove or reject Work which ENGINEER believes to be defective, and will also have authority to require special inspection or testing of the Work as provided in paragraph 12.3, whether or not the Work is fabricated, installed or completed.

**8.7 Shop Drawings**

In connection with ENGINEER'S responsibility for Shop Drawings and samples, see paragraphs 5.15.1 through 5.16 inclusive.

**8.8 Change Orders**

In connection with ENGINEER'S responsibilities as to Change Orders, see Articles 10, 11 and 12.

**8.9 Payments**

In connection with ENGINEER'S responsibilities with respect to Applications for Payment, etc., see Article 13.

**8.10 Determinations for Unit Prices**



ENGINEER will determine the actual quantities and classifications of Unit Price Work performed by CONTRACTOR.

ENGINEER will review with CONTRACTOR ENGINEER'S preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise).

#### **8.11 Decision on Disputes**

ENGINEER will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the Work and claims under Articles 10 and 11 in respect of changes in the Contract Price or Contract Time will be referred initially to ENGINEER in writing with a request for a formal decision in accordance with this paragraph, which ENGINEER will render in writing within a reasonable time. Written notice of each such claim, dispute and other matter will be delivered to ENGINEER promptly (but in no event later than thirty days) after the occurrence of the event giving rise thereto, and written supporting data will be submitted to ENGINEER within sixty days after such occurrence unless ENGINEER allows an additional period of time to ascertain more accurate data in support of the claim.

#### **8.12 Limitations on Engineer's Responsibilities**

##### **8.12.1 CONTRACTOR, Supplier, or Surety**

Neither ENGINEER'S authority to act under this Article 8 or elsewhere in the Contract Documents nor any decision made by ENGINEER in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of ENGINEER to CONTRACTOR, any Subcontractor, any Supplier, or any other person or organization performing any of the Work, or to any surety for any of them.

##### **8.12.2 To Evaluate the Work**

Whenever in the Contract Documents the terms "as ordered", "as directed", "as required", "as allowed", "as approved" or terms of like effect or import are used, or the adjectives "reasonable", "suitable", "acceptable", "proper", or "satisfactory" or adjectives or like "effect" or "import" are used to describe a requirement, direction, review or judgment of ENGINEER as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate the Work for compliance with the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign ENGINEER any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 8.12.3 or 8.12.4.

8.12.3 CONTRACTOR'S Means, Methods, Etc.

ENGINEER will not be responsible for CONTRACTOR'S means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, and ENGINEER will not be responsible for CONTRACTOR'S failure to perform or furnish the Work in accordance with the Contract Documents.

8.12.4 Acts of Omissions of CONTRACTOR

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

**9. CHANGES IN THE WORK**

**9.1 OWNER May Order Change**

Without invalidating the Agreement and without notice to any surety, OWNER may, at any time or from time to time, order additions, deletions or revisions in the Work; these will be authorized by a Change Order. Upon receipt of such notice, CONTRACTOR shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

**9.2 Claims**

Claims for an increase or decrease in the Contract Price or an extension or shortening of the Contract Time that should be allowed as a result of a Change Order will be settled as provided for in Article 10 or Article 11.

**9.3 Work Not in Contract Documents**

CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Time with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented as provided in paragraph 3.4, except in the case of an emergency and except in the case of uncovering Work as provided in paragraph 12.3.4.

**9.4 Change Orders**

OWNER and CONTRACTOR shall execute appropriate Change Orders covering:

9.4.1 changes in the Work which are ordered by OWNER pursuant to paragraph 9.1, are required because of acceptance of defective Work under paragraph 12.7 or corrective defective Work under paragraph 12.8, or are agreed to by the parties;

9.4.2 changes in the Contract Price or Contract Time which are agreed to by the parties; and

9.4.3 changes in the Contract Price or Contract Time which embody the substance of any written decision rendered by ENGINEER pursuant to paragraph 8.11; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and REGULATIONS, but during any such appeal, CONTRACTOR shall carry on the Work and adhere to the progress schedule as provided in paragraph 5.16.

**9.5 Notice of Change**

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

**10. CHANGE OF CONTRACT PRICE**

**10.1 Total Compensation**

The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to CONTRACTOR for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by CONTRACTOR shall be at his expense without change in the Contract Price.

**10.2 Claim for Increase or Decrease in Price**

The Contract Price may only be changed by a Change Order. Any claim for an increase or decrease in the Contract Price shall be based on written notice delivered by the CONTRACTOR to the ENGINEER promptly (but in no event later than thirty days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the amount of the claim with supporting data shall be delivered within sixty days after such occurrence (unless ENGINEER allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by CONTRACTOR'S written statement that the amount claimed covers all known amounts (direct, indirect, and consequential) to which the CONTRACTOR is entitled as a result of the occurrence of said event.

**10.3 Value of Work**

The value of any Work covered by a Change Order or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways:

**10.3.1 Unit Prices**

Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved (subject to the provisions of paragraphs 10.9.1. through 10.9.3, inclusive).

#### 10.3.2 Lump Sum

By mutual acceptance of a lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 10.6.2.1).

#### 10.3.3 Cost Plus Fee

On the basis of the Cost of the Work (determined as provided in paragraphs 10.4 and 10.5) plus a CONTRACTOR'S fee for overhead and profit (determined as provided in paragraphs 10.6 and 10.7).

### 10.4 **Cost of the Work**

The term Cost of the Work means the sum of all costs necessarily incurred and paid by CONTRACTOR in the proper performance of the Work. Except as otherwise may be agreed to in writing by OWNER, such costs shall be in amounts no higher than those prevailing in the locality of the Project; shall include only the following items; and shall not include any of the costs itemized in paragraph 10.5:

#### 10.4.1 Payroll Costs

Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the Work under schedules of job classifications agreed upon by OWNER and CONTRACTOR. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' or workmen's compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. Such employees shall include superintendents and foremen at the site. The expenses of performing Work after regular working hours, on Saturday, Sunday or legal holidays, shall be included in the above to the extent authorized by OWNER.

#### 10.4.2 Materials and Equipment Costs

Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to CONTRACTOR unless OWNER deposits funds with CONTRACTOR with which to make payments, in which case the cash discounts shall accrue to OWNER. All trade discounts, rebates and refunds and all returns from sale of surplus materials and equipment shall accrue to OWNER, and CONTRACTOR shall make provisions so that they may be obtained.

#### 10.4.3 Subcontractor Costs

Payments made by CONTRACTOR to the Subcontractors for Work performed by Subcontractors. If required by OWNER, CONTRACTOR shall obtain competitive bids from Subcontractors acceptable to CONTRACTOR and shall deliver such bids to OWNER who will then determine, with the advice of ENGINEER, which bids will be accepted. If a subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work Plus a Fee, the Subcontractor's Cost of the Work shall be determined in the same manner as CONTRACTOR'S Cost of the Work. All subcontracts shall be subject to the other provisions of the Contract Documents insofar as applicable.

#### 10.4.4 Special Consultant Costs

Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys and accountants) employed for services specifically related to the Work.

#### 10.4.5 Supplemental Costs

10.4.5.1 The proportion of necessary transportation, travel and subsistence expenses of CONTRACTOR'S employees incurred in discharge of duties connected with the Work.

10.4.5.2 Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost less market value of such items used but not consumed which remain the property of CONTRACTOR.

10.4.5.3 Rentals of all construction equipment and machinery and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements approved by OWNER with the advice of ENGINEER, and the costs of transportation, loading, unloading, installation, dismantling and removal shall be in accordance with terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.

10.4.5.4 Sales, consumer, use or similar taxes related to the Work, and for which CONTRACTOR is liable, imposed by Laws and Regulations.

10.4.5.5 Deposits lost for causes other than negligence of CONTRACTOR, any Subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

10.4.5.6 Losses and damages (and related expenses), not compensated by insurance or otherwise, to the Work or otherwise sustained by CONTRACTOR in connection with the performance and furnishing of the Work (except losses and damages within the deductible amounts of property insurance established by OWNER), provided they have resulted from causes other than the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of OWNER. No such losses, damages and expenses shall be included in the Cost of the Work for the purpose of determining CONTRACTOR'S fee. If, however, any such loss or damage requires reconstruction and CONTRACTOR is placed in charge thereof, CONTRACTOR shall be paid a fee proportionate to that stated in paragraph 10.6.2 for services.

10.4.5.7 The cost of utilities, fuel and sanitary facilities at the site.

10.4.5.8 Minor expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage and similar petty cash items in connection with the Work.

10.4.5.9 Cost of premiums for additional Bonds and insurance required because of changes in the Work and premiums for property insurance coverage within the limits of the deductible amounts established by OWNER.

## **10.5 Not to Be Included in Cost of the Work**

The term Cost of the Work shall not include any of the following:

### **10.5.1 Costs of Officers and Executives**

Payroll costs and other compensation of CONTRACTOR'S officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by CONTRACTOR whether at the site or in CONTRACTOR'S principal or a branch office for general administration of

the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 10.4.1 or specifically covered by paragraph 10.4.4 - all of which are to be considered administrative costs covered by the CONTRACTOR'S fee.

10.5.2 Principal Office

Expenses of CONTRACTOR'S principal and branch offices other than CONTRACTOR'S office at the site.

10.5.3 Capital Expense

Any part of CONTRACTOR'S capital expenses, including interest on CONTRACTOR'S capital employed for the Work and charges against CONTRACTOR for delinquent payments.

10.5.4 Bonds and Insurance

Cost of premiums for all Bonds and for all insurance whether or not CONTRACTOR is required by the Contract Documents to purchase and maintain the same (except for the cost of premiums covered by subparagraph 10.4.5.9 above).

10.5.5 Costs Due to Negligence

Costs due to the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property.

10.5.6 Other Costs

Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraph 10.4.

**10.6 Contractor's Fee**

The CONTRACTOR'S Fee allowed to CONTRACTOR for overhead and profit shall be determined as follows:

10.6.1 a mutually acceptable fixed fee; or if none can be agreed upon,

10.6.2 a fee based on the following percentages of the various portions of the Cost of the Work:

10.6.2.1 for costs incurred under paragraphs 10.4.1 and 10.4.2, the CONTRACTOR'S fee shall be fifteen percent;

10.6.2.2 for costs incurred under paragraph 10.4.3, the CONTRACTOR'S fee shall be five percent; and if a subcontract is on the basis of Cost of the Work Plus a fee, the maximum allowable to CONTRACTOR on account of overhead and profit of all Subcontractors shall be fifteen percent;

10.6.2.3 no fee shall be payable on the basis of costs itemized under paragraphs 10.4.4, 10.4.5 and 10.5;

10.6.2.4 the amount of credit to be allowed by CONTRACTOR to OWNER for any such change which results in a net decrease in cost will be the amount of the actual net decrease plus a deduction in CONTRACTOR'S Fee by an amount equal to ten percent of the net decrease; and

10.6.2.5 when both additions and credits are involved in any one change, the adjustment in CONTRACTOR'S fee shall be computed on the basis of the net change in accordance with paragraphs 10.6.2.1 through 10.6.2.4, inclusive.

#### **10.7 Itemized Cost Breakdown**

Whenever the cost of any Work is to be determined pursuant to paragraph 10.4 or 10.5, CONTRACTOR will submit in form acceptable to ENGINEER an itemized cost breakdown together with supporting data.

#### **10.8 Cash Allowances**

It is understood that CONTRACTOR has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be done by such Subcontractors or Suppliers and for such sums within the limit of the allowances as may be acceptable to ENGINEER, CONTRACTOR agrees that:

##### **10.8.1 Materials and Equipment**

The allowances include the cost to CONTRACTOR (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the site, and all applicable taxes; and



10.8.2 Other Costs

CONTRACTOR'S costs for unloading and handling on the site, labor, installation costs, overhead, profit and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances. No demand for additional payment on account of any thereof will be valid.

10.8.3 Change Order

Prior to final payment, an appropriate Change Order will be issued as recommended by ENGINEER to reflect actual amounts due CONTRACTOR on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

**10.9 Unit Price Work**

10.9.1 General

Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the established unit prices for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by CONTRACTOR will be made by ENGINEER in accordance with Paragraph 8.10.

10.9.2 Overhead and Profit

Each unit price will be deemed to include an amount considered by CONTRACTOR to be adequate to cover CONTRACTOR'S overhead and profit for each separately identified item.

10.9.3 Claim for Increase in Unit Price

Where the quantity of any item of Unit Price Work performed by CONTRACTOR differs materially and significantly from the estimated quantity of such item indicated in the Agreement and there is no corresponding adjustment with respect to any other item of Work and if CONTRACTOR believes that CONTRACTOR has incurred additional expense as a result thereof, CONTRACTOR may make a claim for an increase in the Contract Price in accordance with Article 10.

**11. CHANGE OF CONTRACT TIME**

**11.1 Change Order**

The Contract Time may only be changed by a Change Order. Any claim for an extension or shortening of the Contract Time shall be based on written notice delivered to ENGINEER promptly (but in no event later than thirty days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the extent of the claim with supporting data shall be delivered within sixty days after such occurrence (unless ENGINEER allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Time shall be determined by ENGINEER in accordance with paragraph 8.11. No claim for an adjustment in the Contract Time will be valid if not submitted in accordance with the requirements of this paragraph 11.1.

**11.2 Justification for Time Extensions**

The Contract Time will be extended in an amount equal to time lost due to delays beyond the control of CONTRACTOR if a claim is made therefore as provided in paragraph 11.1. Such delays shall include, but not be limited to, acts or neglect by OWNER or others performing additional work as contemplated by Article 6, or to fires, floods, labor disputes, epidemics, abnormal weather conditions or acts of God.

**11.3 Time Limits**

All time limits stated in the Contract Documents are of the essence of the Agreement. The provisions of this Article 11 shall not exclude recovery for damages (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court costs) for delay by either party.

**12. WARRANTY AND GUARANTEE; TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK**

**12.1 Warranty and Guarantee**

CONTRACTOR warrants and guarantees to OWNER and ENGINEER that all Work will be in accordance with the Contract Documents and will not be defective. All defective Work, whether or not in place, may be rejected, corrected or accepted as provided in this Article 12.

**12.2 Access to Work**

ENGINEER and ENGINEER'S representatives, other representatives of OWNER, testing agencies and governmental agencies with jurisdictional interests will have access to the Work at reasonable times for their observation, inspecting and testing. CONTRACTOR shall provide proper and safe conditions for such access.

## 12.3 Tests and Inspections

### 12.3.1 Timely Notice

CONTRACTOR shall give ENGINEER timely notice of readiness of the Work for all required inspections, tests or approvals.

### 12.3.2 Requirements and Responsibilities

The ENGINEER may require such inspection and testing during the course of the Work as he/she deems necessary to ascertain and assure the integrity and acceptable quality of the materials incorporated and the work performed. Inspection presence may be either full-time or intermittent, and neither the presence nor absence at any time of the ENGINEER or the INSPECTOR shall relieve the CONTRACTOR of sole responsibility for the acceptability and integrity of the Work or any part thereof.

The costs of sampling, testing, and inspection on-site to ascertain acceptability of the Work and materials will be borne by the OWNER except as otherwise provided. The OWNER will select a testing laboratory to perform such sampling and testing. Sampling and/or testing required by the CONTRACTOR or necessitated by failure of Work or materials to meet the above acceptability test shall be at the expense of the CONTRACTOR.

Inspection services may be performed by the employees of the OWNER or by others selected or designated by the OWNER or the ENGINEER.

Sampling and/or testing required for manufacturing quality and/or process control, for certification that raw mineral materials or manufactured products are the quality specified in the contract, or to assure the acceptability for incorporation into the Work shall be borne by the CONTRACTOR or the material supplier.

Cost for inspection, sampling, testing, and approvals required by the laws or regulations of any public body having competent jurisdiction shall be borne by the CONTRACTOR or the material supplier.

Sampling and testing will be in accord with pertinent codes and regulations and with appropriate standards of the American Society of Testing Materials or other specified standards.

### 12.3.3 On-Site Construction Test and Other Testing

All inspections, tests or approvals other than those required by Laws or Regulations of any public body having jurisdiction shall be performed by organizations acceptable to OWNER and CONTRACTOR (or by ENGINEER if so specified).

#### 12.3.4 Covered Work

If any Work (including the work of others) that is to be inspected, tested or approved is covered without written concurrence of ENGINEER, it must, if requested by ENGINEER, be uncovered for observation. Such uncovering shall be at CONTRACTOR'S expense unless CONTRACTOR has given ENGINEER timely notice of CONTRACTOR'S intention to cover the same and ENGINEER has not acted with reasonable promptness in response to such notice.

#### 12.3.5 CONTRACTOR'S Obligation

Neither observations by ENGINEER nor inspections, tests or approvals by others shall relieve CONTRACTOR from CONTRACTOR'S obligations to perform the Work in accordance with the Contract Documents.

#### **12.4 OWNER May Stop the Work**

If the Work is defective, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, OWNER may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of OWNER to stop the Work shall not give rise to any duty on the part of OWNER to exercise this right for the benefit of CONTRACTOR or any other party.

#### **12.5 Correction or Removal of Defective Work**

If required by ENGINEER, CONTRACTOR shall promptly, as directed, either correct all defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by ENGINEER, remove it from the site and replace it with non-defective Work. CONTRACTOR shall bear all direct, indirect and consequential costs of such correction or removal (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) made necessary thereby.

#### **12.6 One Year Correction Period**

If within one year after the date of Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be defective, CONTRACTOR shall promptly, without cost to OWNER and in accordance with OWNER'S written instructions, either correct such defective Work, or, if it has been rejected by OWNER, remove it from the site and replace it with non-defective Work. If CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, OWNER may have the defective Work corrected or the rejected Work removed and replaced, and all direct, indirect and consequential costs of such removal and replacement (including but not limited to fees and charges of engineers, architects, attorneys and

other professionals) will be paid by CONTRACTOR. In special circumstances where a particular item of equipment is placed in continuous service before Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications or by Change Order.

**12.7 Acceptance of Defective Work**

If, instead of requiring correction or removal and replacement of defective Work, OWNER prefers to accept it, OWNER may do so. CONTRACTOR shall bear all direct, indirect and consequential costs attributable to OWNER'S evaluation of and determination to accept such defective Work (such costs to be approved by ENGINEER as to reasonableness and to include but not be limited to fees and charges of engineers, architects, attorneys and other professionals).

**12.8 OWNER May Correct Defective Work**

If CONTRACTOR fails within a reasonable time after written notice of ENGINEER to proceed to correct and to correct defective Work or to remove and replace rejected Work as required by ENGINEER in accordance with paragraph 12.5, or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if CONTRACTOR fails to comply with any other provision of the Contract Documents, OWNER may, after seven days' written notice to CONTRACTOR, correct and remedy any such deficiency. In exercising the rights and remedies under this paragraph OWNER shall proceed expeditiously. To the extent necessary to complete corrective and remedial action, OWNER may exclude CONTRACTOR from all or part of the site, take possession of all or part of the Work, and suspend CONTRACTOR'S services related thereto, take possession of CONTRACTOR'S tools, appliances, construction equipment and machinery at the site and incorporate in the Work all materials and equipment stored at the site or for which OWNER has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow OWNER, OWNER'S representatives, agents and employees such access to the site as may be necessary to enable OWNER to exercise the rights and remedies under this paragraph. All direct, indirect and consequential costs of OWNER in exercising such rights and remedies will be charged against CONTRACTOR in an amount approved as to reasonableness by ENGINEER, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and OWNER shall be entitled to an appropriate decrease in the Contract Price. Such direct, indirect and consequential costs will include but not be limited to fees and charges of engineers, architects, attorneys and other professionals, all court costs and all costs of repair and replacement of work of others destroyed or damaged by correction, removal or replacement of CONTRACTOR'S defective Work. CONTRACTOR shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by OWNER of OWNER'S rights and remedies hereunder.

## **13. PAYMENTS TO CONTRACTOR AND COMPLETION**

### **13.1 Schedule of Values**

The schedule of values established as provided in paragraph 2.8 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to ENGINEER. Progress payments on account of Unit Price Work will be based on the number of units completed.

### **13.2 Application for Progress Payment**

At least ten days before each progress payment is scheduled (but not more often than once a month), CONTRACTOR shall submit to ENGINEER for review an Application for Payment filled out and signed by CONTRACTOR covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that OWNER has received the materials and equipment free and clear of all liens, charges, security interests and encumbrances (which are hereinafter in these General Conditions referred to as "Liens") and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect OWNER'S interest therein, all of which will be satisfactory to OWNER. OWNER shall, within thirty (30) calendar days of presentation to him of an approved Application for Payment, pay CONTRACTOR the amount approved by ENGINEER. Monthly progress payments shall be ninety (90) percent of the sum obtained by applying the respective bid unit prices to the approved estimated quantities of work completed by the Contractor during the preceding month. The remaining ten (10) percent will be held by the Owner, as retainage. At such time as the Engineer deems appropriate - based on the quality of work performed, progress of cleanup, and other pertinent factors - the rate of retainage, or the total amount retained, may be reduced; although, any reduction in retainage, below the ten (10) percent level, is made solely at the Engineer's discretion. All remaining retainage held will be included in the final payment to the Contractor.

### **13.3 CONTRACTOR'S Warranty of Title**

CONTRACTOR warrants and guarantees that title to all Work, materials and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to OWNER no later than the time of payment free and clear of all Liens.

## **13.4 Review of Applications for Progress Payment**

### **13.4.1 Submission of Application for Payment**

ENGINEER will, after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to OWNER, or return the Application to CONTRACTOR indicating in writing ENGINEER'S reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application.

### **13.4.2 ENGINEER'S Recommendation**

ENGINEER may refuse to recommend the whole or any part of any payment, if, in ENGINEER'S opinion, it would be incorrect to make such representations to OWNER. ENGINEER may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in ENGINEER'S opinion to protect OWNER from loss because:

13.4.2.1 the Work is defective, or completed Work has been damaged requiring correction or replacement;

13.4.2.2 the Contract Price has been reduced by Written Amendment or Change Order;

13.4.2.3 OWNER has been required to correct defective Work or complete Work in accordance with paragraph 12.8; or

13.4.2.4 of ENGINEER'S actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.2.1 through 14.2.9 inclusive.

## **13.5 Partial Utilization**

OWNER at any time may request CONTRACTOR in writing to permit OWNER to use any such part of the Work which OWNER believes to be ready for its intended use and has been completed. If CONTRACTOR agrees, CONTRACTOR will certify to OWNER that said part of the Work is complete and request that a Certificate of Completion be issued for that part of the Work.

## **13.6 Final Inspection**

Upon written notice from CONTRACTOR that the entire Work or an agreed portion thereof is complete, ENGINEER will make a final inspection with CONTRACTOR and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. CONTRACTOR shall immediately take such measures as are necessary to remedy such deficiencies.

### **13.7 Final Application for Payment**

After CONTRACTOR has completed all such corrections to the satisfaction of ENGINEER and delivered all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, marked-up record documents (as provided in paragraph 5.14) and other documents - all as required by the Contract Documents, and after ENGINEER has indicated that the Work is acceptable (subject to the provisions of paragraph 13.10), CONTRACTOR may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by all documentation called for in the Contract Documents, together with complete and legally effective releases or waivers (satisfactory to OWNER) of all Liens arising out of or filed in connection with the Work. In lieu thereof and as approved by OWNER, CONTRACTOR may furnish receipts or releases in full; an affidavit of CONTRACTOR that the releases and receipts include all labor, services, material and equipment for which a Lien could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which OWNER or OWNER'S property might in any way be responsible, have been paid or otherwise satisfied; and consent of the surety, if any, to final payment. If any Subcontractor or Supplier fails to furnish a release or receipt in full, CONTRACTOR may furnish a Bond or other collateral satisfactory to OWNER to indemnify OWNER against any Lien.

### **13.8 Final Payment and Acceptance**

#### **13.8.1 ENGINEER'S Approval**

If, on the basis of ENGINEER'S observation of the Work during construction and final inspection, and ENGINEER'S review of the final Application for Payment and accompanying documentation - all as required by the Contract Documents, ENGINEER is satisfied that the Work has been completed and CONTRACTOR'S other obligations under the Contract Documents have been fulfilled, ENGINEER will, after receipt of the final Application for Payment, indicate in writing ENGINEER'S recommendation of payment and present the Application to OWNER for payment. Thereupon ENGINEER will give written notice to OWNER and CONTRACTOR that the Work is acceptable, subject to the provisions of paragraph 13.10. Otherwise, ENGINEER will return the Application to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application.

#### **13.8.2 Delay in Completion of Work**

If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed, OWNER shall, upon receipt of CONTRACTOR'S final Application for Payment and recommendation of ENGINEER, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by OWNER for Work not fully completed or corrected is



less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in paragraph 10 of Part II, Information for Bidders, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by CONTRACTOR to ENGINEER with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

**13.9 CONTRACTOR'S Continuing Obligation**

CONTRACTOR'S obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. Neither recommendation of any progress or final payment by ENGINEER, nor the issuance of a certificate of Completion, nor any payment by OWNER to CONTRACTOR under the Contract Documents, nor any use or occupancy of the Work or any part thereof by OWNER, nor any act of acceptance by OWNER nor any failure to do so, nor any review and approval of a Shop Drawing or sample submission, nor any correction of defective Work by OWNER will constitute an acceptance of Work not in accordance with the Contract Documents or a release of CONTRACTOR'S obligation to perform the Work in accordance with the Contract Documents (except as provided in paragraph 13.10).

**13.10 Waiver of Claims**

The making and acceptance of final payment will constitute:

**13.10.1** a waiver of all claims by OWNER against CONTRACTOR, except claims arising from unsettled Liens, from defective Work appearing after final inspection or from failure to comply with the Contract Documents or the terms of any special guarantees specified therein; however, it will not constitute a waiver by OWNER of any rights in respect of CONTRACTOR'S continuing obligations under the Contract Documents; and

**13.10.2** a waiver of all claims by CONTRACTOR against OWNER other than those previously made in writing and still unsettled.

**14. SUSPENSION OF WORK AND TERMINATION**

**14.1 OWNER May Suspend Work**

OWNER may, at any time and without cause, suspend the Work or any portion thereof for a period of not more than ninety days by notice in writing to CONTRACTOR and ENGINEER which will fix the date on which Work will be resumed. CONTRACTOR shall resume the Work on the date so fixed. CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to any suspension if CONTRACTOR makes an approved claim therefor as provided in Articles 10 and 11.

## **14.2 OWNER May Terminate**

The OWNER may terminate the Work upon the occurrence of any one or more of the following events:

**14.2.1** if CONTRACTOR commences a voluntary case under any chapter of the Bankruptcy Code (Title 11, United States Code), as now or hereafter in effect, or if CONTRACTOR takes any equivalent or similar action by filing a petition or otherwise under any other federal or state law in effect at such time relating to the bankruptcy or insolvency;

**14.2.2** if a petition is filed against CONTRACTOR under any chapter of the Bankruptcy Code as now or hereafter in effect at the time of filing, or if a petition is filed seeking any such equivalent or similar relief against CONTRACTOR under any other federal or state law in effect at the time relating to bankruptcy or insolvency;

**14.2.3** if CONTRACTOR makes a general assignment for the benefit of creditors;

**14.2.4** if a trustee, receiver, custodian or agent of CONTRACTOR is appointed under applicable law or under contract, whose appointment or authority to take charge of property of CONTRACTOR is for the purpose of enforcing a Lien against such property or for the purpose of general administration of such property for the benefit of CONTRACTOR'S creditors;

**14.2.5** if CONTRACTOR admits in writing an inability to pay its debts generally as they become due;

**14.2.6** if CONTRACTOR persistently fails to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.8 as revised from time to time);

**14.2.7** if CONTRACTOR disregards Laws or Regulations of any public body having jurisdiction;

**14.2.8** if CONTRACTOR disregards the authority of ENGINEER, or

**14.2.9** if CONTRACTOR otherwise violates in any substantial way any provisions of the Contract Documents;

OWNER may, after giving CONTRACTOR (and the surety) seven days' written notice and to the extent permitted by Laws and Regulations, terminate the services of CONTRACTOR, exclude CONTRACTOR from

the site and take possession of the Work and of all CONTRACTOR'S tools, appliances, construction equipment and machinery at the site and use the same to the full extent they could be used by CONTRACTOR (without liability to CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the site or for which OWNER has paid CONTRACTOR but which are stored elsewhere, and finish the Work as OWNER may deem expedient. In such case CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds the direct, indirect and consequential costs of completing the Work (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court and arbitration costs) such excess will be paid to CONTRACTOR. If such costs exceed such unpaid balance, CONTRACTOR shall pay the difference to OWNER. Such costs incurred by OWNER will be approved as to reasonableness by ENGINEER and incorporated in a Change Order, but when exercising any rights or remedies under this paragraph OWNER shall not be required to obtain the lowest price for the Work performed.

**14.2.10** If safety violations are observed and brought to the Contractors attention and Contractor fails to take immediate corrective measures any repeat of similar safety violations, Owner will order an immediate termination of contract. Note: it is the Contractor's responsibility to know proper safety measures as they pertain to construction and OSHA.

**14.2.11** This contract may be canceled by either party thirty (30) days after delivery by canceling party of written notice of intent to cancel to the other contracting party.

**14.2.12** This contract may be canceled by the Lexington-Fayette Urban County Government if it is determined that the Bidder has failed to perform under the terms of this agreement, such cancellation to be effective upon receipt of written notice of cancellation by the Bidder.

**14.3 CONTRACTOR'S Services Terminated**

Where CONTRACTOR'S services have been so terminated by OWNER, the termination will not affect any rights or remedies of OWNER against CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of moneys due CONTRACTOR by OWNER will not release CONTRACTOR from liability.

**14.4 Payment After Termination**

Upon seven days' written notice to CONTRACTOR, OWNER may, without cause and without prejudice to any other right or remedy, elect to abandon the Work and terminate the Agreement. In such case, CONTRACTOR shall be paid for all Work executed and any expense sustained plus reasonable termination expenses, which will include, but not be limited to, direct, indirect and consequential costs (including,

but not limited to, fees and charges of engineers, architects, attorneys and other professionals and court and arbitration costs).

**14.5 CONTRACTOR May Stop Work or Terminate**

If, through no act or fault of CONTRACTOR, the Work is suspended for a period of more than ninety days by OWNER or under an order of court or other public authority, or ENGINEER fails to act on any Application for Payment within sixty days after it is submitted, or OWNER fails for sixty days to pay CONTRACTOR any sum finally determined to be due, then CONTRACTOR may, upon seven days' written notice to OWNER and ENGINEER, terminate the Agreement and recover from OWNER payment for all Work executed and any expense sustained plus reasonable termination expenses. In addition and in lieu of terminating the Agreement, if ENGINEER has failed to act on an Application for Payment or OWNER has failed to make any payment as aforesaid, CONTRACTOR may upon seven days' written notice to OWNER and ENGINEER stop the Work until payment of all amounts then due. The provisions of this paragraph shall not relieve CONTRACTOR of the obligations under paragraph 5.16 to carry on the Work in accordance with the progress schedule and without delay during disputes and disagreements with OWNER.

**15. MISCELLANEOUS**

**15.1 Claims for Injury or Damage**

Should OWNER or CONTRACTOR suffer injury or damage to person or property because of any error, omission or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is legally liable, claim will be made in writing to the other party within a reasonable time of the first observance of such injury or damage. The provisions of this paragraph 15.1 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or repose.

**15.2 Non-Discrimination in Employment**

The CONTRACTOR shall comply with the following requirements prohibiting discrimination:

**15.2.1** That no person (as defined in KRS 344.010) shall bid on Lexington-Fayette Urban County Government construction projects, or bid to furnish materials or supplies to the Lexington-Fayette Urban County Government, if, within six months prior to the time of opening of bids, said person shall have been found, by declaratory judgment action in Fayette Circuit Court, to be presently engaging in an unlawful practice, as hereinafter defined. Such declaratory judgment action may be brought by an aggrieved individual or upon an allegation that an effort at conciliation pursuant to KRS 344.200 has been attempted and failed, by the Lexington-Fayette County Human Rights Commission.

**15.2.2** That it is an unlawful practice for an employer:

**15.2.2.1** to fail or refuse to hire, or to discharge any individual or otherwise to discriminate against an individual, with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, age, or national origin; or

**15.2.2.2** to limit, segregate or classify his employees in any way which would deprive or tend to deprive an individual of employment opportunities or otherwise adversely affect his status as an employee because of such individual's sex, race, color, religion, age, or national origin.

**15.2.3** That it is an unlawful practice for an employer, labor organization, or joint-labor management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against an individual because of his race, color, religion, sex, age, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

**15.2.4** That a copy of this Ordinance shall be furnished all suppliers and made a part of all bid specifications.

**15.2.5** This Ordinance shall take effect after it is signed, published and recorded, as required by law.

**15.3 Temporary Street Closing or Blockage**

The CONTRACTOR will notify the ENGINEER at least 72 hours prior to making any temporary street closing or blockage. This will permit orderly notification to all concerned public agencies. Specific details and restrictions on street closure or blockage are contained in the Special Conditions.

**15.4 Percentage of Work Performed by prime CONTRACTOR**

The CONTRACTOR shall perform on site, and with its own organization, Work equivalent to at least fifty (50%) percent of the total amount of Work to be performed under the Contract. This percentage may be reduced by a supplemental agreement to this Contract if, during performing the Work, the CONTRACTOR requests a reduction and the ENGINEER determines that the reduction would be to the advantage of the OWNER.

**15.5 Clean-up**

Cleanup shall progress, to the greatest degree practicable, throughout the course of the Work. The Work will not be considered as completed, and final payment will not be made, until the right-of-way and all ground occupied or affected by the Contractor in connection with the Work has been cleared of all rubbish, equipment,

excess materials, temporary structures, and weeds. Rubbish and all waste materials of whatever nature shall be disposed of, off of the project site, in an acceptable manner. All property, both public and private, which has been damaged in the prosecution of the Work, shall be restored in an acceptable manner. All areas shall be draining, and all drainage ways shall be left unobstructed, and in such a condition that drift will not collect or scour be induced.

**15.6 General**

The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon CONTRACTOR by paragraphs 12.1, 12.3.5, 13.3, and 15.2 and all of the rights and remedies available to OWNER and ENGINEER thereunder, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply. All representations, warranties and guarantees made in the Contract Documents will survive final payment and termination or completion of the Agreement.

**15.7 Debris Disposal**

For all LFUCG projects any trash, construction demolition debris, yard waste, dirt or debris of any kind that is removed from the project site must be disposed of in accordance with local, state, and federal regulations. The disposal site or facility must be approved in advance by the LFUCG and disposal documentation is required. The Contractor will be responsible for payment of any fines associated with improper disposal of material removed from the project site.

END OF SECTION

**PART V**  
**SPECIAL CONDITIONS**  
**INDEX**

1	BLASTING.....	SC-2
2	RISK MANAGEMENT PROVISIONS – INSURANCE AND INDEMNIFICATION .....	SC-3
3	WAGE SCALE (if applicable) .....	SC-7

**1. BLASTING**

Blasting shall only be allowed with the specific written permission from the OWNER and the CONTRACTOR will be fully responsible and will be required to provide additional insurance.

Blasting is only allowed by a licensed blaster in compliance with the State of Kentucky Laws, KRS Section 351.310 – 351.340 and applicable rules and regulations issued by the Department of Mines and Minerals.

CONTRACTOR shall notify each property owner and public utility company having structures or facilities in proximity to the site of the work of the intent to use explosives. Give such notice sufficiently in advance to enable those being notified to take the necessary steps to protect their property from injury. CONTRACTOR will be liable for any and all damages and claims made as a result of his blasting operations.

CONTRACTOR shall preserve the original bearing value of rock located under proposed structure foundations from damage by blasting, by concussion from the blasting or by excessive breakage. The CONTRACTOR shall bear any increase in structure costs caused by blasting damage to rock under proposed foundations.



2.

**RISK MANAGEMENT PROVISIONS  
INSURANCE AND INDEMNIFICATION**

---

**INDEMNIFICATION AND HOLD HARMLESS PROVISION**

- (1) It is understood and agreed by the parties that Contractor hereby assumes the entire responsibility and liability for any and all damages to persons or property caused by or resulting from or arising out of any act or omission on the part of Contractor or its employees, agents, servants, owners, principals, licensees, assigns or subcontractors of any tier (hereinafter "CONTRACTOR") under or in connection with this agreement and/or the provision of goods or services and the performance or failure to perform any work required thereby.
- (2) CONTRACTOR shall indemnify, save, hold harmless and defend the Lexington-Fayette Urban County Government and its elected and appointed officials, employees, agents, volunteers, and successors in interest (hereinafter "LFUCG") from and against all liability, damages, and losses, including but not limited to, demands, claims, obligations, causes of action, judgments, penalties, fines, liens, costs, expenses, interest, defense costs and reasonable attorney's fees that are in any way incidental to or connected with, or that arise or are alleged to have arisen, directly or indirectly, from or by CONTRACTOR's performance or breach of the agreement and/or the provision of goods or services provided that: (a) it is attributable to personal injury, bodily injury, sickness, or death, or to injury to or destruction of property (including the loss of use resulting therefrom), or to or from the negligent acts, errors or omissions or willful misconduct of the CONTRACTOR; and (b) not caused solely by the active negligence or willful misconduct of LFUCG.
- (3) In the event LFUCG is alleged to be liable based upon the above, CONTRACTOR shall defend such allegations and shall bear all costs, fees and expenses of such defense, including but not limited to, all reasonable attorneys' fees and expenses, court costs, and expert witness fees and expenses, using attorneys approved in writing by LFUCG, which approval shall not be unreasonably withheld.
- (4) These provisions shall in no way be limited by any financial responsibility or insurance requirements, and shall survive the termination of this agreement.
- (5) The work and services performed hereunder involve a CONSENT DECREE as further explained in Part 1-Advertisement for Bids, provision 13. These provisions are incorporated herein by reference as if expressly stated.
- (6) LFUCG is a political subdivision of the Commonwealth of Kentucky. CONTRACTOR acknowledges and agrees that LFUCG is unable to provide indemnity or otherwise save, hold harmless, or defend the CONTRACTOR in any manner.

**FINANCIAL RESPONSIBILITY**

BIDDER/CONTRACTOR understands and agrees that it shall, prior to final acceptance of its bid and the commencement of any work, demonstrate the ability to assure compliance with the above Indemnity provisions and these other risk management provisions.

## **INSURANCE REQUIREMENTS**

YOUR ATTENTION IS DIRECTED TO THE INSURANCE REQUIREMENTS BELOW, AND YOU MAY NEED TO CONFER WITH YOUR INSURANCE AGENTS, BROKERS, OR CARRIERS TO DETERMINE IN ADVANCE OF SUBMISSION OF A RESPONSE THE AVAILABILITY OF THE INSURANCE COVERAGES AND ENDORSEMENTS REQUIRED HEREIN. IF YOU FAIL TO COMPLY WITH THE INSURANCE REQUIREMENTS BELOW, YOU MAY BE DISQUALIFIED FROM AWARD OF THE CONTRACT.

### **Required Insurance Coverage**

BIDDER/CONTRACTOR shall procure and maintain for the duration of this contract the following or equivalent insurance policies at no less than the limits shown below and cause its subcontractors to maintain similar insurance with limits acceptable to LFUCG in order to protect LFUCG against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by CONTRACTOR. The cost of such insurance shall be included in any bid:

<b><u>Coverage</u></b>	<b><u>Limits</u></b>
General Liability aggregate (Insurance Services Office Form CG 00 01)	\$1 million per occurrence, \$2 million or \$2 million combined single limit
Commercial Automobile Liability occurrence (Insurance Services Office Form CA 0001)	combined single, \$1 million per
Worker's Compensation	Statutory
Employer's Liability	\$500,000.00

The policies above shall contain the following conditions:

- a. All Certificates of Insurance forms used by the insurance carrier shall be properly filed and approved by the Department of Insurance for the Commonwealth of Kentucky (DOI). LFUCG shall be named as an additional insured in the General Liability Policy and Commercial Automobile Liability Policy using the Kentucky DOI approved forms.
- b. The General Liability Policy shall be primary to any insurance or self-insurance retained by LFUCG.
- c. The General Liability Policy shall include a Products and Completed Operations endorsement or Premises and Operations Liability endorsement unless it is deemed not to apply by LFUCG.
- d. The General Liability Policy shall include an Explosion-Collapse Underground (XCU)

endorsement.

- e. The General Liability Policy shall include a Pollution liability and/or Environmental Casualty endorsement unless it is deemed not to apply by LFUCG.
- f. LFUCG shall be provided at least 30 days advance written notice via certified mail, return receipt requested, in the event any of the required policies are canceled or non-renewed.
- g. Said coverage shall be written by insurers acceptable to LFUCG and shall be in a form acceptable to LFUCG. Insurance placed with insurers with a rating classification of no less than Excellent (A or A-) and a financial size category of no less than VIII, as defined by the most current Best's Key Rating Guide shall be deemed automatically acceptable.
- h. Owner requests that the Bidder obtain an Umbrella Liability endorsement to the CGL policy for a limit of liability of \$ [REDACTED] and that this CGL policy endorsement be renewed for one (1) year after completion of this project.

#### Renewals

After insurance has been approved by LFUCG, evidence of renewal of an expiring policy must be submitted to LFUCG, and may be submitted on a manually signed renewal endorsement form. If the policy or carrier has changed, however, new evidence of coverage must be submitted in accordance with these Insurance Requirements.

#### Deductibles and Self-Insured Programs

**IF YOU INTEND TO SUBMIT A SELF-INSURANCE PLAN IT MUST BE FORWARDED TO LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, DIVISION OF RISK MANAGEMENT, 200 EAST MAIN STREET, LEXINGTON, KENTUCKY 40507 NO LATER THAN A MINIMUM OF FIVE (5) WORKING DAYS PRIOR TO THE RESPONSE DATE.**

Self-insurance programs, deductibles, and self-insured retentions in insurance policies are subject to separate approval by Lexington-Fayette Urban County Government's Division of Risk Management, upon review of evidence of BIDDER/CONTRACTOR's financial capacity to respond to claims. Any such programs or retentions must provide LFUCG with at least the same protection from liability and defense of suits as would be afforded by first-dollar insurance coverage. If BIDDER/CONTRACTOR satisfies any portion of the insurance requirements through deductibles, self-insurance programs, or self-insured retentions, BIDDER/CONTRACTOR agrees to provide Lexington-Fayette Urban County Government, Division of Risk Management, the following data prior to the final acceptance of bid and the commencement of any work:

- a. Latest audited financial statement, including auditor's notes.
- b. Any records of any self-insured trust fund plan or policy and related accounting statements.
- c. Actuarial funding reports or retained losses.

- d. Risk Management Manual or a description of the self-insurance and risk management program.
- e. A claim loss run summary for the previous five (5) years.
- f. Self-Insured Associations will be considered.

#### Safety and Loss Control

CONTRACTOR shall comply with all applicable federal, state, and local safety standards related to the performance of its works or services under this Agreement and take necessary action to protect the life, health and safety and property of all of its personnel on the job site, the public, and LFUCG.

#### Verification of Coverage

BIDDER/CONTRACTOR agrees to furnish LFUCG with all applicable Certificates of Insurance signed by a person authorized by the insurer to bind coverage on its behalf prior to final award, and if requested, shall provide LFUCG copies of all insurance policies, including all endorsements.

#### Right to Review, Audit and Inspect

CONTRACTOR understands and agrees that LFUCG may review, audit and inspect any and all of its records and operations to insure compliance with these Insurance Requirements.

#### DEFAULT

BIDDER/CONTRACTOR understands and agrees that the failure to comply with any of these insurance, safety, or loss control provisions shall constitute default and that LFUCG may elect at its option any single remedy or penalty or any combination of remedies and penalties, as available, including but not limited to purchasing insurance and charging BIDDER/CONTRACTOR for any such insurance premiums purchased, or suspending or terminating the work.

### **3. WAGE SCALES – Not applicable.**

END OF SECTION

**PART VI**  
**CONTRACT AGREEMENT**

**INDEX**

1. SCOPE OF WORK
2. TIME OF COMPLETION AND LIQUIDATED DAMAGES
3. ISSUANCE OF WORK ORDERS
4. THE CONTRACT SUM
5. PROGRESS PAYMENTS
6. ACCEPTANCE AND FINAL PAYMENT
7. THE CONTRACT DOCUMENTS
8. EXTRA WORK
9. CONSENT DECREE REQUIREMENTS
10. ENUMERATION OF SPECIFICATIONS AND DRAWINGS

PART VI

CONTRACT AGREEMENT

THIS AGREEMENT, made on the 31 day of January, 2019, by and between **Lexington-Fayette Urban County Government**, acting herein called "OWNER" and **ADS LLC**, doing business as a Delaware Limited Liability Company located in the City of Huntsville, County of Madison, and State of Alabama, hereinafter called "CONTRACTOR."

WITNESSETH: That the CONTRACTOR and the OWNER in consideration of Three Hundred Twenty-Four Thousand Nine Hundred Ninety Dollars and Zero Cents (\$324,990.00) quoted in the proposal by the CONTRACTOR, dated December 6, 2018, hereby agree to commence and complete the construction described as follows:

**1. SCOPE OF WORK**

The CONTRACTOR shall 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, and the Special Conditions of the Contract, the Specifications and Contract Documents therefore as prepared by The Engineer for the **2019 CAPACITY ASSURANCE PROGRAM FLOW MONITORING FIELD SERVICES.**

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

The time period estimated and authorized by the OWNER for the proper execution of the Work by the Contract, in full, is hereby fixed as **three hundred sixty five (365)** calendar days. The time shall begin ten (10) days after the CONTRACTOR is given the Notice to Proceed with the Work. **TIME IS OF THE ESSENCE IN THE PERFORMANCE OF THIS AGREEMENT AND CONTRACTOR SHALL BE LIABLE AND RESPONSIBLE FOR DAMAGES SUFFERED BY OWNER AS A RESULT OF THE DELAY CAUSED BY CONTRACTOR.**

Should the contractor fail or refuse to complete the work within the time specified in his Proposal and/or Contract (or extension of time granted by the owner), the Contractor shall pay liquidated damages in an amount of **\$400.00 per day**. The amount of liquidated damages shall in no event be considered as a penalty, nor other than an amount agreed upon by the Contractor and the Owner for damages, loses, additional engineering, additional resident representation and other cost that will be sustained by the owner, if the Contractor fails to complete the work within the specified time. Liquidated damages will be applied on a rate per day for each and every calendar day (Sundays and holidays included) beyond the Contract expiration date stipulated in the Contract Documents, considering all time extension granted. **These Liquidated Damages are in addition to any other damages/fees/penalties that are incurred as a result of Consent Decree requirements.**

**3. ISSUANCE OF WORK ORDERS**

Notice to begin Work will be given in whole or for part of the Work as determined by the OWNER pending the availability of funds. The order of construction will be as determined by the Engineer after consultation with the CONTRACTOR and the OWNER.

**4. THE CONTRACT SUM**

The OWNER agrees to pay the CONTRACTOR in current funds for the performance of the Contract, as quoted in the proposal, subject to any additions and deductions, as provided therein.

**5. PROGRESS PAYMENTS**

The OWNER shall make payments on account of the Contract, as provided in accordance with the General Conditions, as estimated by the Engineer, less the aggregate of previous payments.

**6. ACCEPTANCE AND FINAL PAYMENT**

Final payment shall be due within ninety (90) days after completion of the Work, provided the Work be then fully completed and the Contract fully accepted.

Before issuance of final certificate, the CONTRACTOR shall submit evidence satisfactory to the Engineer that all payrolls, material bills, and other indebtedness connected with the Work has been paid.

If, after the Work has been substantially completed, full completion thereof is materially delayed through no fault of the CONTRACTOR, and the ENGINEER so certifies, the OWNER shall upon certificate of the ENGINEER, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

**7. THE CONTRACT DOCUMENTS**

The Advertisement for Bids, Information for Bidders, the General Conditions, Performance and Payment Bonds, Contract Agreement, Special Conditions, Technical Specifications, any and all Addenda, and Proposal, and Plan Drawings form the Contract, and they are fully a part of the Contract as if hereto attached or herein repeated.

**8. EXTRA WORK**

The OWNER, without invalidating the Contract, may order extra work or make changes by altering, adding to or deducting from the Work, the Contract Sum being adjusted accordingly. All such Work shall be executed and paid for in accordance with the General Conditions, which is a part of this Contract.

## 9. CONSENT DECREE REQUIREMENTS

**9.1 OWNER**, the United States Environmental Protection Agency, and the Commonwealth of Kentucky have entered into a Consent Decree in a case styled *United States, et al. v. Lexington-Fayette Urban County Government*, United States District Court for the Eastern District of Kentucky, Case No. 5:06-CV-00386 (“CONSENT DECREE”), that requires OWNER to complete numerous projects related to its sanitary sewer system and storm water management program within specific periods of time.

**9.2 TIME IS OF THE ESSENCE IN THE PERFORMANCE OF THIS AGREEMENT.** CONTRACTOR is aware that the OWNER is subject to penalties for non-compliance with the CONSENT DECREE deadlines. The CONTRACTOR shall be specifically liable and responsible for payment of any and all penalties, fines, or fees assessed against or incurred by the OWNER as a result of any delay in, or non-performance of, any of the CONTRACTOR’s obligations or responsibilities under this Contract, or for any other damages suffered by OWNER as a result of such delay or non-performance. This shall specifically include, but shall not be limited to, any penalty, fine, fee, or assessment against the OWNER by the U.S. Department of Justice, U.S. Environmental Protection Agency, and/or the Kentucky Energy and Environment Cabinet related to the Consent Decree.

**9.3** The provisions of this Section and the various rates of compensation for CONTRACTOR’s services provided for elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the PROJECT through completion.

**9.4** If delays result by reason of acts of the OWNER or approving agencies, which are beyond the control of the CONTRACTOR, an extension of time for such delay will be considered. If delays occur, the CONTRACTOR shall immediately notify the OWNER, and within five (5) business days from the date of the delay apply in writing to the OWNER for an extension of time for such reasonable period as may be mutually agreed upon between the parties, and if approved, the PROJECT schedule shall be revised to reflect the extension. Such extension of time to the completion date shall in no way be construed to operate as a waiver on the part of the OWNER of any of its rights in the Agreement. Section 9.6 of this Agreement (Disputes) shall apply in the event the parties cannot agree upon an extension of time.

In the event that the overall delay resulting from the above-described causes is sufficient to prevent complete performance of the Agreement within six (6) months of the time specified herein, the fees to be paid to CONTRACTOR shall be subject to adjustment as agreed upon by the parties. Section 9.6 of this Agreement shall apply in the event the parties cannot agree upon an adjustment of fee.

**9.5** If delays result solely by reason of acts of the CONTRACTOR, the CONTRACTOR shall be held liable for any financial penalties incurred by the OWNER as a result of the delay, including but not limited to those assessed pursuant to the CONSENT DECREE as provided in Section 9.2, above. Section 9.6 of this Agreement (Disputes), shall apply in the event the parties cannot mutually agree upon the cause(s) associated with delays



in completing project deliverables. The CONTRACTOR must immediately notify the OWNER in the event of such delay, and provide the OWNER a written action plan within five (5) business days on how it will attempt to resolve the delay.

#### **9.6 DISPUTES**

Except as otherwise provided in this Agreement, any dispute hereunder may be resolved by agreement of the OWNER's Agent (Charles H. Martin, P.E., Director of Water Quality) and the CONTRACTOR. In the absence of such an agreement, the dispute shall be submitted to the OWNER's Commissioner, Department of Environmental Quality, whose decision shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, or so grossly erroneous as necessarily to imply bad faith. Pending a final decision of a dispute hereunder, the CONTRACTOR shall proceed diligently with the performance of the Agreement in accordance with the directions of the OWNER.

### **10. THE FOLLOWING IS AN ENUMERATION OF THE SPECIFICATIONS AND DRAWINGS (CONTRACT DOCUMENTS):**

#### **SPECIFICATIONS**

<b>SECTION NO.</b>	<b>TITLE</b>	<b>PAGES</b>
I	Advertisement for Bids	AB 1 thru 6
II	Information for Bidders	IB 1 thru 10
III	Form of Proposal	P 1 thru 36
IV	General Conditions	GC 1 thru 50
V	Special Conditions	SC 1 thru 6
VI	Contract Agreement	CA 1 thru 6
VII	Performance and Payment Bonds	PB 1 thru 7
VIII	Addenda	AD 1 thru 1
IX	Technical Specifications	TS 1 thru 26

IN WITNESSETH WHEREOF, the parties hereto have executed this Contract as of the date and year above written.

(Seal)

Lexington-Fayette Urban County Government.  
Lexington, Kentucky

(Owner)

ATTEST:

  
Clerk of the Urban County Council  
  
(Witness)

BY:

  
MAYOR

(Title)

(Seal)



ADS LLC

(Contractor)


BY:



Vice President

(Title)

(Secretary Assistant Treasurer)\*

  
(Witness)

340 The Bridge St., Ste. 204, Huntsville, AL 35806  
(Address and Zip Code)

IMPORTANT: \*Strike out any non-applicable terms.

Secretary of the Owner should attest. If the CONTRACTOR is corporation, Secretary should attest. Give proper title of each person-executing Contract.

**PART VII**

**PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS, that

ADS, LLC

\_\_\_\_\_  
(Name of CONTRACTOR)

340 The Bridge Street, Suite 204, Huntsville, AL 35806

\_\_\_\_\_  
(Address of CONTRACTOR)

a Corporation \_\_\_\_\_, hereinafter  
(Corporation, Partnership, or Individual)

called Principal, and Liberty Mutual Insurance Company

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

175 Berkeley Street, Boston, MA 02116

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

hereinafter called Surety, are held and firmly bound unto

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT  
200 East Main Street, Third Floor  
Lexington, Kentucky 40507

hereinafter called "OWNER" in the penal sum of: Three Hundred Twenty-Four Thousand Nine Hundred Ninety and 00/100 Dollars, (\$324,990.00), for the payment of whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal by written agreement is entering into a Contract with OWNER for **2018 CAPACITY ASSURANCE PROGRAM FLOW MONITORING FIELD SERVICES** in accordance with drawings and specifications prepared by: (the Engineer) which Contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Principal shall promptly and faithfully perform said Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the OWNER.

Whenever, Principal shall be, and declared by OWNER to be in default under the Contract, the OWNER having performed OWNER'S obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

- (1) Complete the Contract in accordance with its terms and conditions or
- (2) Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or if the OWNER elects, upon determination by the OWNER and Surety jointly of the lowest responsible bidder, arrange for a Contract between such bidder and OWNER, and make available as Work progresses (even though there may be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the Contract Price", as used in this paragraph shall mean the total amount payable by OWNER to Principal under the Contract and any amendments thereto, less the amount properly paid by OWNER to Principal.

Any suit under this bond must be instituted before the expiration of two (2) years from the date on which final payment under the Contract falls due.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the OWNER named herein or the heirs, executors, administrators or successors of OWNER.

IN WITNESS WHEREOF, this instrument is executed in 3 counterparts, each one of (number)

which shall be deemed an original, this the 21st day of December, 2018.

ATTEST:

ADS, LLC  
Principal

(Principal) Secretary  
Assistant Treasurer



BY: [Signature] (s)

340 The Bridge Street, Ste. 204  
(Address)  
Huntsville, AL 35806

[Signature]  
Witness as to Principal

340 The Bridge Street  
(Address)  
Huntsville, AL 35806

Liberty Mutual Insurance Company  
Surety  
BY: [Signature]  
Attorney-in-Fact Crystal Duberstein  
2000 Westwood Drive,  
(Address)  
Wausau, WI 54402

ATTEST:

[Signature]  
(Surety) Phil Lazarski, Bond Manager II

(SEAL)

[Signature]  
Witness as to Surety - Derek Menard  
2000 Westwood Drive  
(Address)  
Wausau, WI 54402

TITLE: \_\_\_\_\_  
Surety

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

NOTE: The number of executed counterparts of the bond shall coincide with the number of executed counterparts of the Contract.

**PART VII**  
**PAYMENT BOND**

KNOW ALL MEN BY THESE PRESENT: that  
ADS, LLC

(Name of Contractor)

340 The Bridge Street, Suite 204, Huntsville, AL 35806

(Address of Contractor)

a Corporation \_\_\_\_\_, hereinafter

(Corporation, Partnership or Individual)

called Principal, and Liberty Mutual Insurance Company

(Name of Surety)

175 Berkeley Street, Boston, MA 02116

(Address of Surety)

hereinafter called Surety, are held and firmly bound unto:

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT  
200 East Main Street, Third Floor  
Lexington, Kentucky 40507

Obligee, hereinafter called OWNER, for the use and benefit of claimants as hereinafter defined, in the amount of Three Hundred Twenty-Four Thousand Nine Hundred Ninety and 00/100 Dollars (\$324,990.00 ) the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal by written agreement is entering into a Contract with OWNER for **2018 CAPACITY ASSURANCE PROGRAM FLOW MONITORING FIELD SERVICES** in accordance with drawings and specifications prepared by: (the Engineer) which Contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Principal shall promptly make payment to all claimants as hereinafter defined for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions.

1. A claimant is defined as one having a direct contract with the Principal or with a Subcontractor of the Principal for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.

2. The above named Principal and Surety hereby jointly and severally agree with the OWNER that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The OWNER shall not be liable for the payment of any costs or expenses of any such suit.
  
3. No suit or action shall be commenced hereunder by any claimant:
  - (a) Unless claimant, other than one having a direct contract with the Principal, shall have given written notice to any two of the following: The Principal, the OWNER, or the Surety above named, within ninety (90) days after such claimant did or performed the last of the Work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the Work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal, OWNER, or Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer.
  - (b) After the expiration of one (1) year following the date on which Principal ceased Work on said Contract, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.
  - (c) Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the project, or any part thereof, is situated, or in the United States District Court for the district in which the project, or any part thereof, is situated, and not elsewhere.
  
4. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanics' liens which may be filed of record against aid improvement, whether or not claim for the amount of such lien be presented under and against this bond.

IN WITNESS WHEREOF, this instrument is executed in 3 counterparts, each one of (number)

which shall be deemed an original, this the 21st day of December, 2018.

ATTEST:

ADS, LLC  
(Principal)

(Principal) ~~Secretary~~  
Assistant  
Treasurer  
(SEAL)



BY: [Signature] (s)  
340 The Bridge Street, Ste. 204  
(Address)  
Huntsville, AL 35806

[Signature]  
(Witness to Principal)  
340 The Bridge Street  
(Address)  
Huntsville, AL 35806

Liberty Mutual Insurance Company  
(Surety)

ATTEST:

BY: [Signature]  
(Attorney-in-Fact) Crystal Duberstein

[Signature]  
(Surety) Phil Lazarski, Bond Manager II

(SEAL)  
[Signature]  
Witness as to Surety - Derek Menard  
2000 Westwood Drive  
(Address)  
Wausau, WI 54402

2000 Westwood Drive  
(Address)  
Wausau, WI 54402

NOTE: The number of executed counterparts of the bond shall coincide with the number of executed counterparts of the Contract.

END OF SECTION



Notarial Acknowledgement – Attorney in Fact

STATE OF Wisconsin  
County of Marathon } S.S.

On this 21st day of December, 2018, before me, Renee A. Kolpacki a Notary Public in and for said  
Marathon County, State aforesaid, residing therein, duly  
commissioned and sworn, personally appeared Crystal Duberstein  
know to me to be the person whose name is subscribed to the within instrument as the attorney in fact of

Liberty Mutual Insurance Company

and acknowledged to me that he subscribed the name of Liberty Mutual Insurance Company thereto as surety, and his  
own as attorney in fact.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in said county of  
Marathon the day and year in this certificate first above written.

Renee A. Kolpacki

Notary Public in and for the county of Marathon

State of Wisconsin

My commission expires 04/29/2021

**THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.**

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Certificate No. 8188325

Liberty Mutual Insurance Company  
The Ohio Casualty Insurance Company West American Insurance Company

**POWER OF ATTORNEY**

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Crystal Duberstein; Pam Fromm; Renee A. Kolpacki; Phil Lazarski; Derek Menard; Marc Sacia

all of the city of Wausau, state of WI, each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed hereto this 24th day of August, 2018.



The Ohio Casualty Insurance Company  
Liberty Mutual Insurance Company  
West American Insurance Company

By: [Signature]  
David M. Carey, Assistant Secretary

STATE OF PENNSYLVANIA ss  
COUNTY OF MONTGOMERY

On this 24th day of August, 2018, before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written



COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Teresa Pastella, Notary Public  
Upper Merion Twp., Montgomery County  
My Commission Expires March 28, 2021  
Member: Pennsylvania Association of Notaries

By: [Signature]  
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

**ARTICLE IV – OFFICERS** – Section 12. Power of Attorney. Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

**ARTICLE XIII – Execution of Contracts – SECTION 5. Surety Bonds and Undertakings.** Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

**Certificate of Designation** – The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

**Authorization** – By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 21st day of December, 20 18.



By: [Signature]  
Renee C. Llewellyn, Assistant Secretary

Not valid for mortgage, note, interest rate, currency rate, interest rate, letter of credit, actual value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
01/03/2019

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

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

<b>PRODUCER</b> MARSH USA INC. 540 W. MADISON CHICAGO, IL 60661 Attn: Fax: 212-948-0770 or Chicago.CertRequest@marsh.com	<b>CONTACT NAME:</b> _____	
	<b>PHONE (A/C, No, Ext):</b> _____	<b>FAX (A/C, No):</b> _____
<b>E-MAIL ADDRESS:</b> _____		
<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
<b>INSURER A :</b> Liberty Mutual Fire Insurance Company		23035
<b>INSURER B :</b> N/A		N/A
<b>INSURER C :</b> Liberty Insurance Corporation		42404
<b>INSURER D :</b>		
<b>INSURER E :</b>		
<b>INSURER F :</b>		

**COVERAGES**                      **CERTIFICATE NUMBER:** CHI-008253870-11                      **REVISION NUMBER:** 3

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER			TB2-681-004088-049	01/01/2019	01/01/2020	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000 \$
A	<input checked="" type="checkbox"/> <b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY <input type="checkbox"/> OTHER			AS2-681-004088-039	01/01/2019	01/01/2020	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<input type="checkbox"/> <b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
C	<input checked="" type="checkbox"/> <b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	WA7-68D-004088-519 (AOS) WC7-681-004088-019 (WI,OR)	01/01/2019 01/01/2019	01/01/2020 01/01/2020	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 2,000,000 E.L. DISEASE - EA EMPLOYEE \$ 2,000,000 E.L. DISEASE - POLICY LIMIT \$ 2,000,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**  
Re: Lexington Fayette Urban County Government Building Inspection is included as Additional Insured with respect to General and Automobile Liability coverages as required by written contract, subject to policy terms and conditions.

<b>CERTIFICATE HOLDER</b>  Lexington Fayette Urban County Government Building Inspection 200 E. Main St. Lexington, KY 40507	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE of Marsh USA Inc.  Manashi Mukherjee
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**PART VIII**

**ADDENDA**

All addenda issued during the bidding of the Project will be reproduced in the signed Contract Documents, on the pages following this heading sheet.

<u>Addendum Number</u>	<u>Title</u>	<u>Date</u>
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____

**BID #158- 2018**

**2019 CAPACITY ASSURANCE PROGRAM**  
**FLOW MONITORING FIELD SERVICES**

**PART IX**

**TECHNICAL SPECIFICATIONS**

**INDEX**

SECTION 1	GENERAL SCOPE AND SPECIAL PROVISIONS
SECTION 2	FLOW MONITORING
SECTION 3	RAINFALL MONITORING
SECTION 4	SAMPLE FORMS

# TECHNICAL SPECIFICATIONS

## SECTION 1

### GENERAL SCOPE & SPECIAL PROVISIONS

#### 1.01 PURPOSE:

Annual rainfall and flow monitoring of the gravity sanitary sewer system is necessary to maintain compliance with the OWNER's Capacity Assurance Program (CAP), support hydraulic model maintenance, and verify effectiveness of completed sewer improvements and rehabilitation activities.

#### 1.02 SCOPE OF WORK:

This contract includes performance of the following activities:

- A. Flow Monitoring. Install, calibrate, remove, operate and maintain flow monitoring equipment within the gravity sanitary sewer system at locations prescribed by the Engineer. (Refer to Section 2 of the Technical Specifications.)
- B. Rainfall Monitoring. Install, calibrate, remove, operate and maintain rainfall monitoring equipment at locations prescribed by the Engineer. (Refer to Section 3 of the Technical Specifications.)
- C. Reporting. Provide raw monitoring data collected at installed flow meters and rainfall gages to LFUCG on a monthly basis during the monitoring period. Provide a final report after the conclusion of the monitoring period that includes: final data (i.e. adjusted for any equipment or data errors), a site summary narrative and photographs for each installed location, and a summary of maintenance performed at each monitoring location including any data inaccuracies and performance issues encountered. (Refer to Section 2.14 and Section 3.11 of the Technical Specifications.)
- D. Meetings. Attend project kickoff and progress meetings as directed by LFUCG. (Refer to Section 1.20 of the Technical Specifications.)

The CONTRACTOR shall provide all materials, labor and equipment necessary for completion of the Contract. The Contract Documents are intended to provide the basis for proper completion of the work suitable for the intended use of the OWNER. Anything not expressly set forth but which is reasonably implied or necessary for proper performance of the Project shall be included.

#### 1.03 DESIGNATION OF PARTIES:

All references in the specifications, contract documents and drawings to "OWNER" shall mean the Lexington-Fayette Urban County Government (LFUCG); all references to "ENGINEER" shall mean the LFUCG Division of Water Quality or authorized representative.

1.04 ACCESS TO AND INSPECTION OF WORK:

Representatives of the Kentucky Department of Health, the Kentucky Department for Natural Resources and Environmental Protection, U.S. Environmental Protection Agency, Lexington-Fayette Urban County Government or authorized representative, and the local public health agencies shall at all times have full access to the project sites for inspection of the work accomplished under this contract and for inspection of all materials intended for use under this contract. The CONTRACTOR shall provide proper facilities for such access and inspection.

1.05 UTILITIES REQUIRED BY CONTRACTOR:

All water, electric current and/or utility service required by the CONTRACTOR shall be furnished at his own expense.

1.06 TAXES, WORKMEN'S COMPENSATION AND PREVAILING WAGE:

Proposals shall be made to include any applicable taxes on payrolls, materials, equipment, vehicles, utilities, etc., including the Kentucky Sales Taxes and shall include compensation for such taxes on all work under this contract.

The CONTRACTOR will be required to accept liability for payment of all payroll taxes, sales and use tax, and all other taxes or deductions required by local, state or federal law, such as social security. The CONTRACTOR shall carry Workmen's Compensation Insurance to the full amounts as required by Statutes and shall include the cost of all foregoing items in the proposal. The CONTRACTOR will not otherwise be reimbursed or compensated for such tax payments. The CONTRACTOR is urged to ascertain at his own risk and actual tax liability in connection with the execution or performance of this contract.

Federal or state wage rates and regulations are not required for this Contract.

1.07 WORK ON PRIVATE PROPERTY:

- A. Private property is defined as property other than that belonging to the OWNER. Highway and railroad rights-of-way, public parks, schoolyards and other such properties shall be considered private residences and businesses for the purpose of this paragraph.
- B. The CONTRACTOR shall be responsible for any damages to public and/or private property resulting from any work under this contract. Other responsibilities involving access to work shall be as provided for in the General Conditions Part IV, 12.2.
- C. Fences, walls, hedges, shrubs (i.e. any and all landscaping), etc., shall be carefully, preserved, and or replaced if damaged when work is completed. No separate payment shall be allowed for removal and replacement of fencing as

necessary, to restrain livestock or domestic pets. Grassed areas, if damaged, shall be graded, fertilized and sodded when work is completed in accordance with the requirements of these Technical Specifications and is included in the cost of work to be done.

- D. It shall be the CONTRACTOR's responsibility to notify private property owners **A MINIMUM OF 48-HOURS** in advance prior to any site access. Notices must be distributed to these property owners. These notices will inform the resident the type of work being conducted. The names and addresses of notified private property owners shall be recorded on distribution logs and said logs shall be delivered to the Division of Water Quality prior to the commencement of work. If logs are not received, work cannot begin. Sample of notice and log forms are in Section 4 of the Technical Specifications.

1.08 RIGHT-OF-WAY REQUIREMENTS:

It shall be the CONTRACTOR's responsibility to notify the LFUCG Police Department's Safety Officer (859) 258-3600 prior to performing any work, which might interfere with traffic or compromise the public welfare or safety. The CONTRACTOR shall also be responsible for notifying the Division of Public Information and the Division of Traffic Engineering of any roadway blockages or traffic delays at least 48 hours in advance

Access to all existing subdivisions and private residences shall also be maintained unless otherwise directed.

1.09 CONTINUOUS OPERATIONS:

The existing system must be maintained in continuous operation in such a manner that it meets all local, state, and federal requirements. The CONTRACTOR is responsible not to deactivate or interfere with any system component required for continuous operation until a temporary system has been installed and is operational. The CONTRACTOR is responsible for payment of all fines resulting from any action or inaction on his part or the part of his subcontractors during performance of the Work that causes the facility/facilities to operate in an illegal manner or fail to operate in a legal manner.

1.10 COMPLIANCE WITH SAFETY REGULATIONS:

The equipment items furnished shall comply with all governing federal and state laws regarding safety, including all requirements of the Occupation and Safety Act of 1970 (OSHA).

It shall be the CONTRACTOR's responsibility to provide signs, traffic control devices, and obtain any required permits throughout the duration of this contract and is to be included in the cost of work to be done.

CONTRACTOR shall abide by local and state regulations governing utility construction work.

Traffic control shall be provided according to the Federal Highway Administration (FHWA) Manual on Uniform Traffic Control.



1.11 MAPPING DISCREPANCIES:

The CONTRACTOR shall be responsible for reporting discrepancies between the OWNER's GIS mapping data and field observations, when encountered. Discrepancies shall include: differences in the location of manholes (more than 10 feet), missing or new manholes, differences in sewer pipe configuration/connectivity, or differences in pipe diameter.

When a mapping discrepancy is observed, the CONTRACTOR shall complete a Mapping Discrepancy Form. A sample Mapping Discrepancy Form is provided in Section 4 of the Technical Specifications.

Mapping Discrepancy Forms shall be submitted to the OWNER within 48 hours of initial observation of the discrepancy.

1.12 IDENTIFICATION REQUIREMENTS

The CONTRACTOR shall be required to have workers and all equipment clearly identified.

- A. It shall be the CONTRACTOR's responsibility to provide identification (ID) cards for all employees. The ID cards must have a photo of the employee, the company name, emergency phone number and contract expiration date. The ID cards shall be exposed at all times.
- B. All company equipment and vehicles shall have the company name and an emergency number clearly displayed.

1.13 EMERGENCIES:

The CONTRACTOR shall provide the Engineer with an emergency telephone number where he or his coordinator may be reached on a 24 hour, daily basis.

1.14 COMMUNICATIONS:

The CONTRACTOR shall provide, for the duration of the contract, for the ENGINEER and/or the OWNER's representative(s) a means of direct communication acceptable to the ENGINEER. This may be in the form of a cell phone number, e-mail address or radio. The form of communication and pertinent information related to the cell phone number, e-mail address or radio must be provided to the ENGINEER and/or the OWNER prior to start of construction.

- A. The ENGINEER will provide the CONTRACTOR with an on call list for after regular work hours in case of an emergencies and \ or if assistance is needed from the Division of Water Quality on call personnel.
- B. The CONTRACTOR shall notify the Division of Water Quality on call personnel prior to work each day and shall notify the Division of Water Quality on call personnel at the end of work each work day.

1.15 FLOW CONTROL:

The CONTRACTOR shall furnish and install all sewer plugs, bypass piping and pumping equipment where necessary to adequately handle existing flow rates during performance of the work. Any overflow shall be reported to Kentucky Division of Water, Environmental Response Team (ERT) and the ENGINEER in accordance with the Sewage Spill Procedure outlined in Section 4.04 of the Technical Specifications.

In general, pumping equipment shall be positioned in or near the upstream end of the sewer section with piping laid to the next downstream manhole. Sewage shall only be bypassed to a downstream sanitary manhole or adjacent sanitary sewers. No overflow will be permitted.

Whenever flows in a sewer line are blocked or plugged, sufficient precautions shall be taken by the CONTRACTOR to protect the sewer lines from damage that might be inflicted by excessive sewer surcharging. Further, precautions shall be taken by the CONTRACTOR to ensure that sewer flow control operations do not cause flooding or damage to public or private property being served by the sewers involved. If such damage occurs, it shall be the CONTRACTOR's responsibility to clean, disinfect, and replace, where appropriate, any and all damaged public or private property as quickly as possible. The CONTRACTOR shall be available or make the necessary arrangements to perform work of this nature.

1.16 DAILY CLEAN UP:

At the end of each working day, the CONTRACTOR shall conduct a daily clean-up of trash, product containers, and misc. debris, at the individual work sites where he has performed or is performing the work, as directed by the ENGINEER.

1.17 FEDERAL, STATE, AND LOCAL LAWS:

It shall be the CONTRACTOR's responsibility to research, understand, and comply with all federal, state, and local laws, codes, regulations, ordinances, etc., which relate to performing the work as described within this contract.

1.18 LOCATION OF WORK SITES:

In general, the work sites contained in this contract are separated by moderate to large distances, but are all located within Fayette County.

It shall be the CONTRACTOR's responsibility to locate all work sites, including individual manholes. Manholes should be numbered in accordance with the numbering system used on the OWNER's GIS Sanitary Sewer Infrastructure Data.

The CONTRACTOR shall be responsible for verifying their location prior to installation of any monitoring equipment. Monitoring equipment installed in locations not prescribed

by the OWNER or ENGINEER will be at the CONTRACTOR's own expense and no compensation will be provided.

1.19 GEOGRAPHIC INFORMATION SYSTEM (GIS) DATA:

The OWNER will provide a copy of their GIS Sanitary Sewer Infrastructure Data to the CONTRACTOR, upon request. The CONTRACTOR will be required to sign a License Agreement prior to receiving the data. There is no cost associated with the License Agreement, but it does restrict use of the data. GIS data will not be provided without a signed License Agreement.

1.20 COORDINATION MEETINGS:

The CONTRACTOR's project coordinator shall be required to attend any scheduled meetings with the OWNER and ENGINEER. The ENGINEER will notify the CONTRACTOR of the location, date and time of meetings. The purpose of these meetings will be to facilitate effective communication between all parties, convey pertinent information, and to discuss the status of the project.

At each meeting, the CONTRACTOR shall be prepared to provide a summary of the project status, including monitoring equipment down-time or data loss statistics, inaccuracies, maintenance issues, and any other relevant project issues or challenges. The CONTRACTOR should also identify any anticipated slippages in the project schedule or other conditions/risks which may jeopardize the CONTRACTOR from completing the work within the allotted schedule.

1.21 SPILLS

The CONTRACTOR shall perform the work in a manner that does not cause flooding or damage to public or private property being served by the sewers involved. If such damage occurs as a result of the CONTRACTOR's actions, it shall be the CONTRACTOR's responsibility to clean, disinfect, and replace, where appropriate, any and all damaged public or private property as quickly as possible. The CONTRACTOR shall be available or make the necessary arrangements to perform work of this nature.

Any unpermitted sewage release from the sewer system shall be reported according to the Sewage Spill Procedures outlined in Section 4.04 of the Technical Specifications.

END OF SECTION

## **TECHNICAL SPECIFICATIONS**

### **SECTION 2**

#### **FLOW MONITORING**

##### **2.01 GENERAL**

Temporary flow monitoring is to be performed in the gravity sanitary sewer system. The intent of the flow monitoring is to collect dry weather and wet weather sewer flow rates, velocities, and depths at monitoring locations prescribed by the ENGINEER. Collected data will be utilized by the ENGINEER to support the OWNER's Capacity Assurance Program and hydraulic model maintenance. CONTRACTOR is to provide collected flow measurements. Determination of dry weather and wet weather flow parameters will be performed by others and is not part of the Scope of Work for this contract. Analysis of the flow data by the CONTRACTOR is limited to that necessary to verify accurate measurement and performance of the monitoring equipment.

##### **2.02 SITE INVESTIGATIONS**

The CONTRACTOR shall perform a site investigation at each monitoring location proposed by the ENGINEER. The site investigation shall include visiting each proposed location and verifying its suitability for installing monitoring equipment and collecting reliable and accurate flow measurements.

The CONTRACTOR shall notify (in writing) of the suitability of each proposed flow monitoring site. The CONTRACTOR shall clearly identify any proposed monitoring sites that are, in the opinion of the CONTRACTOR, ill-suited for performing flow measurement and provide a short description of the basis for the opinion. A digital photograph (or movie) should accompany the written communication for any proposed monitoring site that is not recommended by the CONTRACTOR. The photograph shall clearly illustrate the issue/concern with flow monitoring at the location.

##### **2.03 EQUIPMENT**

The CONTRACTOR's equipment shall be capable of monitoring sewer flow depths, velocities, and rates with an accuracy of plus or minus ten percent (+/- 10%) under both normal flow and surcharging conditions.

Monitoring equipment shall be capable of recording measurements at five (5) minute intervals on a continuous 24-hour basis over a continuous four (4) month monitoring

period, which shall generally begin near the first of March. The OWNER reserves the right to increase or decrease the length of the monitoring period at their discretion.

Several of the monitoring locations are at the terminus of a pump station force main. At these locations, the flow monitoring equipment shall be capable of recording flow measurements at 1-inch intervals over the monitoring period.

Ownership of monitoring equipment remains with the Contractor and no equipment is to be provided to LFUCG as part of this contract.

#### 2.04 INSTALLATION

The CONTRACTOR shall furnish all materials, equipment, and labor to install flow monitoring equipment. Flow monitoring equipment shall be installed in a manner to minimize disruption of the operation of the sewer.

#### 2.05 CONFINED SPACE ENTRY

All crews entering sewer manholes shall be trained in and equipped for confined space entry and perform all such entries in accordance with federal, state, and local requirements, including those of the Occupational Safety and Health Administration (OSHA).

Proof of confined space entry training certification shall be provided to the OWNER, upon request, for any person performing the flow monitoring installations or equipment removals.

#### 2.06 CALIBRATION

Flow monitoring equipment shall be calibrated prior to the start of the monitoring period to ensure that accurate measurements are being recorded by the meter. At a minimum, the flow depth in the sewer shall be verified manually and compared to the depth recorded by the meter.

Meter calibration checks shall be performed monthly during the monitoring period. The CONTRACTOR shall provide data to verify calibration checks were performed during the monitoring period to ensure the maximum accuracy range of plus or minus ten percent (+/- 10%).

#### 2.07 FLOW MONITORING LOCATIONS

Flow monitoring locations will be provided to the CONTRACTOR by the ENGINEER. The CONTRACTOR shall have equipment to perform flow monitoring in pipe sizes

ranging from 8 inches to 54 inches in diameter and in manholes up to a depth of 30 feet. Monitoring locations will be located within Fayette County, Kentucky.

## 2.08 EQUIPMENT MAINTENANCE AND DATA DOWNLOAD FREQUENCY

The CONTRACTOR is responsible for all maintenance of flow monitoring equipment necessary to ensure their continued operation, reliability, and accuracy. No compensation will be provided for replacement of inoperable, malfunctioning, damaged, or otherwise under-performing monitoring equipment.

Flow monitoring equipment shall be inspected, maintained and calibrated as necessary to maintain a system-wide uptime of ninety (90) percent. At a minimum, the CONTRACTOR shall inspect each flow meter and download collected data on a monthly basis.

The CONTRACTOR shall maintain a log that summarizes the date and time when maintenance is performed at each monitoring location. The maintenance log shall briefly summarize the maintenance activity performed and document any problems/issues that were encountered.

## 2.09 TRAFFIC CONTROL

The CONTRACTOR shall be responsible for the traffic control measures necessary to provide safe conditions for their personnel and the general public. Traffic control shall be in accordance with the requirements of the Lexington-Fayette Urban County Government (LFUCG), Division of Traffic Engineering. All work potentially impacting traffic shall be coordinated with the Division of Traffic Engineering and the Division of Water Quality prior to commencing the work.

Whenever the CONTRACTOR's operations create a condition hazardous to the public, the CONTRACTOR shall furnish traffic control persons (flagmen and guards) as are necessary to give adequate warning to the public and safely allow for the passage of pedestrians and vehicles through the affected area. All traffic control devices/signage shall be in accordance with the Manual of Uniform Traffic Control Devices published by the Federal Highway Administration.

The CONTRACTOR shall be responsible for obtaining all traffic control or encroachment permits (local, state, federal) necessary to perform the work. Costs associated with traffic control and permits shall be incidental to the work. All traffic control and permit costs shall be included in the unit costs provided in the Bid Schedule.

## 2.10 ACCESS

Where access to private property is necessary to perform the work, the CONTRACTOR shall be responsible for coordinating access with the affected property owner. Refer to

Section 1.07 of the Section 1 (GENERAL SCOPE & SPECIAL PROVISIONS) of the Technical Specifications for additional requirements relative to work on private property.

Where access to a manhole on public property is prevented (obstruction on lid, paved over, etc.), the CONTRACTOR shall coordinate with the OWNER for resolution. For manholes with bolted lids, the CONTRACTOR shall temporarily remove the bolts to perform the work. Bolts shall be re-fastened before leaving the location for the day.

The CONTRACTOR shall make a reasonable effort to locate manholes identified for monitoring. Where a manhole is suspected to be buried, the CONTRACTOR shall notify the OWNER for resolution.

Manholes located less than six (6) inches below the surface (or in mulched areas) may be uncovered by the CONTRACTOR. When uncovered, the ground around the sides of the exposed manhole shall be laid back and all disturbed areas shall be seeded and protected with mulch or straw.

#### 2.11 FIELD OBSERVATION NOTIFICATIONS

Where a missing manhole lid/grate, damage, or other condition that poses an imminent threat of failure or safety hazard is observed, the CONTRACTOR shall report it immediately to the OWNER.

Where an active sewage overflow, or evidence of a prior overflow, is observed, the CONTRACTOR shall report it immediately by contacting LexCall (859-425-2255 or 311).

If a manhole is observed to be surcharging during dry weather conditions, the CONTRACTOR shall notify the OWNER immediately.

In all notifications, the CONTRACTOR shall identify the property address, GIS asset identification number (if known), and briefly summarize the nature of the observation.

#### 2.12 DATA QUALITY CONTROL/QUALITY ASSURANCE

The CONTRACTOR shall be responsible for performing internal quality assurance and quality control (QA/QC) reviews on collected data to ensure its accuracy. QA/QC review of the raw data provided to the ENGINEER each month is not required. QA/QC review of the final data provided at the conclusion of the monitoring period is required prior to submission to the OWNER. (Refer to Section 2.14 of this Technical Specification for a detailed list of required Flow Monitoring deliverables.)

The CONTRACTOR shall provide documentation to verify QA/QC reviews were performed.



## 2.13 REMOVAL OF EQUIPMENT

The CONTRACTOR shall remove all flow monitoring equipment from the sewer system at the conclusion of the monitoring period. Removal costs shall be included in the unit price for Item No. 1 (Installation, Removal, & Calibration of Temporary Flow Meter) in the Bid Schedule.

All flow monitoring equipment shall be removed from the sewer system within two (2) weeks of the conclusion of the monitoring period. The CONTRACTOR shall notify the OWNER when all equipment has been removed from the sewer system.

## 2.14 DELIVERABLES

- A. **Raw Flow Data.** At a minimum, the CONTRACTOR shall furnish raw flow measurements (rate, velocity, and depth) for all monitoring locations to the ENGINEER on a monthly basis. Raw data shall be provided in a Microsoft Excel database or a text file that can be easily imported into Microsoft Excel. Raw flow data provided to the ENGINEER shall not be adjusted or corrected to “smooth” out data spikes. An example table of raw flow data is provided in Section 4.05 of the Technical Specifications.
- B. **Final Report.** The CONTRACTOR shall prepare a final report and data sets for the entire flow monitoring period. Three (3) printed copies and an electronic copy (in Adobe Acrobat Portable Document Format) shall be provided to the OWNER. The final report shall include the following:
- Description of each monitoring site (pipe identification number/name, location/address, installation date, pipe size, pipe material, manhole depth);
  - Photographs of each meter location and installation;
  - Description of equipment utilized (model and manufacturer)
  - Discussion of any unusual events during monitoring period or maintenance issues that adversely impacted flow measurement;
  - Summary table reporting actual meter uptime achieved at each monitoring location;
  - Installation and calibration notes;
  - QA/QC documentation;
  - Maintenance log records;
  - Graphs showing flow, velocity, and depth for each meter;
  - Depth versus velocity scatter plots for each monitoring location; and

- Rainfall monitoring period information (See Section 3.11 of the Technical Specifications).

C. **Final Flow Data.** The CONTRACTOR shall provide an electronic copy of the final flow data (after adjustment from QA/QC reviews). For each meter the data shall include the: meter identification number/name, location, date and time step (in 5 minute intervals), and corresponding measured flow rate, velocity, and depth. Final flow data shall be provided in a Microsoft Excel spreadsheet with a separate tab established for each monitoring site. The electronic copy of the flow data shall be provided on a DVD and provided with the Final Report.

The Final Report and Final Flow Data shall be submitted to LFUCG within 60 days of the end of the monitoring period.

END OF SECTION

## TECHNICAL SPECIFICATIONS

### SECTION 3

#### RAINFALL MONITORING

##### 3.01 GENERAL

Temporary rainfall monitoring is to be performed concurrently with the flow monitoring period to support future analysis of the flow data by the ENGINEER. Rain gages shall be placed on the rooftop at the following locations:

**Table 1. Rainfall Gage Locations - 2019**

No.	Sewershed	Site ID	Location Name	Address
1.	Cane Run	CR-RG-01	Castlewood Park Building	201 Castlewood Drive
2.	Cane Run	CR-RG-02	Mary Todd Elementary	551 Parkside Drive
3.	Cane Run	CR-RG-03	Penn Station	1719 North Broadway
4.	Cane Run	CR-RG-04	Kentucky Highway Department	763 New Circle Road
5.	Cane Run	CR-RG-05	Winburn Middle School	1060 Winburn Drive
6.	Cane Run	CR-RG-06	Henry Schein Animal Health	920 Citation Boulevard
7.	West Hickman	WH-RG-01	Lexington Senior Center	195 Life Lane
8.	West Hickman	WH-RG-02	Mason Liquors	3500 Creekwood Drive
9.	West Hickman	WH-RG-03	Mill Creek Elementary	1212 Reva Ridge Way
10.	West Hickman	WH-RG-04	Veteran's Park Elementary	4351 Clearwater Way
11.	West Hickman	WH_RG05	Southern Elementary	340 Wilson Downing Road
12.	West Hickman	WH_RG06	Glendover Elementary	710 Glendover Road

##### 3.02 SITE INVESTIGATIONS

The CONTRACTOR shall perform a site investigation at each rainfall monitoring location proposed by the ENGINEER. The site investigation shall include visiting each proposed location and verifying its suitability for installing monitoring equipment and collecting reliable and accurate rainfall measurements.

The CONTRACTOR shall notify (in writing) of the suitability of each proposed rainfall monitoring site. The CONTRACTOR shall clearly identify any proposed monitoring sites that are, in the opinion of the CONTRACTOR, ill-suited for performing rainfall

measurement and provide a short description of the basis for the opinion. A digital photograph should accompany the written communication for any proposed monitoring site that is not recommended by the CONTRACTOR. The photograph shall clearly illustrate the issue/concern with rainfall monitoring at the location.

### 3.03 EQUIPMENT

Rainfall monitoring equipment shall consist of a tipping bucket rain gage capable of recording rainfall amounts in 0.01 inch increments or smaller. Rainfall gage equipment shall be sufficiently weighted or anchored to prevent overturning from excessive wind or small animal (e.g. bird, squirrel, etc.) activity.

Rainfall monitoring equipment shall be capable of recording measurements at five (5) minute intervals on a continuous 24-hour basis over a continuous four (4) month monitoring period, which shall generally begin near the first of March. The OWNER reserves the right to increase or decrease the length of the monitoring period at their discretion.

Ownership of monitoring equipment remains with the Contractor and no equipment is to be provided to LFUCG as part of this contract.

### 3.04 INSTALLATION

The CONTRACTOR shall furnish all materials, equipment, and labor to install rainfall monitoring equipment. Equipment shall be installed in locations that avoid overhead obstructions or areas of excessive localized wind that would undermine the ability to accurately record rainfall amounts during wet weather events.

It is the CONTRACTOR's responsibility to secure equipment in a manner to prevent vandalism or theft. The OWNER will not be responsible for damaged or stolen equipment.

### 3.05 CALIBRATION

Rainfall monitoring equipment shall be calibrated prior to the start of the monitoring period to ensure that accurate measurements are being recorded by the gage.

Rainfall gage calibration checks shall be performed monthly during the monitoring period. The CONTRACTOR shall provide data to verify calibration checks were performed during the monitoring period to ensure the maximum accuracy range of plus or minus ten percent (+/- 10%).

### 3.06 RAINFALL MONITORING LOCATIONS

Rainfall monitoring locations will be provided to the CONTRACTOR by the ENGINEER. It is the OWNER's preference to select monitoring locations on property owned by LFUCG or other government entity. Preference will be given to building rooftops to minimize the potential for tampering, vandalism, or theft. Rainfall monitoring locations will be located within Fayette County, Kentucky.

### 3.07 EQUIPMENT MAINTENANCE AND DATA DOWNLOAD FREQUENCY

The CONTRACTOR is responsible for all maintenance of rainfall monitoring equipment necessary to ensure their continued operation, reliability, and accuracy. No compensation will be provided for replacement of inoperable, malfunctioning, damaged, or otherwise under-performing monitoring equipment.

Rainfall monitoring equipment shall be inspected, maintained and calibrated as necessary to maintain a system-wide uptime of ninety (90) percent. At a minimum, the CONTRACTOR shall inspect each rainfall gage and download collected data on a monthly basis.

The CONTRACTOR shall maintain a log that summarizes the date and time when maintenance is performed at each monitoring location. The maintenance log shall briefly summarize the maintenance activity performed and document any problems/issues that were encountered.

### 3.08 ACCESS

The CONTRACTOR shall be responsible for coordinating access to install, maintain, and remove rainfall monitoring equipment.

Where access to private property is necessary to perform the work, the CONTRACTOR shall be responsible for coordinating access with the affected property owner. Refer to Section 1.07 of the Section 1 (GENERAL SCOPE & SPECIAL PROVISIONS) of the Technical Specifications for additional requirements relative to work on private property.

### 3.09 DATA QUALITY CONTROL/QUALITY ASSURANCE

The CONTRACTOR shall be responsible for performing internal quality assurance and quality control (QA/QC) reviews on collected data to ensure its accuracy. QA/QC review of the raw data provided to the ENGINEER each month is not required. QA/QC review of the final data provided at the conclusion of the monitoring period is required prior to submission to the OWNER. (Refer to Section 3.11 of this Technical Specification for a detailed list of required Rainfall Monitoring deliverables.)

The CONTRACTOR shall provide documentation to verify QA/QC reviews were performed.

### 3.10 REMOVAL OF EQUIPMENT

The CONTRACTOR shall remove all rainfall monitoring equipment from the sewer system at the conclusion of the monitoring period. Removal costs shall be included in the unit price for Item No. 3 (Installation, Removal, & Calibration of Temporary Rain Gage) in the Bid Schedule.

### 3.11 DELIVERABLES

- A. **Raw Rainfall Data.** At a minimum, the CONTRACTOR shall furnish raw rainfall measurements (date, time, and depth) for all monitoring locations to the ENGINEER on a monthly basis. Raw data shall be provided in a Microsoft Excel database or a text file that can be easily imported into Excel.
- B. **Final Report.** Rainfall monitoring information shall be included in the Final Report outlined in Section 2.14 in Section 2 (FLOW MONITORING) of the Technical Specifications. The final report shall include the following information relative to the rainfall monitoring:
- Description of each monitoring site (address, location within address, equipment type, and installation date);
  - Type of equipment used (model and manufacturer);
  - Discussion of any unusual events during monitoring period or maintenance issues that adversely impacted rainfall measurement;
  - Summary table reporting actual gage uptime achieved at each monitoring location;
  - Installation and calibration notes;
  - QA/QC documentation;
  - Maintenance log records;
  - Table summarizing each discrete rainfall event that occurred during the monitoring period. For each rainfall event identify the start date/time, end date/time, total precipitation depth, and the return period/recurrence interval; and
  - Graph showing rainfall depth versus time for each monitoring location.

C. **Final Rainfall Data**. The CONTRACTOR shall provide an electronic copy of the final rainfall data (after adjustment from QA/QC reviews). For each rainfall gage the data shall include the: gage identification number/name, location, date and time step (in 5 minute intervals), and corresponding measured rainfall depth. Final rainfall data shall be provided in a Microsoft Excel spreadsheet with a separate tab established for each monitoring site. The electronic copy of the rainfall data shall be provided on a DVD and provided with the Final Report.

The Final Report and Final Rainfall Data shall be submitted to LFUCG within 60 days of the end of the monitoring period.

TECHNICAL SPECIFICATIONS

SECTION 4

SAMPLE FORMS

4.01

MAPPING DISCREPANCY FORM

<b>Date Observed:</b> _____	<b>Discrepancy Type:</b> New Manhole(s): <input type="checkbox"/> Manhole(s) Does Not Exist: <input type="checkbox"/> Connectivity: <input type="checkbox"/> Other: <input type="checkbox"/>
<b>Crew Leader:</b> _____	
<b>Sewershed:</b> _____	
<b>Address:</b> _____	
<b>Location Details:</b> _____	<b>Identified During:</b> Smoke Testing: <input type="checkbox"/> Manhole Inspections: <input type="checkbox"/> CCTV Inspection: <input type="checkbox"/> Manhole Raising: <input type="checkbox"/> Other (specify): <input type="checkbox"/>
<b>Affected Pipe Segment(s):</b>  _____	
<b>Affected Manhole(s):</b>  _____	
<b>Sketch:</b>  <div style="border: 1px solid black; height: 250px; width: 100%;"></div>	
<b>Additional Comments:</b> _____ _____ _____	
<b>Resolution:</b> _____	



4.02 PRIVATE PROPERTY NOTICE DISTRIBUTION LOG

Date: _____		CAPACITY ASSURANCE PROGRAM FLOW MONITORING FIELD SERVICES		Distributor: _____
Monitoring Location (Manhole ID)	Address	Resident Name and Phone # (if given)	Distribution Date	Comments

4.03 PRIVATE PROPERTY NOTICE

Dear Resident:

This is to let you know that the Lexington-Fayette Urban County Government will be performing maintenance activities on the sanitary sewer in your area. The sanitary sewer contractor \_\_\_\_\_ is performing the work.

We are attempting to reduce both the sanitary sewer overflows and operating cost at the treatment plant. These expenditures are paid from the Sanitary Sewer User's Fee.

In order to do this, we will need to access our sanitary sewer easement by way of your property on or about \_\_\_\_/\_\_\_\_/\_\_\_\_/.

If you are not the owner of this property, please forward this letter to the property owner.

If you have any questions, concerns or special problems, please call the sanitary sewer contractor at: \_\_\_\_\_, or LexCall (859) 425-2255 or 311.

SEWAGE SPILL PROCEDURE

The following list is a chronological checklist of things that need to be completed when experiencing a sewage overflow or spill. Understand that this checklist is intended only to provide **minimal** procedures for a general sanitary sewer overflow occurrence. Each overflow occurrence is situation-dependant and more steps may need to be added to ensure proper cleanup.

1. **Immediately** call Environmental Response Team (ERT), City Inspector, Collection and Conveyance Manager (CCM), Health Department,.
  - **ERT** – 1-800-928-2380
  - **City Inspector:** Rob Clay – (859) 425-2448 Office, (859) 983-0616 Cell.
  - **CAP Manager:** Craig Prater – (859) 425-2446 Office, (859) 229-1887 Cell
  - **Health Department Officer:** (859) 335-7071. You will need to report the following regarding the incident:
    - Estimated spill volume (in gallons)
    - Time of the spill and duration
    - Location (street address)

ERT will assign an Incident Number that you will need to write down.

2. **Immediately** contain the overflow and prevent untreated sewage from entering waterways (i.e. creeks, rivers, lakes, etc.) by building a temporary barrier or containment using sandbags, soil, metal or wood curbing, etc.
3. Remove sanitary water from containment area. This can be done numerous ways. See below for examples of how to remove sanitary water:
  - Use vacuum truck to remove water from containment area
  - Using barrier, direct flow back into sanitary sewer manhole
4. Remove any visible debris (e.g. toilet paper, condoms, etc.) from area and dispose of at the wastewater treatment plant.
5. Use lime or some type of disinfectant in pervious areas such as soil, mulch, and grass or open areas.
6. Once sanitary water has been contained and removed, the impervious areas (pavement, concrete, etc.) should be rinsed. The water used to rinse the impervious area will also need to be removed by the previous methods described.
7. The Kentucky Department of Environmental Protection must be notified via email within 24 - 48 hours. Be sure to include the Incident Number. Electronic Submittal address is: <https://dep.gateway.kygov/eportal/default.aspx>.
8. Lexington Fire Department Battalion Chief (Gregg Bayer) should be sent a hard copy of the Electronic Submittal. The Chief's mailing address is: 219 E. Third St., Lexington, KY 40507

A copy of the Electronic Submittal should also be faxed to the Division of Fish and Wildlife at (502) 564-3178.

An “after the event” summary should be electronically provided to LFUCG’s Division Director, Charles Martin ([chmartin@lexingtonky.gov](mailto:chmartin@lexingtonky.gov)).

4.05

EXAMPLE RAW FLOW DATA TABLE

<b>Meter ID</b>	<b>Location</b>	<b>Date/Time Stamp</b>	<b>Flow (gpm)</b>	<b>Depth (inches)</b>	<b>Velocity (fps)</b>
CR1_20	123 Newtown Pike	1/16/2009 0:00	79.27	15.01	1.23
CR1_20	123 Newtown Pike	1/16/2009 0:05	81.71	15.21	1.29
CR1_20	123 Newtown Pike	1/16/2009 0:10	84.11	15.36	1.25
CR1_20	123 Newtown Pike	1/16/2009 0:15	88.32	15.98	1.34
CR1_20	123 Newtown Pike	1/16/2009 0:20	85.66	15.46	1.32
CR1_20	123 Newtown Pike	1/16/2009 0:25	86.72	15.72	1.33
CR1_20	123 Newtown Pike	1/16/2009 0:30	81.74	15.22	1.29
CR1_20	123 Newtown Pike	1/16/2009 0:35	82.67	15.28	1.28

2019 TEMPORARY FLOW MONITORING LOCATIONS

Preliminary flow meter sites for the 2019 monitoring season are summarized in Table 1. A corresponding map illustrating the preliminary monitoring locations is presented in Figure 1. The monitoring locations shown in Table 1 and in Figure 1 are provided for information purposes. Actual 2019 monitoring locations may change.

**Table 1. Preliminary Temporary Flow Monitoring Locations - 2019**

No.	Address / Location	Manhole ID	Pipe ID	Pipe Size (inches)
<b>Cane Run Sewershed</b>				
1.	740 Newtown Pike (Lexmark)	CR1_111	CR1_51_CR1_111	18
2.	531 New Circle Road	CR1_21B	CR1_22_CR1_21B	21
3.	464 New Circle Road	CR1_74	CR1_74A_CR1_74	10
4.	740 Newtown Pike (Lexmark)	CR1_129	CR2_367_CR1_129	18
5.	1051 Russell Cave Road	CR3_12	CR3_13_CR3_12	15
6.	775 N. Upper Street	CR3_70	CR3_71_CR3_70	12
7.	1675 N. Broadway	CR4_107	CR4_106_CR4_107	10
8.	444 Cane Run Road (Elkhorn Park)	CR4_12	CR4_8_CR4_12	18
9.	620 Parkside Drive	CR4_157	CR4_156A_CR4_157	12
10.	626 Parkside Drive	CR4_159	CR4_160_CR4_159	12
11.	1612 Hawthorne Lane	CR4_16	CR4_16A_CR4_16	18
12.	344 Radcliff Road	CR4_323	CR4_307_CR4_323	10
13.	2320 Shandon Drive	CR4_1035	CR4_423_CR4_1035	8
14.	557 Dover Road	CR4_733	CR4_734_CR4_733	16
15.	1436 Edgelawn Avenue	CR5_286	CR5_285_CR5_286	15
16.	115 E. New Circle Road	CR5_4	CR5_5_CR5_4	15
17.	1651 Russell Cave Road	CR5_501	CR5_502_CR5_501	15
18.	124 E. New Circle Road	CR5_91	CR5_92_CR5_91	10
19.	920 Bull Lea Road	CR7_13A	CR7_1B_CR7_13A	15
20.	920 Bull Lea Road	CR7_14A	CR7_15A_CR7_14A	30
21.	1800 Newtown Pike	CR7_149	CR7_150_CR7_149	10
22.	920 Bull Lea Road (approximate)	CR7_22	CR7_603_CR7_22	12

No.	Address / Location	Manhole ID	Pipe ID	Pipe Size (inches)
23.	1800 Newtown Pike	CR7_256	CR7_257_CR7_256	15
24.	1875 McGrathiana Parkway	CR8_11	CR8_12_CR8_11	21
25.	2250 Spurr Road (approximate)	CR8_408	CR8_407A_CR8_408	15
26.	1875 McGrathiana Parkway	CR8_6	CR8_7_CR8_6	36
<b>West Hickman Sewershed</b>				
27.	645 W. Hickman Plant Road, Nicholasville (West Hickman WWTP)	WH_WWTP	TBD	72
28.	4351 Clearwater Way (Veteran's Park Elementary)	WH1_16	WH1_17_WH1_16	36
29.	3930 Crosby Drive	WH1_30	WH1_31_WH1_30	27
30.	700 Southpoint Drive (Veterans Park)	WH1_40	WH1_41_WH1_40	48
31.	341 E. Tiverton Way	WH10_17	WH10_18_WH10_17	21
32.	769 Rainwater Drive	WH10_2	WH10_3_WH10_2	21
33.	218 Wilson Downing Road	WH10_307	WH10_308_WH10_307	12
34.	3595 Laredo Drive	WH2_178 <sup>2</sup>	WH2_179_WH2_178	15
35.	616 Pebble Creek Drive	WH2_21V <sup>2</sup>	WH2_21U_WH2_21V	15
36.	3434 Greenlawn Drive (Wildwood Park)	WH2_237	WH2_267_WH2_237	12
37.	1156 Appian Crossing Way	WH2_395A	WH2_395C_WH2_395A	12
38.	1461 Stephen Foster Drive	WH2_477	WH2_477A_WH2_477	10
39.	680 Wilson Downing Road	WH2_5	WH2_6_WH2_5	42
40.	3051 Kirklevington Drive	WH3_142A	WH3_186_WH3_142A	10
41.	3537 Willowood Drive	WH3_1	WH3_2_WH3_1	18
42.	3531 Greentree Road	WH3_336	WH3_337_WH3_336	27
43.	3546 Greenlawn Drive	WH3_333K	WH3_334A_WH4_333K	8
44.	3498 Greentree Road	WH3_348	WH3_354_WH3_348	10
45.	3051 Kirklevington Drive	WH3_55	WH3_55A_WH3_55	18
46.	3474 Pimlico Parkway	WH3_607	WH3_606_WH3_607	12

No.	Address / Location	Manhole ID	Pipe ID	Pipe Size (inches)
47.	3432 Sutherland Drive	WH3_658C	WH3_643_WH3_658C	12
48.	3418 Greentree Road	WH3_659	WH3_661_WH3_659	24
49.	306 Zandale Drive	WH4_371	WH4_372_WH4_371	12
50.	306 Zandale Drive	WH4_371	WH4_79_WH4_371	10
51.	3329 Bates Creek Road	WH4_81D	WH4_3D_WH4_81D	21
52.	3105 Lamar Drive	WH5_122	WH5_121_WH5_122	15
53.	1021 Honeycreek Drive	WH5_172A	WH5_182_WH5_172A	12
54.	3329 Bates Creek Road	WH5_1B	WH5_1A_WH5_1B	15
55.	941 Turkey Foot Road	WH5_247	WH5_241_WH5_247	10
56.	3153 Lamar Drive	WH5_63	WH5_64_WH5_63	10
57.	2046 Edgewater Court	WH6_105	WH6_105B_WH6_105	24
58.	2044 Shadybrook Lane	WH6_107	WH6_108_WH6_107	15
59.	1545 Harmony Hall Lane	WH6_159A	WH6_160_WH6_159A	15
60.	2112 Bridgeport Drive	WH6_327	WH6_326_WH6_327	12
61.	2076 Bridgeport Drive	WH6_333	WH6_334_WH6_333	8
62.	600 Lakeshore Drive	WH6_391	WH6_393_WH6_391	18
63.	1153 Dunbarton Lane	WH6_3A	WH6_4_WH6_3A	10
64.	2168 Island Drive	WH6_424	WH6_427_WH6_424	8
65.	2168 Island Drive	WH6_424	WH6_461_WH6_424	12
66.	400 Plainview Drive	WH6_452	WH6_454_WH6_452	8
67.	2309 The Woods Lane	WH6_652	WH6_653_WH6_652	10
68.	3520 Creekwood Drive	WH6_75	WH6_98_WH6_75	24
69.	3667 Barrow Wood Lane	WH6_758	WH6_759_WH6_758	8
70.	819 Siesta Cove	WH6_902	WH6_903_WH6_902	8
71.	293 Alsab Court	WH7_178A	WH7_178B_WH7_178A	12
72.	2380 Lake Park Road	WH7_1A	WH7_2_WH7_1A	12
73.	283 Idle Hour Drive	WH7_357	WH7_358_WH7_357	15
74.	709 Ellison Court	WH7_375A	WH7_376_WH7_375A	12
75.	2234 Richmond Road	WH7_39	WH7_40_WH7_39	12
76.	1920 Richmond Road	WH7_401	WH7_402_WH7_401	10
77.	212 St. Ann Drive	WH7_935	WH7_936_WH7_935	21



No.	Address / Location	Manhole ID	Pipe ID	Pipe Size (inches)
	(Idle Hour Park)			
78.	2420 Lake Park Road	WH7_971	WH7_973_WH7_971	30
79.	2349 Richmond Road	WH7_987	WH7_5029_WH7_987	24
80.	2397 Richmond Road	WH7_988	WH7_989_WH7_988	21
81.	2350 Woodhill Drive	WH7_997	WH7_998_WH7_997	15
82.	612 Rolling Creek Way	WH8_11	WH8_11A_WH8_11	36
83.	709 Southpoint Drive	WH8_2	WH8_3_WH8_2	36
84.	700 Southpoint Drive (Veterans Park)	WH8_703	WH8_704_WH8_703	15
85.	448 Southpoint Drive	WH8_719A	WH8_720_WH8_719A	12
86.	645 W. Hickman Plant Road, Nicholasville (West Hickman WWTP)	WH9_4	WH9_704_WH9_4	24
87.	4865 Tates Creek Road	WH9_53	WH9_56_WH9_53	12
88.	4669 Collinswood Drive	WH9_99B	WH9_99_WH9_99B	15
89.	TBD <sup>1</sup>	TBD <sup>1</sup>	TBD <sup>1</sup>	TBD <sup>1</sup>
90.	TBD <sup>1</sup>	TBD <sup>1</sup>	TBD <sup>1</sup>	TBD <sup>1</sup>
91.	TBD <sup>1</sup>	TBD <sup>1</sup>	TBD <sup>1</sup>	TBD <sup>1</sup>
92.	TBD <sup>1</sup>	TBD <sup>1</sup>	TBD <sup>1</sup>	TBD <sup>1</sup>
93.	TBD <sup>1</sup>	TBD <sup>1</sup>	TBD <sup>1</sup>	TBD <sup>1</sup>

<sup>1</sup> The proposed location within LFUCG's sewer system for this flow meter has not yet been determined.

<sup>2</sup> Meter locations at WH2\_178 and WH2\_21V may be eliminated. Locations are within project limits of Landsdowne Trunk Sewer Replacement Project. Determination will be made at project kickoff meeting, based on progress of trunk sewer replacement construction.

4.07 MAP OF 2019 TEMPORARY RAINFALL AND FLOW MONITORING LOCATIONS