

**REGULAR MEETING OF WILMINGTON CITY COUNCIL  
FEBRUARY 20, 2020 @ 6:30 P.M. - REV. #3\***

**Council Chambers  
Louis L. Redding City/County Building  
800 N. French Street - Wilmington, DE 19801  
[www.WilmingtonDe.gov](http://www.WilmingtonDe.gov) or [www.WITN22.org](http://www.WITN22.org)**

**AGENDA**

**I. Call to Order  
Prayer  
Pledge of Allegiance  
Roll Call**

**II. Approval of Minutes**

**III. Committee Reports**

**IV. Acceptance of Treasurer's Report**

**V. Non-Legislative Business**

All Council	Recognize Black History Month
All Council	Retirement Elouise G. Watson
Congo	Recognize Blue Diamond Dental Group/Dr. Daniels
Congo	Recognize Delaware Elite
Guy	Recognize Dr. Carter G. Woodson and the month of February 2020 as "African American History Month"
Oliver	Recognize Essence YMCA Drill Team
Oliver	Sympathy Melvin Scruggs
Oliver	Sympathy Mary E. Pettaway
Oliver	Sympathy Kevin L. Bolden
Shabazz	Recognize Maurice Simms
Shabazz	Recognize Herman Holloway, Jr.
Shabazz	Recognize Delaware Technical Community College Black History Month Honoree Wali W. Rushdan, II
Shabazz	Sympathy Barbara S. Frye
Turner	Sympathy Kobe Bryant

**VI. Legislative Business**

**HARLEE**

Rev. 1

#4756 Sub. 1 Ord. 20-001 Authorize and Approve an Extension of Contract 20011PW  
Between the City of Wilmington and Brandywine Construction  
Company, Inc. for Sewer Maintenance (**3<sup>rd</sup> & Final Reading**)

**Synopsis:** *This Substitute Ordinance is being presented by the Administration for Council's review and approval. This Substitute Ordinance authorizes the City to exercise one (1) one-year extension option to extend Contract 20011PW - Sewer Maintenance - between the City of Wilmington and Brandywine Construction Company, Inc. for the period of July 1, 2020 to June 30, 2021, at an estimated price of One Million, Two Hundred Eighty-Five Thousand, Eight Hundred Eighty Dollars (\$1,285,880.00) plus a one percent (1%) increase for the extension period.*

#4757      Ord. 20-002      Authorize and Approve an Extension of Contract 20012WD Between the City of Wilmington and Brandywine Construction Company, Inc. for Water Distribution System Maintenance (**3<sup>rd</sup> & Final Reading**)

**Synopsis:** *This Ordinance is being presented by the Administration for Council's review and approval. This Ordinance authorizes the City to exercise four (4) one-year extension options to extend Contract 20012WD - Water Distribution System Maintenance - between the City of Wilmington and Brandywine Construction Company, Inc. for the periods of July 1, 2020 to June 30, 2021, July 1, 2021 to June 30, 2022, July 1, 2022 to June 30, 2023, and July 1, 2023 to June 30, 2024, at an estimated price of Two Thousand, Nine Hundred Seventy-Seven Dollars (\$2,977.00) per day plus an increase of up to two percent (2%) for each extension period.*

**SHABAZZ (Harlee presenting on behalf of Shabazz)**

#4773      An Ordinance to Name the South Wilmington Wetlands Park Project the "Southbridge Wilmington Wetlands Park" (**1<sup>st</sup> & 2<sup>nd</sup> Reading**)

**Synopsis:** *This Ordinance is being presented by Council for Council's review and approval. This Ordinance officially names the South Wilmington Wetlands Park as the "Southbridge Wilmington Wetlands Park".*

**JOHNSON**

#4770      Res. 20-008      Approving the Wilmington Police Department's Grant Application to the Department of Justice for Ten (10) Motorized Trikke Police Interceptors (**Postponed from Feb. 6, 2020 meeting**)

**Synopsis:** *This Resolution is being presented by the Administration for Council's review and approval. This Resolution authorizes the Wilmington Police Department's grant applications to the State of Delaware Criminal Justice Council in the total amount of \$100,000.00. The proposed grant funds would be used to purchase ten (10) Trikke Police Interceptor mobile vehicles along with safety equipment and training, providing police officers with additional contact with the community while simultaneously enabling the officers to respond quickly to incidents.*

**FREEL**

#4774

An Ordinance to Authorize and Approve a Professional Services Agreement Between the City of Wilmington, Delaware and Operations Management International, Inc. for the Management, Administration, Operation, and Maintenance of the Wilmington Wastewater Treatment Plant, Renewable Energy and Biosolids Facility, Main Pump Stations, Storage and Control Structures and Systems Associated with the Control of Combined Sewer Overflows (including Global Optimal Real Time Control System), and Associated Infrastructure  
**(1<sup>st</sup> & 2<sup>nd</sup> Reading)**

**Synopsis:**

*This Ordinance is being presented by the Administration for Council's review and approval. This Ordinance authorizes the City to enter into a professional services agreement with Operations Management International, Inc. for the management, administration, operation, and maintenance of the Wilmington Wastewater Treatment Plant, Renewable Energy and Biosolids Facility, Main Pump Stations, Storage and Control Structures and Systems associated with the control of Combined Sewer Overflows (including Global Optimal Real Time Control System), and Associated Infrastructure for a period of twenty (20) years with two (2) two-year extension options.*

#4775

A Resolution Approving the Bid of the Best Bidder for the Disposition of 1814 Gilpin Avenue

**Synopsis:**

*This Resolution is being presented by City Council for Council's review and approval. This Resolution approves the bid of J. Douglas Patterson, M.D. for 1814 Gilpin Avenue, Wilmington, DE 19806 (Tax Parcel ID No. 26-013.10-025) as the best bidder and authorizes the Mayor or his designee to execute any and all documents necessary to effectuate the disposition of the property to Dr. Patterson.*

**SHABAZZ (Freel presenting on behalf of Shabazz)**

#4776

A Resolution Encouraging the City of Wilmington to Support Tiny Houses/Tiny Homes to Address Affordable Housing, Neighborhood Stabilization, Homelessness, Seniors Seeking to Downsize, Veterans, and Those Seeking to Lower their Carbon Footprint

**Synopsis:**

*This Resolution is being presented by City Council for Council's review and approval. This Resolution strongly encourages the City of Wilmington, Delaware to support the inclusion of Tiny Houses/Tiny Homes in our City's housing stock to address the growing problems associated with the scarcity of Affordable Housing, issues regarding Neighborhood Stabilization, Millennials needing Starter Homes, Homelessness, Seniors Seeking to Downsize, Veterans needing affordable housing, and those seeking to lower their Carbon Footprint.*

**ADAMS**

#4771

A Resolution to Amend City Council Rules 2 and 3 Regarding Order of Business and Public Comment

**Synopsis:**

*This Resolution is being presented by City Council for Council's review and approval. This Resolution amends City Council Rules 2 and 3 to provide for the following: (1) public comment will be part of the order of business at regular meetings of City Council; (2) the public comment period, which had occurred from 6:00 p.m. to 6:30 p.m. before regular Council meetings, will now take place immediately after regular Council meetings are called to order; (3) the sign up deadline for members of the public who would like to speak during the public comment period will be changed from 5:45 p.m. to 6:25 p.m.; (4) any person who has signed up with the City Clerk by 6:25 p.m. will be allowed to speak for up to three minutes during the public comment period; (5) there will be no limit on the number of speakers allowed to speak during public comment period; (6) the duplicative public comment period after the close of debate on each legislative item at regular City Council meetings is eliminated; and (7) the duplicative second round of debate by Council Members at regular City Council meetings is eliminated. In addition, as housekeeping matters, certain sections of Rule 2 are relettered and the word "official" in the first sentence of Rule 2 is replaced with the word "regular".*

**GUY**

#4760

Ord. 20-005 Authorizing the Issuance of the City's General Obligation Bonds, In One or More Series on a Tax-Exempt and/or Taxable Basis, In Order to Provide the Funds Necessary to Refund Certain Outstanding General Obligation Bonds of the City; Providing for the Sale of the Bonds; and Authorizing Other Necessary Action  
**(3<sup>rd</sup> & Final Reading)**

**Synopsis:**

*This Ordinance is being presented by the City Treasurer for City Council's consideration and approval and authorize the issuance of up to \$50,000,000 aggregate principal amount of the City's General Obligation Bonds in order to finance certain outstanding debt of the City for possible, present value savings up to \$7,000,000.*

#4777

A Resolution Authorizing a Grant to Culture Restoration Project, Inc.

**Synopsis:**

*This Resolution provides authorization for City Council member Samuel L. Guy to award a grant of \$1,000 to Culture Restoration Project, Inc., from his portion of Council's Discretionary Funds. As stated in Section 2-369 of the City Code, in order to provide such a grant, this resolution must be passed by City Council.*



**SHABAZZ** (*Walsh presenting on behalf of Shabazz*)

#4780      A Resolution Supporting the General Assembly to Draft Legislation to Require Schools to Provide Free Feminine Products to Students in Grades 6-12

**Synopsis:**      *This Resolution is being presented by City Council for Council's review and approval. This Resolution expresses the Honorable Senators of the Delaware General Assembly to pass House Bill 285.*

**VII.    Petitions and Communications**

**VIII.   Adjournment**

\*Note: This agenda was revised to remove item #4778 due to questions and concerns regarding any potential conflict of interests and code of ethics pertaining to agenda #4778.

**SUBSTITUTE NO. 1 TO ORDINANCE NO. 20-001**

**AN ORDINANCE TO AUTHORIZE AND APPROVE AN EXTENSION OF CONTRACT 20011PW BETWEEN THE CITY OF WILMINGTON AND BRANDYWINE CONSTRUCTION COMPANY, INC. FOR SEWER MAINTENANCE**

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**Rev. 1  
#4756**

**Sponsor:**

**Council  
Member  
Harlee**

**Co-Sponsor:**

**Council  
President  
Shabazz**

**WHEREAS**, pursuant to Section 2-308 and Section 8-200 of the City Charter, the City of Wilmington is authorized to enter into contracts for the supply of personal property or the rendering of services for a period of more than one year if approved by City Council by ordinance; and

**WHEREAS**, the City publicly advertised the specifications for Contract 20011PW - Sewer Maintenance (the "Contract") - in accordance with the requirements of Section 8-200 of the City Charter, and subsequently awarded the Contract, a copy of which, in substantial form, is attached hereto and incorporated by reference herein as Exhibit "A", to Brandywine Construction Company, Inc. (the "Contractor"), the lowest responsible bidder; and

**WHEREAS**, the Contract's term is from July 1, 2019 to June 30, 2020, at an estimated price of One Million, Two Hundred Eighty-Five Thousand, Eight Hundred Eighty Dollars (\$1,285,880.00), with the possibility of one (1) one-year extension thereafter (from July 1, 2020 to June 30, 2021) at a one percent (1%) increase in price for the extension; and

**WHEREAS**, the primary purpose of the Contract is to provide sewer maintenance services to the City; and

**WHEREAS**, said extension period was included in the Contract in order to provide for continuity of service; and

**WHEREAS**, it is the recommendation of the Department of Public Works that the City exercise the option to extend the Contract for one (1) additional period of one (1) year.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON  
HEREBY ORDAINS:**

**SECTION 1.** The one (1) one-year extension period to Contract 20011PW - Sewer Maintenance - between the City of Wilmington and Brandywine Construction Company, Inc., a copy of which Contract, in substantial form, is attached hereto as Exhibit "A," for the period of July 1, 2020 to June 30, 2021, at an estimated price of One Million, Two Hundred Eighty-Five Thousand, Eight Hundred Eighty Dollars (\$1,285,880.00) plus a one percent (1%) increase for the extension period, is hereby approved, and the Mayor or his designee is hereby authorized to exercise the City's option, as well as all additional undertakings related thereto, as may be necessary.

**SECTION 2.** This Ordinance shall become effective upon its passage by City Council and approval by the Mayor.

First Reading..... January 9, 2020  
Second Reading..... January 9, 2020  
Third Reading.....February 20, 2020

Passed by City Council,

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President of City Council

ATTEST: \_\_\_\_\_  
City Clerk

Approved this \_\_\_\_ day of \_\_\_\_\_, 2020.

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Mayor

**SYNOPSIS:** This Substitute Ordinance authorizes the City to exercise one (1) one-year extension option to extend Contract 20011PW - Sewer Maintenance - between the City of Wilmington and Brandywine Construction Company, Inc. for the period of July 1, 2020 to June 30, 2021, at an estimated price of One Million, Two Hundred Eighty-Five Thousand, Eight Hundred Eighty Dollars (\$1,285,880.00) plus a one percent (1%) increase for the extension period.

**FISCAL IMPACT STATEMENT:** The fiscal impact of this Substitute Ordinance is one (1) one-year contract extension for the period of July 1, 2020 to June 30, 2021, at an estimated price of One Million, Two Hundred Eighty-Five Thousand, Eight Hundred Eighty Dollars (\$1,285,880.00) plus a one percent (1%) increase for the extension period.

W0109560

# EXHIBIT A

Ad Number: 0003488053

Run Dates: 04/09/19, 04/16/19

The City of Wilmington will receive sealed bids  
at the Division of Procurement & Records, 5th Fl., Louis L. Redding Bldg.,  
800 French St., Wilmington, DE 19801 for:

**20011PW – SEWER MAINTENANCE**

And

**20012WD – WATER DISTRIBUTION SYSTEM MAINTENANCE**

**Pre-Bid Meeting:** Thursday, April 18, 2019, at 11:00 a.m., Louis L. Redding  
City County Building, 5th Floor Conference Room, 800 French Street, Wil-  
mington, DE 19801.

**Bid opening:** Tuesday, May 7, 2019, at 3:00 p.m., in the Finance Depart-  
ment Conference Room, 5th Floor, Louis L. Redding City/County Building,  
800 French Street, Wilmington, DE 19801.

Plans and Specifications may be obtained at the above address for the Divi-  
sion of Procurement & Records.

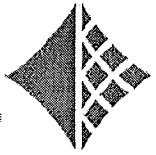
Philip Ceresini  
Purchasing Agent II  
Division of Procurement and Records  
Department of Finance

[pceresini@wilmingtonde.gov](mailto:pceresini@wilmingtonde.gov)  
[www.wilmingtonde.gov](http://www.wilmingtonde.gov)

4/9, 4/16-NJ

0003488053-01





**The News Journal**  
**Media Group**

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New Castle, DE 19720

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(800) 235-9100

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Wilmington, DE 19850

Legal Desk:  
(302) 324-2676  
Legal Fax:  
302 324-2249

SD CITY WILM PURCHASING DIV  
800 N FRENCH ST FL 5

WILMINGTON, DE 19801

DE,

## AFFIDAVIT OF PUBLICATION

**State of Delaware**

**New Castle County**

Personally appeared **The News Journal**

Of the **The News Journal Media Group**, a newspaper printed, published and circulated in the State of Delaware, who being duly sworn, depose and saith that the advertisement of which the annexed is a true copy, has been published in the said newspaper 2 times, once in each issue as follows:

04/09/19, 04/16/19 A.D 2019

Ad Number: 0003488053

Sworn and subscribed before me, this 16 day of April,  
2019

Legal notification printed at larger size for affidavit.





Classified Ad Receipt  
(For Info Only - NOT A BILL)

Customer: SD CITY WILM PURCHASING DIV

Address: 800 N FRENCH ST FL 5  
WILMINGTON DE 19801  
USA

Ad No.: 0003488053

Pymt Method Invoice

Net Amt: \$325.96

Run Times: 2

No. of Affidavits: 1

Run Dates: 04/09/19, 04/16/19

Text of Ad:

The City of Wilmington will receive sealed bids  
at the Division of Procurement & Records, 5th Fl., Louis L. Redding Bldg.,  
800 French St., Wilmington, DE 19801 for:

**20011PW – SEWER MAINTENANCE**

**And**

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Philip Ceresini  
Purchasing Agent II  
Division of Procurement and Records  
Department of Finance

[pceresini@wilmingtonde.gov](mailto:pceresini@wilmingtonde.gov)  
[www.wilmingtonde.gov](http://www.wilmingtonde.gov)

4/9, 4/16-NJ

0003488053-01

ADDENDUM #1

Contract 20011 PW - SEWER MAINTENANCE  
&  
Contract 20012WD - WATER DISTRIBUTION  
SYSTEM MAINTENANCE



- 
- A Bid Bond and Performance Bond are **NOT** required on either of the contracts listed above. Please disregard any reference to Bid and/or Performance Bond that appear in the documents:

ALL OTHER PROVISIONS OF THIS SOLICITATION REMAIN THE SAME.

Issued 23 April 2019 by the  
Procurement and Records Division, Department of Finance  
Louis L. Redding City County Building, 800 French Street  
Wilmington, DE 19801

## INSTRUCTIONS TO BIDDERS

1. Bids on **City Contract 20011PW – SEWER MAINTENANCE** will be publicly opened and read aloud in the 5<sup>th</sup> Floor Finance Department Conference Room, Louis L. Redding City/County Building, 800 French Street, Wilmington, Delaware, on **TUESDAY, MAY 7, 2019, AT 3:00 p.m.**
2. Proposals must be in triplicate, sealed in an envelope, and the envelope endorsed "**Bid for City Contract 20011PW – SEWER MAINTENANCE** " and addressed to the Department of Finance, Division of Procurement and Records, 5<sup>th</sup> Floor, Louis L. Redding City/County Building, 800 French Street, Wilmington, Delaware.
3. Any bid may be withdrawn prior to the schedule time for opening of bids or authorized postponement thereof. No bid may be withdrawn within thirty (30) calendar days after the actual opening thereof.
4. The successful bidder will be required to have or obtain an appropriate business license from the Department of Finance, Revenue Division, City of Wilmington, in order to be awarded the contract. Before obtaining a City of Wilmington Business License, all applicants must show proof of a current State of Delaware Business License.
5. No bid will be considered unless accompanied by a Certified Check (personal check, cashier's check, or treasurer's check are not acceptable) or a good and sufficient Bid Bond to the City of Wilmington in the amount of not less than 10 percent of the amount of the base bid, plus all additive alternatives, with Corporate Surety authorized to do business in the State of Delaware.
6. The Bid Bond must be accompanied by a certification attached hereto, issued by the Surety Company, qualified to do business in the State of Delaware, and satisfactory to the Owner, which certification contains the commitment of the Surety Company to execute a 100 percent Performance and/or Labor and Materials Bonds to cover the bidder's performance and its' payments of labor and materials if the bidder is successful and the contract is awarded to him. The successful bidder must furnish the above bond within ten days after the award of contract.
7. If a corporation, the successful bidder shall furnish a certificate from the State where it is incorporated, stating that it is a subsisting corporation. The corporation shall also furnish one (1) original and two (2) copies of the excerpts of the corporate minutes which grant authority to those who sign and attest the contract. The Corporate Seal shall be affixed where signatures are attested.
8. The successful bidder will be required to withhold City of Wilmington Wage Tax from their employees and withheld taxes paid to the City of Wilmington pursuant to the provisions of the Wilmington Wage Tax Law. This law applies to people living and/or working in the City of Wilmington.
9. Bidders are required to refer to the delinquent tax clause appearing on page GC-21 of the General Conditions.
10. The successful bidder certifies that they are not listed on the Federal Government, Excluded Parties List System ([www.sam.gov](http://www.sam.gov)). This will be verified by the City of Wilmington and if listed may be grounds for rejection of the bid or proposal.
11. Any person doing business or seeking to do business with the City shall abide by the following Global Sullivan Principles:
  - A. Support universal human rights and particularly, those of employees, the communities within which you operate, and parties with whom you do business.

- B. Promote equal opportunity for employees at all levels of the company with respect to issues such as color, race, gender, age, ethnicity, or religious beliefs, and operate without unacceptable worker treatment such as the exploitation of children, physical punishment, female abuse, involuntary servitude, or other forms of abuse.
- C. Respect employee's voluntary freedom of association.
- D. Compensate employees to enable them to meet at least their basic needs and provide the opportunity to improve their skill and capability in order to raise their social and economic opportunities.
- E. Provide a safe and healthy workplace; protect human health and the environment; and promote sustainable development.
- F. Promote fair competition including respect for intellectual and other property rights, and not offer, pay, or accept bribes.
- G. Work with governments and communities in which you do business to improve the quality of life in those communities -- their educational, cultural, economic, and social well-being -- and seek to provide training and opportunities for workers from disadvantaged backgrounds.
- H. Promote the application of these principles by those with whom you do business.

12. **Award and Execution of Contract**

- A. **Consideration of Proposals.** After the proposals are opened and read, they will be compared on the basis of the summation of the products of the approximate quantities shown in the bid schedule by the unit bid prices, unless the proposals states a different basis for comparing bids. In the event of a discrepancy between unit bid prices and extensions, the unit bid price shall govern.

Before awarding the contract, a bidder may be required to show that he/she has the ability, experience, necessary equipment, experienced personnel, and financial resources to successfully carry out the work required by the contract.

The right is reserved to reject any and/or all proposals, to waive technicalities, to advertise for new proposals, or to proceed to do the work otherwise, if in the judgement of the department the best interest of the City will be promoted thereby.

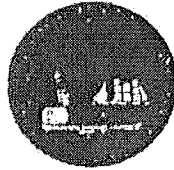
- B. **Award of Contract.** The award of the contract, if it be awarded, must be within thirty (30) calendar days after the opening of proposals to the lowest responsible and qualified bidder whose proposal complies with all the requirements prescribed. The successful bidder will be notified by letter mailed to the address shown on his proposals that his bid has been accepted and has been awarded the contract.
- C. **Cancellation of Award.** The City reserves the right to cancel the award of any contract at any time before the execution of said contract by all parties without any liability against the City.
- D. **Right to Audit.** The City Auditor or his designee shall have the right to audit the contract and any books, documents, or records relating thereto.

**Pre-Bid Meeting:** Thursday, April 18, 2019, at 11:00 a.m., Louis L. Redding City County Building, 5<sup>th</sup> Floor Conference Room, 800 French Street, Wilmington, DE 19801.

**20011PW**

**SEWER CONSTRUCTION**

**Prepared by:**

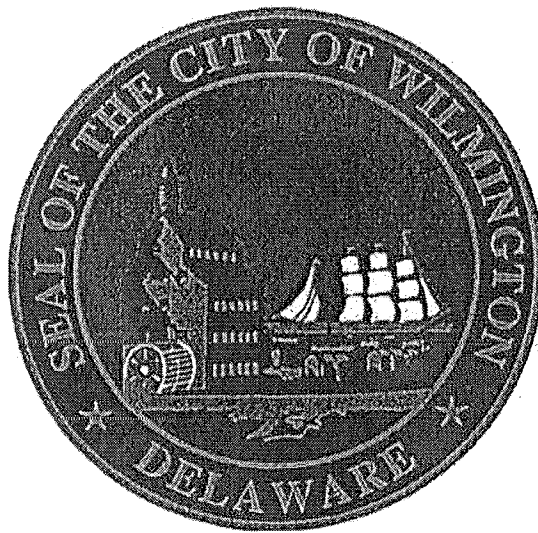


**City of Wilmington, DE  
Department of Public Works  
Sewer Division  
Louis L. Redding City/County Building  
800 North French Street – 6<sup>th</sup> Floor  
Wilmington, DE 19801**

**April 4, 2019**



# CITY OF WILMINGTON



## GENERAL CONDITIONS FOR CONSTRUCTION CONTRACTS

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# Construction Contracts

## Bidding Procedures

### DEFINITIONS OF TERMS

Whenever in these specifications and other contract documents the following terms or pronouns in place of them are used, their intent and meaning shall be interpreted as follows:

"City"	The City of Wilmington
"Owner"	The City of Wilmington
"Director"	The Director or Commissioner of the Department of the "City" for which the work is being done or his duly authorized representative.
"Manager"	The Manager, Department of Finance, Division of Procurement and Records.
"Contractor"	Party of the second part of the contract, acting directly or through his agents or employees.
"Work"	Any or all things agreed to be furnished or done by or on the part of the Contractor, and which are required in the construction and completion of the project herein contemplated, including also labor, materials and equipment.
"Engineer"	The City Engineer or his duly authorized representative.

All things contained or referred to herein, the Advertisement, the Instructions to Bidders, the General Conditions, the Special Provisions, the Specifications, the Proposal, the Contract, the Bond, the Plans, Addenda, as well as any other papers or bulletins referred to therein are hereby made a part of these specifications and contract, and are to be considered as one instrument constituting the "Contract Documents." The intent is to make them explanatory one or to the other but in the case of any inconsistency, the provisions of the Contract shall govern.

Whenever in these contract documents, the words "directed," "required," "prescribed," "permitted," "approved," "acceptable," "in the judgment of," and other words and phrases of like import, refer to the work or its performance, they shall be taken to mean and intend "directed," "required," "prescribed," "permitted," "approved," "acceptable," "in the judgment of," and the like by or to the Director.

The headings and subheadings printed in these specifications are intended for convenience or reference only and shall not be considered as having any particular bearing on the interpretation thereof.

### ESTIMATED QUANTITIES

Any estimates of quantities herein furnished by the Director are approximate only, and have been used by the Director as a basis of estimating the cost of the work, and will also be used for the purpose of tabulating and comparing the bids and awarding the contract. The Engineer has endeavored to estimate these quantities correctly, according to his knowledge and the information shown on the plans;

but it is not guaranteed that these estimated quantities are accurate, and if the Contractor, in making up and/or submitting his bid or bids, relies upon the accuracy of such estimated quantities, he does so at his own risk.

### **PROPOSAL FORM**

The Bidder will be furnished -- by the Manager -- with proposal forms which will show the approximate estimate of the various quantities of work to be performed and materials to be furnished under the unit and lump sum price items.

The Bidder shall submit his proposal on the forms furnished by the Manager. The blank spaces in the proposal shall be filled in correctly where indicated, for each and every item, and the Bidder shall state the prices (written in ink, in words and numerals) for which he proposes to do each item of the work contemplated. In case of discrepancy between the written figures and the numerals, the written figures shall govern.

The Bidder shall sign his proposal correctly. If the proposal is made by an **individual**, his name and post office address shall be shown. If made by a **firm or partnership**, the name and post office address of the firm or partnership, and of each member thereof, shall be shown. If a **corporation**, the successful bidder shall furnish a certificate from the Secretary of State or commonwealth where the firm is incorporated stating the company is a presently subsisting corporation of that state or commonwealth and the date of its incorporation.

Further, the successful bidder shall furnish an original and two copies of excerpts from the minutes of the corporation authorizing its President or Vice President to execute the necessary Contract on behalf of the Corporation, and an original and two copies of the resolution authorizing the Secretary or the Assistant Secretary to attest Contract Documents and the names of all officers qualified to sign for your company.

### **IRREGULAR PROPOSALS**

Proposals may be rejected if they show any omissions, alterations of form, additions not called for, conditional or alternative bides, or irregularities of any kind.

### **UNRESPONSIVE OR UNBALANCED BIDS**

To better insure fair competition, and to permit a determination of the lowest bidder, unresponsive bids or bids obviously unbalanced, may be rejected by the Manager.

### **FAMILIARITY WITH PROPOSED WORK**

The Bidder is required to examine carefully the site of the work, the proposal, the plans, specifications and other contract documents for the work contemplated and it will be assumed that he had familiarized and satisfied himself as to the conditions and obstacles to be encountered, as to the character, quality and quantities of work to be performed and materials to be furnished, and as to the requirements of these specifications, plans and other contract documents and he must be prepared to execute a finished job in every particular, without any extra charge whatever, except as may be specifically provided for elsewhere in these contract documents.

### **FAMILIARITY WITH LAWS, ETC.**

The Bidder is assumed to have made himself familiar with all Federal, State, Local, and municipal laws, ordinances, rules and regulations which in any manner affect those engaged or employed in the work, or the materials or equipment used in or upon the work, or in any way affect the work, and no plea of

misunderstanding will be considered on account of the ignorance thereof. If the Bidder or Contractor shall discover any provision in the plans, specification, or contract which is contrary to or inconsistent with any such law, ordinance, rule or regulation, he shall forthwith report it to the Engineer in writing.

#### INTERPRETATIONS OF ADDENDUM

If any person contemplating submitting a bid for this contract is in doubt as to the true meaning of any part of the plans, specifications, or other proposed contract documents, he may submit to the Director a written request for interpretation thereof. The person submitting the request will be responsible for the prompt delivery before one week prior to the date affixed for the opening of bids. Any interpretation of the proposed contract documents will be made only by Addendum duly issued, and a copy of such Addendum will be mailed directly to each person receiving a set of such documents. The City will not be responsible for any other explanation or interpretations of the proposed documents.

#### DELIVERY AND OPENING OF PROPOSALS

Proposals shall be submitted in triplicate with all blanks filled in. They shall be enclosed in sealed envelopes, endorsed, and delivered as stated in the Advertisement. If forwarded by mail, the above-mentioned envelope shall be enclosed in another envelope addressed to the Manager, Division of Procurement and Records, City/County Building, Wilmington, Delaware, preferably by registered mail. No responsibility shall be attached to any persons for the premature opening of any proposal not properly endorsed.

Proposals will be publicly opened and read aloud at the time and place stated in the Advertisement. Bidders or their authorized agents are invited to be present.

#### WITHDRAWAL OF PROPOSALS

Any bid may be withdrawn prior to the scheduled time for the opening of bids or authorized postponement thereof. No bid may be withdrawn within thirty (30) days after the actual opening thereof.

#### QUALIFICATIONS FOR BIDDERS

No contract will be awarded to any bidder who, in the judgment of the Manager, is not a responsible bidder, or is not prepared with all the necessary experience, capital, organization and equipment to conduct and complete work for which the bidder proposes to contract, in strict accordance with all terms and provisions of the contract documents.

In each instance when the qualifications of any bidder are questioned in any way, such bidder shall furnish information concerning his experience, capital, organization and equipment as may be required by the Owner within five (5) days after written notice from the Board to do so, and the information so furnished by the bidder, together with any other information received or possessed by the Owner, will be taken into consideration by the Manager in awarding the contract.

#### RIGHT TO REJECT BIDS

The Manager expressly reserves the right to reject any or all bids, or to accept any bid, and/or to waive technicalities as he may deem to be in the best interest of the City. The successful bidder will be required to have or obtain an appropriate Business License from the Department of Finance, Earned Income Tax Division, of the City of Wilmington in order to be awarded the contract.



### MATERIAL SAMPLES

Before any contract is awarded, the Bidder may be required to furnish a complete statement of the origin, composition and manufacture of any and all materials to be used in the work, together with samples, which samples may be subjected to the tests provided for in these specifications to determine their quality and fitness for the work.

### AWARD AS AN ENTIRETY

While bids are asked for by items, the contract will not be awarded by items, but will be awarded as an entirety, on the basis of the "Bid Total," which total must be the aggregate sum of the bids on all items figured at the unit and lump sum prices bid. Bidders shall bid on all items.

### CONTRACT BOND

The successful bidder must furnish, within ten (10) days after the award, a Performance Bond and/or Labor and Materials for 100% of the total cost of the Contract Price, in triplicate, with corporate surety authorized to do business in the State of Delaware, the form and surety to be approved by the City Solicitor, with a Warrant of Attorney to confess judgment thereon attached thereto.

Whenever surety or sureties on the bond so furnished in accordance with the preceding paragraph shall be deemed by the Owner to be insufficient or unsatisfactory, he may, in his discretion, within ten (10) days after notice to that effect, mail to the address of the Contractor, require the Contractor to furnish and deliver a new bond in the same penalty and on the same conditions, with surety satisfactory to the Owner, and this duty shall continue on the part of the Contractor whenever and so often as the Owner shall require a new bond with a satisfactory surety or sureties. Upon failure of the Contractor to furnish the aforesaid new bond within ten (10) days after said notice is mailed to his address, the Owner may withhold all payments due to the Contractor, stop all further work under said Contract, and re-let the unfinished work at the expense of the Contractor, in any manner in which it may deem best to protect the interests of the City.

### EXECUTION OF CONTRACT

The successful bidder will be required promptly to execute a formal contract upon blank forms with proper insertions furnished by the Owner. Successful bidder will insert on the first page of the contract the date of the day the contract is executed by his company. All copies of the Contract and Bond must be properly executed by qualified officers of the company and the Corporate Seal affixed thereto.

### FAILURE TO EXECUTE CONTRACT AND BOND

Failure to enter bond in a sum equal to the full amount of the award or to execute the contract within ten (10) days after written notice of the award, shall be just cause for the annulment of the award, and it is understood by the Bidder, in the event of the annulment of the award, that the amount of the certified check with the proposal may be forfeited to the use of the City, not as a penalty, but as liquidated damages.

### COMMENCEMENT OF WORK

Work at the site shall be commenced within ten (10) days after the date of the contract and bond and shall be completed within the time stated in the proposal.

#### AVAILABILITY OF FUNDING

The Contract shall be subject to the availability of funding approved by the Wilmington City Council. Contractor shall not exceed the total value of the City of Wilmington's purchase order for this Contract.

#### AWARD AND EXECUTION OF CONTRACT

1. **Consideration of Proposals.** After the proposals are opened and read, they will be compared on the basis of the summation of the products of the approximate quantities shown in the bid schedule by the unit bid prices, unless the proposals states a different basis for comparing bids. In the event of a discrepancy between unit bid prices and extensions, the unit bid price shall govern.

Before awarding the contract, a bidder may be required to show that he/she has the ability, experience, necessary equipment, experienced personnel, and financial resources to successfully carry out the work required by the contract.

The right is reserved to reject any and/or all proposals, to waive technicalities, to advertise for new proposals, or to proceed to do the work otherwise, if in the judgment of the department, the best interest of the City will be promoted thereby.

2. **Award of Contract.** The award of contract, if it be awarded, must be within thirty (30) calendar days after the opening of proposals to the lowest responsible and qualified bidder whose proposal complies with all the requirements prescribed. The successful bidder will be notified by letter mailed to the address shown on his proposal that his bid has been accepted and has been awarded the contract.
3. **Cancellation of Award.** The City reserves the right to cancel the award of any contract at any time before the execution of said contract by all parties without any liability against the City.

## **Construction Contracts**

### **General Conditions**

#### **COMPENSATION AND LIABILITY INSURANCE**

Except as otherwise provided by law, the Contractor shall, at all times, maintain and keep in force such insurance as will protect him from claims under workmen's compensation acts, also such insurance will protect him and the City from any other claims for damages for personal injuries, including death, which may arise from operations under this contract, whether such operations be by the Contractor or by any subcontractor or anyone directly or indirectly employed by any of them, in any amount specified by the Chief Engineer of the Department of Public Works. The Contractor shall also, at all times, maintain and keep in force such insurance, in an amount specified by the Chief Engineer of the Department of Public Works, as will protect him and the City, its agents and employees from all suits, actions, claims, demands, damages, losses, expenses, and/or costs of every kind and description to which the City may be subjected or put by reason of injury (including death) to persons or property resulting from the manner or method employed by the Contractor, his agents and employees, or subcontractors, or from any neglect or default of the Contractor, his agents, employees, or subcontractors, in the performance of this contract, or any part thereof, or from, by, or on account of any act or omission of the Contractor, his agents and employees, or subcontractors, and whether such suits, claims, actions, demands, damages, losses, expenses, and/or costs be against, suffered, or sustained by other corporations and persons to whom the City, its agents and employees, may become liable therefor.

#### **LIABILITY OF CONTRACTOR**

Whenever the Contractor is required by the existing State, Federal, local or municipal law, ordinance, rules or regulations, or by any State, Federal, local, or municipal laws, ordinances, rules or regulations that may be enacted hereafter pertaining to the work to be done under this contract, to secure any permits or licenses to carry on any operation or operations in connection with the performance of the contract and/or to act under the direction or supervision of a City official and/or employee in connection with any such operation or operations, the Contractor shall be solely liable for all suits, actions, costs and damages of every kind and description resulting or which may result, directly or indirectly, from any such operation or operations and shall indemnify and save harmless the City from any and all suits, actions, costs, and damages of every kind and description arising or which may arise, directly or indirectly from the said operation or operations.

#### **INDEMNIFICATION OF THE CITY**

The contractor shall pay, indemnify, and save harmless the City, its agents and employees from all suits, actions, claims, demands, damages, losses, expenses, and/or costs of every kind and description to which the City may be subjected or put by reason of injury (including death) to persons or property resulting from the manner or method employed by the Contractor, his agents and employees, or subcontractors, or from neglect or default of the Contractor, his agents and employees or subcontractors in the performance of this contract or any part thereof or from, by, or on account of any act or omission of the Contractor, his agents and employees, or subcontractors, and whether such suits, actions, claims, demands, losses, expenses, and/or costs against, suffered, or sustained by the City, his agents and employees, may become liable therefor, and the whole, or so much of the monies due, or become due the Contractor under this contract or any other contract as may be considered necessary by the Engineer may be retained by the City until such suits or claims for damages shall have been settled or otherwise disposed of the satisfactory evidence to that effect furnished to the Engineer.

## **PATENTS**

Whenever any article, material, mean, appliance, process, composition, combination, or thing called for by these specifications is covered by Letters Patent, the successful bidder must secure, before using or employing such article, material, mean, appliance, process, composition, combination, or thing, the assent, in writing, of the Owner or Licensee of such Letter Patent and file the same with the Engineer.

The said assent is to cover not only the use, employment, and incorporation of said articles, materials, means, appliances, processes, compositions, combinations, or things in construction and completion of the work, but also the permanent use of said articles, materials, means, appliances, processes, compositions, combinations, or things, thereafter, by or on behalf of the City in the operation and maintenance of the project for the purpose for which it is intended or adapted.

The Contractor shall be responsible for any claims made against the City or any of its agents and employees for any actual or alleged infringement of patents by the use of patented articles, materials, means, appliances, processes, compositions, combinations, or things, in the construction, completion, and the use of the work, and shall save harmless and indemnify the City and its agents and the employees' fees which the City may be obliged to pay by reason of any actual or alleged infringement of Patents used in the construction, completion, maintenance, operation of the work and projects herein specified.

## **SCOPE OF WORK**

The work to be done under these specifications is to cover the completed work shown on the plans or called for in the specifications and other contract documents. The Contractor shall furnish all implements, machinery, tools, equipment, materials, and labor necessary to the performance of the work and shall furnish and do everything necessary to make the work perfect, complete, neat, and finished, and the Contractor shall leave all the work to be done under this contract in this condition at the time the work is finally inspected.

## **PERMITS, LICENSES, CHARGES, AND NOTICES**

The Contractor shall procure all permits and licenses, pay all royalties, charges, and fees, and give all notices necessary and incident to the due and lawful prosecution of the work.

## **ENGINEER MAY INCREASE OR DECREASE QUANTITIES**

The Engineer reserves the right to increase or diminish the amount of quantity of any unit price item included in the Bid or Proposal, wherever he deems it advisable or necessary so to do, and such increase or diminution shall in no way vitiate the contract.

The Contractor shall be paid for the actual amount of quantity of authorized work done or materials furnished under the unit price item of the "Bid or Proposal" at the price bid stipulated for such item. In case the amount of quantity of any item is increased as above provided, the Contractor shall not be entitled to any damages, or increased compensation over and above the price bid for such item, and in case the amount of quantity of any item is diminished as above, provided, the Contractor shall not have any claim for damages on account of loss of anticipated profits or otherwise, because of such diminution.

## **EXTRA WORK**

The Contractor shall perform extra work, for which there is no quantity and price, included in the contract, whenever, to complete fully the work contemplated, it is deemed necessary or desirable, by written authority of the Engineer, and such extra work shall be done in accordance with the

specifications therefore, or in the best workmanlike manner as directed. This extra work will be paid for at a unit price or lump sum to be agreed upon previously, in writing, by the Contractor and the Engineer, or where such a price or sum cannot be agreed upon by both parties, or where this method of payment is impracticable, the Engineer may order the Contractor to do such work on a "force account" basis.

#### FORCE ACCOUNT WORK

All extra work done on a "force account" basis will be paid for in the following manner:

1. For all labor and foremen in direct charge of the specific operation, the Contractor shall receive the rates of wage applicable to this contract, for each and every hour that said labor and foreman are actually engaged in such work.
2. For all material used, the Contractor shall receive the actual cost of such materials, as shown by original receipted bills.
3. An additional amount of twenty-five percent (25%) of the total cost of labor and materials of 1 and 2 above shall be added to allow for profit and overhead of subcontractors and a Contractor.
4. For any machine-power tools or equipment and for any hauling equipment, including fuel and lubricants, which it may be deemed necessary or desirable to use, the Engineer shall allow the Contractor a reasonable rental price, to be agreed upon in writing before such work is begun, for each and every hour that said tools or equipment are in use or on such work, and to its sum no percentage shall be added.

The compensation as herein provided shall be received by the Contractor as payment in full for extra work done on a "force account" basis, and shall include superintendents, use of tools and equipment to which no rental is allowed, and profit. The Contractor's representative and the Inspector shall compare records of extra work on a "force account" basis at the end of each day. Copies of these records shall be made in duplicate, upon the Engineer's "force account" forms provided for this purpose by the Inspector and signed by both the Inspector and the Contractor's representative, one copy being forwarded respectively to the Engineer and to the Contractor. All claims for extra work done on a "force account" basis shall be submitted to the Engineer by the Contractor upon certified triplicate statements, which shall also include the value of all material used in such work, and following that in which the work was actually performed and shall include all labor charges, etc., and material charges insofar as they can be verified.

Should the Contractor refuse or fail to prosecute the work as directed or submit his claim as required, the Engineer may withhold payment of all current estimates until the Contractor's refusal or failure is eliminated, or after giving the Contractor due notice, the Engineer may make payment for said work on the basis of reasonable estimate of the value of the work performed.

On extra work as defined in this paragraph, the Contractor will be reimbursed for his expenditures for Workmen's Compensation Insurance, Social Security taxes, and Unemployment Compensation covering the men actually engaged upon such work. No percentage will be added to such payments, but the Contractor shall be entitled to receive only the actual amount of money expended for such Workmen's Compensation Insurance, Public Liability Insurance, Social Security taxes, and Unemployment Compensation. Such payments shall be based upon the prevailing standard insurance

rates support by receipted vouchers from the insurance vendors and upon the actual amount of taxes paid for Social Security and Unemployment Compensation as evidenced by proper documents furnished by the Contractor.

#### **EXTENSION OF TIME**

Should the Contractor allege to be delayed in the completion of the work by the act, neglect, or default of the Owner, Engineer or any other contractor employed by the Owner under the work, or by damage, caused by fire, flood, or other casualty for which the Contractor is not responsible, he may petition that the time fixed for completion of the work will be extended for a period equivalent to the time lost by any or all that causes aforesaid, which extended period shall be determined and fixed by the Engineer, but no such allowance will be made unless a claim therefore is presented in writing to the Engineer within five (5) days of the occurrence of such delay, and then only when granted in writing with the signature of the Engineer.

#### **UNAUTHORIZED WORK**

Work done beyond the lines and grades shown on the plans or as given, except as herein provided, or any extra work done without written authority, will be considered as unauthorized and at the expense of the Contractor and will not be measured by the Engineer or paid for by the City. Work so done may be ordered removed and replaced by the Engineer at the Contractor's expense.

#### **PROSECUTION OF WORK**

The Contractor shall begin work to be performed under the contract within ten (10) days after the date of the contract. The place where the work is to be started will be designated on the ground by the Engineer. The work shall be prosecuted from as many different points, in such part or parts and at such time as may be directed, and shall be conducted in such a manner and with sufficient materials, equipment, and labor as is considered necessary to insure its completion within the time set forth in the contract.

Should the prosecution of the work for any reason be discontinued by the Contractor with the consent of the Engineer, he shall notify the Engineer at least twenty-four (24) hours before again resuming operations.

#### **EMPLOYEES AND EQUIPMENT**

Any employees of, or person connected with the Contractor, who shall use profane or abusive language to the Inspector, or other employees of the City, or otherwise interfere with him in the performance of his duties, or shall disobey or evade his instructions, or who is careless or incompetent, or is objectionable to the City authorities, shall be discharged on the request of the Engineer, and shall not again be employed without his consent.

The Contractor shall furnish such equipment as is considered necessary by the Engineer for the prosecution of the work in an acceptable manner and at a satisfactory rate of progress. Equipment used on any portion of the work shall be such that no injury to adjacent work or property will result from its use.



### COOPERATION OF CONTRACTOR AND REPRESENTATIVE

The Contractor shall give the work his constant attention to facilitate the progress thereof and shall cooperate with the Engineer in every way possible. The Contractor shall have at all times competent and reliable English-speaking representatives on work, authorized to receive orders and act for him.

### LAWS TO BE OBSERVED

The Contractor at all times shall observe and comply with all Federal, State, local and municipal laws, ordinances, rules, and regulations in any manner effecting the work, and all such orders or decrees as exist at present and those which may be enacted later, of bodies or tribunals having any jurisdiction or authority over the work, and shall indemnify and save harmless the City and all its officers, agents, and servants against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, rule, order, or decree, whether such violations be by the Contractor, or any subcontractor, or any of their agents, and/or employees.

### SANITARY PROVISIONS

The Contractor shall provide and maintain a neat sanitary condition, such sanitary conveniences and accommodations for the use of his employees as may be necessary to comply with the requirements and regulations of the Department of Health or of other bodies or tribunals having jurisdiction thereof. He shall commit no public nuisance.

### WATER SUPPLY

Where water directly from the City-owned water mains is available, it will be supplied to the Contractor upon request and approval, at regular meter and/or rental rates, at the nearest available hydrant or outlet, and no other water shall be used for any purposes connected with the contract, except by permission of the Engineer.

The Contractor will be required to provide approved, standard tight hose, and fittings with which to make connection to hydrants and outlets. No improper, wasteful, or undue use of water will be permitted.

The Contractor shall procure from the Water Department a regular wrench for use on hydrants and no other wrench shall be used. He shall conform to all the rules and regulations of the Water Department in connection with the use of water hydrants, pipes, etc.

Where water directly from the City-owned water mains is not available, the Contractor shall, at his own cost and expense, provide such quantities of clean water as may be required for any and all purposes under the contract. He shall supply sufficient drinking water to allow his employees, but only from such sources as are approved by the Engineer and no other water shall be used for drinking purposes.

### PUBLIC CONVENIENCE AND SAFETY

The Contractor at all times shall conduct the work in such a manner as to insure the least obstruction to traffic practicable. The convenience of the general public and of the residents and occupants of property along and adjacent to the work shall be provided for in an adequate and satisfactory manner. Materials stored upon highway shall be placed so as to cause as little obstruction to the traveling public as is considered necessary. Fire hydrants on or adjacent to the work shall be kept accessible to fire apparatus at all times, and no material or obstruction shall be placed within fifteen (15) feet of any such hydrant. Footways and portions of highways and streams adjoining the work under construction shall not be obstructed more than is absolutely necessary. All gutters and sewer inlets shall be kept

unobstructed at all times. In no case, shall any traveled thoroughfare be closed without permission of the Engineer.

#### MAINTENANCE OF TRAFFIC

The Contractor shall submit a maintenance of traffic plan for approval by the Engineer seven (7) days prior to start of work. The maintenance of traffic plan shall contain only approved traffic control devices and methods of operation in accordance with the State of Delaware "Manual on Traffic Control for Street/Highway Construction and Maintenance Operations." The Contractor shall not perform any work until the maintenance of traffic plan has been approved in writing by the Engineer.

The Contractor shall not enter upon private property for any purpose without obtaining permission, and shall be responsible for the preservation of all public and private property, trees, monuments, etc., along and adjacent to the work and shall use every precaution necessary to prevent damage or injury to property or persons. He shall use suitable precautions to prevent damage to pipes, conduits, and other underground structures and shall protect carefully from disturbances or damage of all and monuments and property marks until an authorized agent has witnessed or otherwise referenced their location, and shall not remove them until directed. The Contractor shall not willfully nor maliciously injure or destroy trees or shrubs and shall not remove or cut them without proper authority. He shall be strictly responsible for any and all damage or injury of every kind and description, which directly or indirectly may be done to any property or sustained by any persons during the prosecution of the work resulting from any wrongdoing, misconduct, want of skill, or any negligence of himself or his agents and/or employees, or at any time due to defective work or materials. Where or when any direct or indirect damage or injury is done to public or private property by or on account of any act, omission, neglect, or misconduct in the execution of the work or in consequence of the non-execution thereof on part of the Contractor, he shall restore, at his own expense, such property to a condition similar or equal to that existing before such damage or injury was done by repairing, rebuilding, or otherwise restoring as may be directed, or he shall make good such damage or injury in an acceptable manner. In case of the failure on the part of the Contractor to restore such property, or make good such damage or injury, the Engineer may, upon three (3) days notice, proceed to repair, rebuild, or otherwise restore such property as may be deemed necessary, and the cost thereof may be deducted from any monies due or which may become due to the Contractor under this contract.

#### DAMAGE TO UTILITIES

Should the Contractor or his workmen in the execution of this contract cause damage to any underground construction, such as water, telephone, electric, and police conduit, such damage shall be repaired or replaced by the Contractor at his own expense and under the direction of the Engineer; or such repairs to the damaged utility or utilities may be made by employees of the respective utility company or companies whose underground structure was damaged by the Contractor or his workmen and such costs for these repairs shall be paid by the Contractor.

#### CONTRACTOR'S RESPONSIBILITY FOR WORK

Until the final acceptance of all work, as indicated in writing by the Engineer, it shall be under the charge of and care of the Contractor and he shall take every precaution against the destruction, injury or damage to the work or to any part thereof by the action of the elements or from any other cause whatsoever. The Contractor shall rebuild, repair, restore, and make good, at his own expense, all destruction of, injuries or damages to the work, or any portion thereof, occasioned by any of the above causes before its final completion and acceptance as indicated in writing by the Engineer.

### SUPERVISION BY ENGINEER

The work is to be carried out under the supervision of the Engineer to his entire satisfaction. The work and materials shall be strictly of the best quality of the kinds specified herein, and should any work or materials other than those specified as shown be introduced into the construction of the work, the Engineer, or his authorized agent, shall have full power to reject them, and they shall be removed from the premises in three (3) days by the Contractor after being notified to do so.

### AUTHORITY OF ENGINEER

The Engineer shall in all cases determine the amount of quantity, quality, acceptability of the work and materials which are to be paid for under this contract and shall decide all questions in relation to said work and the performance thereof; and shall, in all cases, decide questions which may arise relative to the fulfillment of the contract to the obligations of the Contractor thereunder.

### AUTHORITY AND DUTIES OF INSPECTORS

Inspectors employed by the Owner shall be authorized to inspect all work done and materials furnished. Such inspection may extend to all or part of the work to the preparation or manufacture of the materials to be used. An inspector will be stationed on the work to report to the Engineer as to the progress of the work and the manner in which it is being performed; also to report whenever it appears that the materials furnished and the work performed by the Contractor fail to fulfill the requirements of the specifications and contract, and to call to the attention of the Contractor any such failure or other default, but no inspection, nor any failure to inspect, at any time or place, however, shall relieve the Contractor from any obligation to perform all of the work strictly in accordance with the requirements of the specifications. In case of any dispute arising between the Contractor and the Inspector as to materials furnished or the manner of performing the work, the Inspector shall perform such other duties as are assigned to him. He shall not be authorized to revoke, alter, enlarge, relax, or release any requirements of these specifications, not to approve or accept any portion of the work, nor interfere with the management of the work by the Contractor. Any instructions which the Inspector may give the Contractor shall in no way be construed as binding by the Engineer or the City in any way, nor releasing the Contractor from the fulfillment of the terms of the contract.

### INSPECTION OF MATERIALS AND WORK

The Contractor shall furnish the Engineer with every reasonable facility for ascertaining whether or not the work as performed is in accordance with the requirements and intent of the specifications and contract. If the Engineer requests it, the Contractor, at any time before acceptance of the work, shall remove and/or uncover such portions of the finished work as may be directed. After examination, the Contractor shall restore said portions of the work to the standards required by the specifications. Should the work thus exposed or examined prove acceptable, the uncovering, removing, replacing the covering, and/or making good the parts removed shall be paid for as "Extra Work," but should the work exposed or examined prove unacceptable, either in whole or in part, the uncovering, removing, replacing of the covering and/or making good of the parts removed, shall be at the Contractor's expense.

### DEFECTIVE MATERIALS AND WORK

All materials not conforming to the requirements of these specifications shall be considered defective, and all such materials, whether in place or not, shall be rejected and shall be removed immediately from the work unless otherwise permitted. No material which has been rejected, the defects of which have been corrected or removed, shall be used until approval has been given. All work which has been rejected or condemned shall be remedied, or if necessary, removed and replaced in an acceptable manner by the Contractor at his own expense.

### FAILURE TO REMOVE AND RENEW DEFECTIVE MATERIALS AND WORK

Should the Contractor fail or refuse to remove and renew any defective materials used or work performed previously, or to make any necessary repairs in an acceptable manner, and in accordance with the requirements of these specifications, within the time indicated in writing, the Engineer shall have the authority to cause the unacceptable or defective materials or work to be removed and renewed for such repair to be made at the Contractor's expense. Any expense incurred by the City in making these removals, renewals, or repairs, which the Contractor has failed or refused to make, shall be paid out of the monies due or which are to become due to the Contractor, or may be charged against the "Contract Bond" deposited; and continued failure or refusal on the part of the Contractor to make any or all necessary repairs, removals and renewals, promptly, fully, and in an acceptable manner shall be sufficient cause for the City to declare the contract forfeited, in which case, the City at its option may be required to perform the work, or may contract with any other individual, firm, or corporation to perform the work. All costs and expenses incurred thereby shall be charged against the defaulting contractor, and the amount thereof deducted from any monies due or to become due him and/or shall be charged against the "Contract Bond" deposited. The performance of any work by the City and/or others as specified shall not relieve the contractor in any way from his responsibilities under this contract.

### CLEANING UP

The Contractor shall at his own expense, keep the sites of his operations clean during the construction and remove all rubbish as it accumulates.

Upon failure of the Contractor to keep sites of his operation clean to the satisfaction of the Engineer, the City may upon twenty-four (24) hours notice to the Contractor, remove any rubbish, materials, earth, etc., which the Engineer may deem necessary, charging the cost thereof to the Contractor and may deduct the amount from any monies that may be due him. On or before the completion of the work, the Contractor shall, without charge therefore, tear down and remove all his buildings and temporary structures built by him, shall remove all rubbish of all kinds from any grounds which he has occupied, and shall leave the site of the work in a clean and neat condition.

### TEMPORARY SUSPENSION OF WORK

The Engineer shall have the authority to suspend the work, wholly or in part, for such a period or periods as he may deem necessary, due to unsuitable weather, or such other conditions as are considered unfavorable for the suitable prosecution of the work, or for such time as is necessarily due to the failure on the part of the Contractor to carry out orders given or perform any or all provisions of the contract. If it should become necessary to stop work for an indefinite period, the Contractor shall store all materials in such a manner that they will not obstruct or impede the traveling public unnecessarily, nor become damaged in any way, and he shall take every precaution to prevent destruction, damage, or deterioration of the work performed to provide suitable roof drainage, and erect temporary cover where necessary. The Contractor shall not suspend the work without authority. Neither the failure of the Engineer to notify the Contractor to suspend work on account of bad weather, or other unfavorable conditions, nor permission by the Engineer to continue work during bad weather or other unfavorable conditions, shall be a cause for the acceptance of any work which does not comply in every respect with the contract and specifications.

### ANNULMENT OF CONTRACT

If the Contractor fails to begin the work under the contract within the time specified, or fails to perform the work with sufficient materials to insure proper completion of said work, except in cases for which an extension of time is provided, or shall perform the work unsuitably or neglect or refuse to promptly remove materials or again promptly perform such work as shall be rejected as defective or of unsuitable

or shall discontinue the prosecution of the work, or if the Contractor becomes insolvent or to be declared bankrupt, or commit any act of bankruptcy or insolvency, or allow any final judgment to stand against him unsatisfied for a period of forty-eight (48) hours or shall make an assignment for the benefit of creditors or shall fail to make prompt payment for all subcontractors and/or material, for material and/or labor supplied, or shall persistently disregard any State, Federal, local or municipal laws, ordinances, rules, or regulations pertaining to the work or shall disregard the instructions of the Engineer, or from any other cause whatsoever shall not carry on the work in an acceptable manner, the Engineer may give notice in writing, mailed to the Contractor and/or Surety of such delay, neglect, default, specifying same, and if the Contractor within the period of three (3) days after such written notice is mailed, shall not proceed in accordance with same, then the City shall upon written certificate from the Engineer of the fact such delay, neglect, or default, and the Contractor's failure to comply with such notice, have full power and authority without prejudice to any of its other rights or remedies and without violating the contract, to terminate the employment of said Contractor and to take prosecution of the work out of the hands of said Contractor and to take possession of the premises and to appropriate the use of any or all materials, appliances, and equipment on the premises, and may enter into an agreement for the completion of said contract according to the terms and provisions thereof, or use such other methods as in its opinion, shall be deemed expedient and necessary for the completion of said contract in accordance with the plans and specifications, and within such time as in the judgment of the City, the public interests may require. In the event of any of the aforementioned circumstances arising at any time or times, the City shall have the right to withhold, without the payment of interest, any sum or sums of money due or to become due the Contractor until the interests of the City have been fully protected to the satisfaction of the Engineer. All costs and expenses incurred by the City together with the cost of completing the work under the contract, including the cost of additional managerial and administrative services, if any, shall be deducted from the monies due or which may become due said Contractor. In the case of expense so incurred by the City shall be less than the sum which would have been payable under the contract if it had been completed by said Contractor, then the said Contractor shall be entitled to receive the difference; and in case such expense shall exceed the sum which would have been payable under the contract, Contractor and/or Surety shall be liable therefor, and shall pay the amount of the differences to the City within ten (10) days after written notices mailed to the Contractor and/or Surety. The expense, loss, or damage, including the cost of additional managerial and administrative services, if any, incurred by the City through the Contractor's default shall be certified by the Engineer, and such certification shall be conclusive and recognized and accepted as the correct amount of the loss sustained by the City and all parties concerned.

#### MEASUREMENT OF QUANTITIES

All work completed under the contract shall be measured by the Engineer according to the United States Standards of Measures.

#### MATERIALS AND WORK NOT PAID FOR BY THE CONTRACTOR

When written notice is given to the Engineer before or within ten (10) days after the completion and conditional acceptance of the entire work under the contract by persons having done work or furnished materials for such contract that there is money due and unpaid for said work and materials, the Contractor shall furnish the Engineer with satisfactory evidence that said money has been fully paid for satisfactorily secured by him. In case such evidence is not furnished as aforesaid, such amounts as may be necessary to meet the claims of the persons or aforesaid may be retained from any monies due the Contractor under the contract until the liabilities aforesaid shall be fully discharged or such notices withdrawn. The City or the Engineer may also, with the written consent of the Contractor, use any money retained, due or become due under the contract, for the purpose of paying for both labor and materials for the work, for which claims have been filed in the office of the Engineer.

### NO ESTOPPEL OR WAIVER OF LEGAL RIGHTS

The City, or the Engineer, shall not be precluded or estopped by any measurement, estimate, or certificate made or given by them, or by any agent or employee of the City, under any provision or provisions of the contract, at any time, either before or after the completion and acceptance of the work and payment therefor, pursuant to any measurement, estimate or certificate from showing the true and correct amount and character of the work performed and materials furnished by the Contractor or from showing at any time that any such measurement, estimate, or certificate is untrue or incorrectly made in any particular, or that the work or materials or any part thereof, do not conform in fact to specifications and contract, and the Engineer shall have the right to reject the whole or any part of the aforesaid work or materials, should the said measurement, estimate, or certificate or payment be found or be known to be inconsistent with the terms of the contract, or otherwise improperly given, the City shall not be precluded and estopped, notwithstanding any such measurement, estimate, certificate, and payment in accordance therewith from demanding and recovering from the Contractor and his Surety such damages as it may sustain by reason of his failure to comply with terms of the specifications and contract. Either the acceptance by the City, the Engineer, or any agent or employee of the City, nor any certificate by the City for payment of money, nor any payment for, nor acceptance or use of, the whole or any part of the work, by the City or the Engineer, nor any extension of time, nor any possession taken by the City or its employees, shall operate as a waiver of any portion of the contract, or of any power herein reserved by the City, or any right to damages herein provided, nor shall any waiver of any breach of the contract be held to be a waiver of any other or subsequent breach.

### SUBCONTRACTORS

The Contractor shall give his personal attention to the faithful performance of the work, shall keep the same under his control, and shall not assign the contract by power of attorney or otherwise, nor sublet the work or any part thereof, without the previous written consent of the Engineer; he shall state to the Engineer in writing the name of each subcontractor he intends employing, the portion of work which he is to do or the materials which he is to furnish, his place of business and such other information as the Engineer may require, in order to know whether or not said subcontractors are reputable and reliable and able to perform the work or to furnish the materials as called for in the specifications. No subcontractor shall be engaged upon any branch of the work who is not thoroughly practical and responsible and at the time of making this contract, conducting business in the particular branch or trade for which he is employed.

The Contractor shall not, either legally or equitably, assign any of the monies payable under the contract, or his claims thereto, unless by and with the consent of the Engineer.

The Contractor shall not be released from any of his liabilities or obligations under this contract should any subcontractor or subcontractors fail to perform in the satisfactory manner the work undertaken by him or them.

The Contractor agrees that he is fully responsible to the City for the acts or omissions of his subcontractor, and of persons either directly or indirectly employed by them, as he is for the acts or omissions of persons directly or indirectly employed by him.

Subcontracts, if any, shall be let promptly after the signing of the contract.

Nothing contained in the contract shall create any contractual relation between any subcontractor and the City.

The Contractor shall furnish the City with a written list of all subcontractors, if any, to be used in connection with this contract. The City reserves the right to reject the use of any subcontractors for any reason whatsoever.

#### CLAIMS TO BE MADE PROMPTLY

Should the Contractor be of the opinion, at any time or at times, that he is entitled to any additional compensation whatsoever (over and above the compensation stipulated in these contract documents or for quantities and/or amounts over and above the quantities and/or amounts allowed or approved by the Engineer), the damages, losses, costs, and/or expenses alleged to have been sustained, suffered, or incurred by him in connection with the project herein contemplated, he shall, in each instance, within five (5) days after such alleged damages, losses, costs, and/or expenses shall have been sustained, suffered, or incurred, make a written claim therefor to the Engineer. On or before the fifteenth (15th) day of the calendar month succeeding that in which such damages, losses, costs, and/or expenses shall have been sustained, suffered, or incurred, the Contractor shall file with the Engineer a written, itemized statement of the detailed amounts of each such claim or damage, loss, cost, and/or expense and unless such claim for such additional compensation shall be held and taken to be absolutely invalidated, and he shall not be entitled to any compensation on the account of each such alleged damage, loss, cost, and/or expense.

The provisions of this section shall be held and taken to constitute a condition precedent to the right of the Contractor to recover; they shall also apply to all claims by the Contractor in any way relating to the complete project; and even though the claims and/or work involved may be regarded as "outside the contract."

It is understood and agreed, however, that nothing in this section contained shall be held or taken to enlarge in any way the rights of the Contractor or the obligations of the City under these contract documents.

#### EXTRA WORK A PART OF THE CONTRACT

No order for extra work nor the doing of any extra work, at any time or place, shall in any manner or to any extent relieve the Contractor or the Surety of his bond from any of their obligations under the contract documents; all extra work orders being given and all extra work being done, under, and in accordance with the contract are to be considered a part of the same and subject to each and every one of the terms and requirements of the contract documents, and fully covered by the bond and furnished by the Contractor.

#### SCOPE OF PAYMENT

The Contractor shall receive and accept the compensation, as provided in the Bid or Proposal, in full payment for furnishing all materials, labor, tools, and equipment and for performing all work contemplated and embraced under the contract. Also for all loss of damages arising out of the nature of the work, or from the action of the element or from any unforeseen difficulties or obstructions, which may arise or be encountered during the prosecution of the work, until its final acceptance by the City, and for risks of every description connected with the prosecution of the work, until its final acceptance by the City, and for all risks of every description connected with the prosecution of the work, also for all expenses incurred by, or in consequence of the suspension or discontinuance of the prosecution of the work as herein specified, and for any actual or alleged infringement of patent, trade name, or copyright and for completing the work and the whole thereof, in an acceptable manner according to the plans and specifications. The payment of any current or final estimate, or of any retained percentage, shall in no way or in a degree, prejudice, or affect the obligations of the Contractor, at his own cost and expense, to renew or replace any defects and imperfections in the construction of the work or in the strength of the quality of materials used in or about the construction of the work under contract and its

appurtenances, as well as all damages due or attributable to such defects, which defects, imperfections, or damages shall be discovered on or before the final inspection and acceptance of the work, and of which defects, imperfections, or damages, the Engineer shall be the judge, and the said Contractor shall be liable to the City for failure so to do.

#### PARTIAL PAYMENTS

The Engineer will make current estimates in writing, once each month, of the materials in place complete, and the amount of work performed in accordance with the contract, during the preceding month or period, and the value thereof figured at the unit prices of the contract, and in case of lump sum items, figured on the basis of the schedule of values to be agreed upon, as therein after provided for.

For the total of the amounts so ascertained will be deducted an amount equivalent to ten percent (10%) of the whole to be retained by the City until after the completion of the entire contract, in an acceptable manner, and the balance or sum equivalent to ninety percent (90%) of the whole, shall be paid to the Contractor by the City.

Schedule of values of the various parts of work to be done under lump sum items shall be agreed upon by the Contractor and the Engineer, and such schedules shall be the basis for determining the amount allowed the Contractor on account of such lump sum items, partial estimates, or payment under the contract.

#### PAYMENTS MAY BE WITHHELD

Payments may at any time be withheld if the work is not proceeding in accordance with the contract, or if, in the judgment of the Engineer, the Contractor is not complying with requirements of the contract documents.

#### CONDITIONAL ACCEPTANCE

Whenever, in the opinion of the Engineer, the Contractor shall have completed the work in an acceptable manner in accordance with the terms of the contract, the Engineer shall make an inspection of the entire work, and upon inspection and acceptance, completion of all repairs and renewals which may appear at the time to be necessary, in the judgment of the Engineer, he shall certify to the owner in writing as to said completion, and as to the value thereof. The aforesaid certificate shall be held and taken to evidence the conditional acceptance of the entire work by the Owner as of the date thereof, and an additional five percent (5%) of the whole value of the work over and above any and all other reservations and/or deductions which the City is, by the terms of the contract documents or otherwise, entitled or required to make and obtain and shall hold said five percent (5%) for a period of three (3) months from and after the date of such certificate and conditional acceptance, and the City shall be authorized to apply the whole or any part of said five percent (5%) so retained to any and all costs of repairs and renewals of the work and appurtenances which may become necessary, in the judgment of the Engineer, during such period of three (3) months on account of any failure or defects in said work and appurtenances due to improper work done or materials furnished by the Contractor, if the Contractor shall fail to make such repairs or renewals within three (3) days after receiving notice from the City to do so.

#### FINAL ACCEPTANCE OF PAYMENT

Upon the expiration of the aforesaid three (3) months from and after the date of certificate of conditional acceptance of the work, the Engineer shall make final inspection of the entire work, and upon confirmation of all repairs and renewals which may appear at that time to be necessary in the judgment of the Engineer, he shall certify to the Owner in writing as to the final acceptance of the entire project.



The Owner, upon receipt and approval of said certificate, shall pay, or cause to be paid under the contract, except such sums which have already been paid and except such sum or sums as may have been expended by the Owner under the provisions of the contract documents and less any other deductions the Owners may be otherwise entitled to make.

The last mentioned certificate issued by the Engineer shall be deemed and accepted by all of the parties hereto as evidencing the final completion and acceptance of the entire project, and the payment made by the Owner to the Contractor pursuant to the issuance of said certificate of final completion and acceptance shall be deemed to be accepted by all of the parties hereto as the final payment to be made by the Owner to the Contractor, all prior certificates or estimates upon which payments may have been made being partial estimates and subject to correction in said final payment.

#### **LAST PAYMENT TO TERMINATE LIABILITY OF THE OWNER**

The acceptance by the Contractor of the final payment shall operate as and be a release of the Owner and every agent thereof from all claims and liabilities to the Contractor for anything done or furnished or relating to the work, or for any act or neglect of the Owner or any persons relating to or affecting this work.

#### **NO LIMITATION OF LIABILITY**

It is understood and agreed that any and all duties, liabilities, and/or obligations imposed upon or assumed by the Contractor and the Surety, or either of them by or under the contract documents, shall be taken and construed to be cumulative, and that the mention of any specific duty, liability, or obligation imposed upon or assumed by the Contractor and/or Surety under the contract documents shall not be taken or construed as a limitation or restriction upon any or all of the other duties, liabilities and/or obligations imposed upon or assumed by the Contractor and/or Surety by or under the contract documents.

#### **REMEDIES CUMULATIVE**

All remedies provided in the contract documents shall be taken and construed to be cumulative; that is, in addition to any and all other remedies provided therein and to any remedies in law or equity which the City would have in any case.

#### **LEGAL ADDRESS**

The address given in the bid or proposal is hereby designated as the legal address of the Contractor. Such address may be changed at any time by notice in writing delivered to the Engineer. The delivering of such legal address or the depositing in any post office, in a postpaid, registered wrapper direct to the above-mentioned address of any notice, letter, other communication to the Contractor, shall be deemed to be a legal and sufficient service thereof upon the Contractor.

#### **CONTRACTOR'S EXPENSE**

All things required by the contract documents to be done, furnished, and/or installed shall be done, furnished and/or installed by the Contractor at his entire cost and expense, unless otherwise provided therein.

#### **NIGHT, WEEKEND, AND CITY HOLIDAY WORK**

No night work between the hours of 5:00 p.m. and 8:00 a.m., no work on Saturday, Sunday, and no work on any City Holiday shall be permitted except with written permission of the Engineer. If the Contractor decides to work on those above days, he shall reimburse the City for the salaries and wages

of the City Construction Inspectors. Compensation shall include direct payroll cost and fringe benefits. The Contractor shall notify the Engineer in writing at least two (2) days in advance of such days he desires to work.

#### STRIKES, ETC.

The Contractor shall adjust all strikes, or other labor troubles, and no allowance will be made for such delays in the time limit herein named.

#### ACCESS TO WORK

The Engineer may at any time enter upon the work and the premises used by the Contractor, and the Contractor shall provide proper and safe facilities by means of ladders or otherwise to secure convenient access to all parts of the work, and all other facilities necessary for inspection, as may be required by the Engineer.

#### GUARANTEE

The Contractor hereby guarantees all work performed under this contract for a period of one (1) year from the date of the "Final Acceptance and Payment" thereof by the City as follows:

Against all faulty or imperfect materials and against all imperfect, careless, and/or unskilled workmanship.

That the work performed under this contract, including all mechanical and electrical equipment and appurtenances, and each and every part thereof, shall operate (with proper care and maintenance) in a satisfactory and efficient manner and in accordance with the requirements of these contract documents.

The Contractor agrees to replace with proper workmanship and materials, and to re-execute, correct, or repair, without cost to the City, any work which may be found to be improper or imperfect and/or which does not operate in a satisfactory manner or fails to perform as specified.

The guarantee obligations assumed by the Contractor under these contract documents shall not be held or taken to be in any way impaired because of the specifications, indication or approval by or on behalf of the City of any articles, materials, means, combinations, or things used or to be used in the construction, performance, and completion of the work or any part thereof.

No use or acceptance by the City of the work or any part thereof, nor any failure to use the same, nor any repairs, adjustments, replacements, or corrections made by the City due to the Contractor's failure to comply with any of his obligations under these contract documents, shall impair in any way with the guarantee obligations assumed by the Contractor under these contract documents.

#### HOURS OF LABOR

Eight (8) hours shall constitute a day's work for all laborers, workmen, or mechanics directly employed by the Contractor and all subcontractors on the project, except in time of war or at other times of emergency when it may be necessary to work more than eight (8) hours in any one calendar day to protect or save human life or property, and the Contractor or any of his subcontractors shall not require or permit any laborer, workmen, or mechanics to work more than eight (8) hours in any one calendar day while engaged on the project, except at times hereinbefore specifically mentioned.

## WAGES PAYABLE UNDER MUNICIPAL CONTRACTS, ETC.

SECTION 2-1, Wilmington Code, Chapter 20, Article IV.

### SECTION 20-44

#### Definitions.

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

- "City Work"** All building or construction work or projects of any kind or nature, including repair, alteration, and remodeling done on behalf of the City under any contract awarded by the City for building or constructing any building or structure, or the repair, alteration, and remodeling thereof or any other project subject to the determination by the Procurement and Records Division Manager and the State Department of Labor and Industrial Relations in accordance with the provisions of Sections 101 to 129 of Title 19 of the Delaware Code, involving the hourly wages for the respective occupational classifications within a given craft, trade, or industry for the City area.
- "Contractor"** Any employer who has been awarded any contract for the City work as defined herein.
- "Contracts"** Contracts for the performance of City work entered into by the City with contractors and all contracts entered into between such contractors and subcontractors involving or regarding such work.
- "Employee"** A workman or mechanic of the employer.
- "Employer"** Any person who is a party to a contract or subcontract for the performance of any City work as defined herein.
- "Occupational Classifications"** The specific categories of jobs within a given craft, trade, or an industry for which a separate hourly wage rate for the City area as is determined by the Procurement and Records Division Manager and the State Department of Labor and Industrial Relations in accordance with the provisions of Section 101-129 of Title 19 of the Delaware Code.
- "Prevailing Wages"** An aggregate of:
- 1) The hourly wages for the respective occupational classifications within a given craft, trade, or industry for the City area determined by the Procurement and Records Division Manager and the State Department of Labor and Industry Relations in accordance with the provisions of Sections 101-129 of Title 19 of the Delaware Code; provided, however, that during the period of any substantial work stoppage involving rates of wages in a given craft, trade, or industry, such wages for such craft, trade, or industry shall be those as last so determined by the Procurement and Records Division Manager prior to such work stoppage, and

- 2) The additional benefits, for which a monetary equivalent may be determined, and which are given employees pursuant to a bona fide collective bargaining agreement for their respective craft, trade, or industry in the City area, or the monetary equivalent of such benefits.

#### SECTION 20-45

##### Required Contract Provision

The specifications for all City work contracts shall contain a reference that the minimum wages paid for each occupation classification of employees shall be the prevailing wages as determined by the Procurement and Records Division Manager and the State Department of Labor and Industrial Relations. Each contract, as defined in this article, involving any City work shall contain a provision that all employees performing City work shall be paid at least the applicable prevailing wages. Every contract involving any City work shall contain a provision that the Contractor shall require all subcontractors to comply with and be bound by all of the provisions of this article.

As a condition precedent to awarding of any construction contract by the City, all bidders shall be compelled to agree and abide by any Federal, State, County, or municipal statutes, ordinances, or regulations thereof, pertaining to plans for the hiring of persons belonging to minority groups or to any reasonable plans or agreements formulated among the contractors, construction trade unions, and the various neighborhood civic groups concerned with the elimination of discriminatory hiring practices in the construction industry.

The awarding of any City construction contracts shall be made to the lowest responsible bidder who agrees to abide by all Federal, State, County or municipal statutes or ordinances, or rules or regulations which may prohibit the discriminatory hiring practices by a person's race, color, religion, national origin, or political opinion, and who further agrees to promptly comply with any reasonable plan to be formulated by the hiring of persons of minority groups that results from either Federal, State, County or City statutes, ordinances, rules and regulations, or agreements among the construction trade unions, the contractors, and the various neighborhood groups concerned with the elimination of discriminatory hiring practices.

The Finance Department's Division of Procurement and Records shall notify in writing, or include in all specifications, the pertinent provisions of this section, to apprise all bidders on City construction contracts of this requirement (Ordinance No. 70-055, Section 3).

#### SECTION 20-46

##### Affidavit of Compliance with Article Prerequisite to Payment by City; Monthly Payroll Report.

All contractors and subcontractors performing City work shall file with the Procurement and Records Division Manager, an affidavit upon each payment being made by the City to such contractors and subcontractors pursuant to a contract that the provisions of this article have been complied with prior to the City making any payment. The affidavit shall also provide that the contractor or subcontractor has posted in a conspicuous place on the job site a list of the prevailing wages for the respective occupational classifications; and he shall submit with the affidavit a monthly report stating the number of workers in each classification, and the total gross payroll paid by him to each classification (Ordinance No. 73-077, Section 1).

## SECTION 20-47

### Violation of Article.

The violation of this article shall be considered a substantial breach of contractor's obligation under the contract; provided, however, that this article shall not be deemed to have been violated where it is contended that a particular craft, trade or industry is not the appropriate one and the wages applicable to the craft, trade or industry working under the contract have been paid the prevailing wages as determined for the craft, trade or industry contract. No contract for City work shall be awarded to any contractor or subcontractor who has violated any provision of this section until five (5) years have elapsed from the date of determination of such violation, and shall be fined no more than five thousand dollars (\$5,000.00) for each violation (Ordinance No. 73-077, Section 2).

### PLANS, ETC., TO BE FOLLOWED

The approved plans attached to and made a part thereof will show the details and dimensions of the work contemplated, which shall be performed in strict accordance therewith and in accordance with the specifications. There shall be no deviation from the plans, specifications, etc., on account of the exigencies of construction, unless approved by the Engineer and authorized in writing.

### INTERPRETATION OF PLANS, ETC.

On all plans, drawings, etc., the following dimensions shall govern in the case of discrepancy between the scales and figures. The Contractor shall take no advantage of any error or omission in the plans or of any discrepancy between the plans and specifications, and the Engineer shall make such corrections and interpretations as may be deemed necessary for the fulfillment of the intent of the specifications and of the plans as construed by him. In all cases of doubt as to the true meaning of the specifications, plans and/or drawings, the decision of the Engineer will be final and conclusive.

### ALTERATION OF PLANS OR OF CHARACTER OF WORK

The Engineer reserves the right to make such alterations in the plans or in the character of the work as may be considered necessary or desirable from time to time to complete fully and perfectly the construction of the work, provided such alterations do not change materially the original plans and specifications of such alterations shall not be considered as a waiver of any condition of the contract nor to invalidate any of the provisions thereof. Should such alterations in the plans or in character of the work be productive of increased cost or result in decreased cost to the Contractor, a fair and equitable sum therefor to be agreed upon in writing by the Contractor and the Engineer, before such work is begun, shall be added to or deducted from the contract price, as the case may be. No allowance will be made for anticipated profits on the work omitted.

### PLANS AND SPECIFICATIONS FURNISHED TO CONTRACTOR

The Contractor will be supplied by the Engineer with a reasonable number of copies of the plans and specifications and he shall have available on the work at all times during the prosecution of the work, one (1) copy of said plans and specifications.

### TEST OF SAMPLES OF MATERIALS

All tests of materials will be made by the City in accordance with official approved methods as described or designated. The Contractor shall cooperate with and assist the Engineer in taking samples and packing them for shipment to a laboratory.

### STORAGE OF MATERIALS

Materials shall be stored so as to insure the preservation of their quality and fitness for the work. When considered necessary, they shall be placed on wooden platforms, or other hard, clean surfaces, and not on the ground, and shall be placed under cover when directed. Stored materials shall be located so as to facilitate prompt inspection. Lawns, grass plots, or other private property shall not be used for storage purposes without written permission of the owner or lessee.

### QUALITY OF MATERIALS AND WORKMANSHIP

All materials furnished and all work done in carrying out the contract shall be of the best quality and especially adapted to the services required. Wherever the characteristics of any materials are not particularly specified, such materials shall be used as is customary in first class work of the nature for which the material is employed. The source of supply and quality of each of the materials shall be approved by the Engineer before the delivery is started. Representative preliminary samples of the character and quality herein described shall be submitted by the Contractor when indicated or directed, for examination or test, and written approval of the quality of such samples shall be received by the Contractor prior to obtaining materials from the respective sources of supply. Only such materials as conform to the requirements of these specifications shall be used in the work. All materials proposed to be used may be inspected at any time during the progress of their preparation and use. All materials shall be approved before being incorporated in the work, and shall be new and unused.

Representative samples of all materials requiring laboratory tests shall be taken, and such materials shall be used only after written approval has been received by the representative of the Engineer in charge of the work, and only so long as the quality of said materials remains equal to requirements.

### DIMENSIONS AND LEVELS

The Contractor shall be solely responsible for construction of work at proper lines and elevations and no plans as to instructions or orders received from any source other than the information contained in the drawings or specifications, or in written orders of the Engineer, shall justify departure from the lines and elevations as shown on the plans.

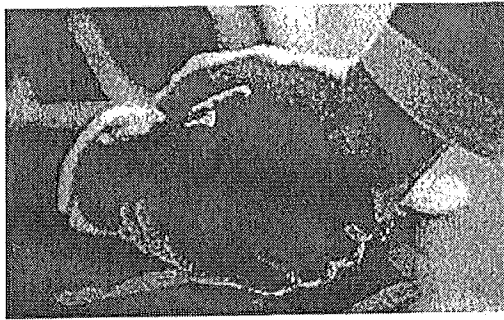
### MAINTENANCE, REPAIRS, ETC., AFTER COMPLETION

The Contractor, at his entire cost and expense, shall maintain all portions of the work included in the contract to meet the requirements of these specifications for and during a period of three (3) months from and after the date of the conditional acceptance of the entire work by the City, and in addition, shall at his entire cost and expense, make all repairs and replacements of the work and appurtenances which may become necessary, in the judgment of the Engineer, at any time or times, during said three (3) months, on account of any failure or defects in said work and appurtenances due to improper work done or materials furnished by the Contractor.

### DELINQUENT TAXES, ETC.

The City shall have the right to set off against all monies due and payable under the provisions of this contract the sum representing the total amount of delinquent taxes and/or water sewer charges owed the City by the Contractor or any of its subcontractors. The monies so set off shall be credited to the amount shown by the tax and or water sewer records to be delinquent, said records shall be prima facie evidence of the true and correct amount of taxes and or water sewer charges due to the City.

The term "delinquent taxes" as used herein applies only to uncollected taxes, license fees, and penalties owed by the Contractor or subcontractor, a subsidiary, or principal owner thereof; "principal owner" as used herein is one which owns a majority share or otherwise maintains a controlling interest in the Contractor or subcontractor. The City shall notify the Contractor in writing of its intention to make the aforesaid set off. If the Contractor and the City cannot agree as to either the amount or propriety of the set off, a formal hearing shall be held. The scope of said hearing shall be limited to the Contractor's good faith objections as to the validity or propriety of the tax and/or water sewer assessment or contemplated set off. If the dispute remains extant, the amount subsequently set off shall be deemed paid under protest.



# **City of Wilmington DBE Program and Bidders Requirements**

## **DBE PROCUREMENT PROGRAM**

Responsibilities of the Equal Opportunity/Contract Compliance Office (EO/CCO) are assumed by the City of Wilmington's Small, Minority Business Enterprise Office (SMBEO) in the Mayor's Office of Economic Development. The City of Wilmington has established laws and procedures to increase accessibility of contracting opportunities for small and minority businesses. The EO/CCO authority derives from Chapter 35, Article IV of the Wilmington City Code. This section of the Code addresses Equal Opportunity in Employment and City Contracts.

Mayor's Office of Economic Development/SMBEO  
800 North French Street, 3<sup>rd</sup> Floor, Wilmington, DE 19801  
(302) 576-2121 (Office) • (302) 571-4326 (Fax)  
[www.wilmingtonde.gov](http://www.wilmingtonde.gov)



## DISADVANTAGED BUSINESS PROGRAM

In the performance of this contract, the contractor agrees to provide the information as described herein and to make its best efforts to include one or more types of disadvantaged businesses as subcontractors.

A Disadvantaged Business Enterprise means a business that is at least fifty-one percent (51%) owned and controlled by one or more socially disadvantaged individuals who, in fact, control the management and daily business operations of the business.

"Disadvantaged Individuals" are those who have been actual victims of discriminatory practices or individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business who are not so disadvantaged.

In determining the degree of diminished credit and capital opportunities, the City may consider, but shall not be limited to, reviewing the assets and net worth of disadvantaged individuals and disadvantaged businesses.

For purposes of determining the disadvantage in competing for City contracts, there shall be a presumption of economic disadvantage if an individual's net worth, exclusive of up to one hundred and fifty thousand dollars (\$150,000.00) of equity in his or her primary residence, is less than five hundred thousand dollars (\$500,000.00). The City may, in the administration of its programs, direct its assistance toward those economically disadvantaged individuals who are among the chronically unemployed and may identify demographic subgroups of disadvantaged individuals identified by race or national origin whenever current, verifiable local statistics confirm the existence of unemployment rates among such individuals that are more than fifty (50) percent above the prevailing overall unemployment rate statewide.

All contractors doing business with the City shall show good faith efforts to obtain minority and other disadvantaged subcontracting businesses' participation. Good faith efforts shall be evidenced by listing each disadvantaged business enterprise (DBEs) contacted, showing the name and address of each, the names of contact persons, telephone numbers, sources used to identify DBEs, methods used to make contact, dates firms were contacted, responses, dates responses were received, type of subcontract, reasons for rejection if the firm is not used, and estimated value of each subcontract, through completion of the City's Form DBE-1.

The federal set-aside program requirements for any applicable federally funded contract are fully applicable to the City of Wilmington, such that contractors will be subject to federal penalties of non-compliance if a contract or any subcontract awarded involves the federal set-aside program and the contractor fails to meet its requirements as to that program.

## GOAL STATEMENT PROVISION FOR DISADVANTAGED BUSINESS PARTICIPATION

In order to expand opportunities and insure fair participation for disadvantaged individuals and businesses in its construction, goods and services and professional service contracts, the City has set purchasing goals for its fiscal year 1991 in each of these three procurement categories. Except to the extent that the Director of the Minority Business Office determines otherwise, such as for utilities, telephone, etc., the City shall endeavor to achieve, and shall require evidence of good faith efforts by bidders and contractors to achieve the goals of contracting with disadvantaged individuals or disadvantaged businesses for the following percentages of the total dollar amount of each contract in these three purchasing categories:

1. A goal of 20% for all construction contracts;
2. A goal of 10% for all professional service contracts; and
3. A goal of 5% for all goods and other contracts.

### Notes:

1. If the contractor customarily performs the work required in any subcontracting category by workers regularly employed by the contractor in his own organization, the contractor does not have to try to subcontract such work to others solely to comply with the DBE requirements. In such cases, however, the contractor shall clearly note this fact on the applicable DBE form(s), and the burden of proof shall be on the contractor to demonstrate the accuracy thereof upon inquiry by the City.
2. Female-owned businesses do **not**, per se, qualify as DBEs.
3. Questions regarding the DBE program and directory should be directed to the City's EEO/Contractor Compliance Office at (302) 576-2121.

## **ADDITIONAL GOOD FAITH EFFORT (CHANGES TO Chapter 35 of the City Code)**

Ordinance No. 09-057, effective December 1, 2009, requires the following DBE changes within the "Good Faith Efforts" in bidding regarding disadvantaged business enterprises (DBE's).

### **Subcontractors Listing**

Identify all subcontractors that the bidder plans to utilize as well as listing the amount of money that will be paid to each of the subcontractors as part of the contract

### **DBE Replacement**

Contractors are further required to make good faith efforts to replace any disadvantaged business enterprise ("DBE") that is terminated or has otherwise failed to complete its work on a contract. In such situations, the general contractor shall be required to notify immediately the City's DBE Office and provide reasonable documentation regarding any DBE's inability or unwillingness to perform the contracted work. The City's DBE Office shall require the general contractor to obtain prior approval for the DBE that will be used as a substitute, and the general contractor must provide copies of new or amended subcontracts along with documentation of the good faith efforts made in acquiring the substitute DBE.

### **DBE Payment**

General contractors shall pay all correct invoices for the completed work of any DBE subcontractor within 10 days of receipt by the prime contractor of payment by the City. Noncompliance with this section shall subject the general contractor to penalties as provided in Section 35-135(e).

The ordinance further provides administrative additional penalties for noncompliance in addition to the penalties already provided for in the Ordinance:

1. Suspension of contract;
2. Withholding of contract funds;
3. Termination of contract based on material breach;
4. Refusal to accept a future bid; and
5. Disqualification from eligibility for providing goods or services to the City for a period not to exceed 2 years.

## **DBE FORMS**

Contractors must file with the City, as applicable, the City's DBE Forms as follows:

1. **\*DBE-1:** A listing of the subcontractors included in the bid, by which a bidder acknowledges having read the DBE goal provisions in Attachment 1 and states that the bidder will expend a percentage of the dollar amount of the contract for DBE subcontractors, if any.
2. **\*DBE-2:** A listing of the subcontractors and other information to provide evidence of good faith efforts to include DBE's in subcontracts. This form must be completed and submitted with the bid, regardless of the level of DBE participation.
3. **\*DBE-3:** DBE verification form stating the ownership information regarding any business seeking to qualify as a City-certified DBE, if not listed in DBE Directory.
4. **DBE-4:** A DBE contract participation report requiring that the general contractor submit a report regarding DBE contract participation at the time the contract is entered into, when 50% and when 100% of each DBE subcontractor's portion of the construction project has been completed.
5. **\*DBE-5:** A listing of **ALL subcontractors** to be utilized on the contract. This form must be completed and submitted with the bid, regardless of the level of DBE participation.

### **FEDERAL Dollars involved in City Contracts:**

A DBE Utilization form(s), including reference to minority business enterprise participation if a federal program is involved, and an indication as to whether a disadvantaged business enterprise (DBE) status is claimed. These EPA (DBE Forms 6100-3 & 6100-4) forms are required by both the SRF and EPA Grant funding programs.

If you need additional information on the DBE Program or assistance completing the DBE Forms, please contact the office by one of the following methods:

Email: [smbeo@wilmingtonde.gov](mailto:smbeo@wilmingtonde.gov)

Phone: (302) 576-2121

Address: Small, Disadvantage Business Enterprise Office (SMBEO)  
Mayor's Office of Economic Development  
Louis L. Redding Building, 3<sup>rd</sup> Floor  
800 North French Street  
Wilmington, DE 19801  
[www.wilmingtonde.gov](http://www.wilmingtonde.gov)

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\*Mandatory to be submitted back with Bid Documents.

## **EFFORTS TO OBTAIN DBE SUBCONTRACTORS DBE FORM 1 – DBE FORM 2 EXPLANATION**

**[NOTE: DBE FORM-2 MUST BE COMPLETED BY ALL BIDDERS REGARDLESS OF THE LEVEL  
OF PARTICIPATION OF DBEs IN THE BID.]**

All contractors doing business with the City are required to show good faith efforts to obtain DBE subcontracting businesses' participation. The burden is on the bidder to evidence such good faith efforts by means of the information required on this page. Failure to complete this form and/or failure to make good faith efforts to obtain DBE participation are grounds for rejecting any bid. Further, bidders are expected to make such good faith efforts to obtain DBE participation in connection with each and every subcontract, if any. The City's goals for DBE participation are listed on Attachment 1 to this form. These goals are not set-aside requirements, but they are the overall goals which the City is endeavoring to achieve through the disadvantaged business program. Each person or firm who or which submits a bid for City contracts is expected to demonstrate good faith efforts by actively and aggressively seeking out DBE participation in the contract to the maximum extent, to meet the City's goals, given all relevant circumstances, and shall complete all forms and follow guidelines as required by the Minority Business Office. The following are examples of the kinds of efforts that may be taken but are not deemed to be exclusive or exhaustive and the City's Minority Business Office may consider other factors and types of efforts that may be relevant:

1. Efforts made to select part of the work to be performed by DBEs in order to increase the likelihood of achieving the City's goal for that type of contract. Selection of parts of the work should at least equal the City's goal for DBE participation in that type of contract.
2. Written notification, at least ten (10) days prior to the opening of a bid, soliciting individual DBEs interested in participation in the contract as a subcontractor and for specific items of work.
3. Efforts made to negotiate with DBEs for specific items of work as detailed below and whether initial contacts to solicit DBE participation were followed up to determine with certainty whether DBEs were interested. A description of information provided to DBEs regarding plans and specifications and estimated quantities for parts of the work to be performed. A statement of why additional agreements with DBEs were not reached. Documentation of each DBE contacted but rejected and the reasons for the rejection.
4. Documentation that DBEs are not available or not interested.
5. Advertisements in general circulation media, trade association publications, and DBE media of interest in utilizing DBEs and specific areas of interest.
  - a. Efforts to use effectively the services of organizations that provide assistance in recruitment and placement of DBEs.
  - b. Whether the bidder selected portions of the work to be performed by DBEs 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 DBE participation, even when the bidder might otherwise perform these work items with its own forces.

## **DBE FORM 3 – DBE FORM 4 – DBE FORM 5 EXPLANATION**

### **DBE FORM 3**

**DBE-3:** DBE verification form stating the ownership information regarding any business seeking to qualify as a City-certified DBE.

- This form must be submitted back with the bid when the contractor is working with a company who they believe to be eligible for the City of Wilmington's DBE Program. The SMBEO Office reserves the right to determine the eligibility and verification of eligibility for the firm listed on DBE Form 3.
- The burden is on the bidder to evidence such good faith efforts by means of providing the contact information for the DBE firm listed on the DBE Form 3. If a firm is determined to be an eligible DBE firm, the total dollar value of the participation by the DBE will be counted toward the contract requirement. The total dollar value of participation by a certified DBE will be based upon the value of work actually performed by the DBE and the actual payments to DBE firms by the Contractor.
- Failure to complete the DBE 3 form and/or failure to make good faith efforts to obtain DBE participation are grounds for rejecting any bid.

### **DBE FORM 4**

**DBE-4:** DISADVANTAGED BUSINESS ENTERPRISE – CONTRACT PARTICIPATION REPORT

- The Contractor shall provide the DBE Office with an accounting of payments made to Disadvantaged Business Enterprise firms, including material suppliers, contractors at all levels (prime, subcontractor, or second tier subcontractor). This accounting shall be furnished to the DBE Office when the contract is entered into by the general contractor and the subcontractor, when 50% and when 100% of each DBE subcontractor's portion of a project has been completed. Failure to submit this information accordingly may result in the following action or other action as deemed by the City:
  1. Withholding of money due in the next partial pay estimate; or
  2. Contractor may be disqualified from further bidding for a period as designated.

### **DBE FORM 5**

**DBE-5** SUBCONTRACTORS' REPORT

- The Contractor shall provide the DBE Office with a listing of ALL sub contractors to be entered into contract with this bid. DBE subcontractor'(s) are not to be listed on this form but on form DBE #1 (Ord. 09-057).
- Failure to complete the required Subcontractor's form (DBE Form 5) will be grounds for the disqualification of such bid as being a responsive bid.

**To Be Submitted with Bid**

CONTRACT: \_\_\_\_\_

FORM DBE-1  
(Rev. 10/09)

***Failure to submit this completed form will be cause for rejection of your proposal***

Bidder acknowledges that he has read the D.B.E. goal provisions of the City for this fiscal year and that bidder will expend the dollar amount of the contract for D.B.E. subcontractors through the use of the following disadvantaged business enterprises, subject to the certification by the City, as subcontractors and that Bidder has made good faith efforts\* as evidenced by its listing of disadvantaged businesses that were contacted as detailed herein and on the following pages. (Must be completely filled out.)

**CITY OF WILMINGTON  
DISADVANTAGED BUSINESS ENTERPRISE ("D.B.E.")  
SUBCONTRACTOR LISTING**

D.B.E. Firm Name IRS Numbers	Mailing Address & Contact Number	Type of Service	Dollar Amount of Contract
Total Dollar Amount to be Expended for Disadvantaged Business Enterprises			
Total Amount of Contract			
Percentage of Contract used for D.B.E.			

\_\_\_\_\_  
Name of Authorized Official of Bidder

\_\_\_\_\_  
Title

**Company**

\*Good faith efforts shall be evidenced by listing each and every disadvantaged business enterprise (DBEs) contacted, showing the name and address of each, the names of contact persons, telephone numbers, sources used to identify DBEs, methods used to make contact, dates firms were contacted, responses, dates responses were received, type of subcontract, reasons for rejection, and estimated value of subcontract.

# **To Be Submitted with Bid**

FORM DBE-2  
(Rev. 10/09)

CONTRACT: \_\_\_\_\_

*Failure to submit this completed form will be cause for rejection of your proposal*

DBE Firm Name/Address	Contact Person(s) Email or Phone Number	Dates Contacted Initially and In Follow Up Methods Used	Type of Subcontractor, plus Estimated Value	Reason for Rejection (If Firm Not Used) (If Bid "Too High" Also Indicate Value)
1.			\$	
2.			\$	
3.			\$	

Were advertisements placed in general circulation media, trade association publications, and DBE media interested in DBE participation? If so, state details of the advertisement. If not, state why not.

What efforts were made to use the services of organizations that provide assistance in recruitment and placement of DBEs?

The following are examples of actions that may not be used as justification by the contractor or bidder for failure to meet DBE participation goals:

1. Failure to contract with a DBE solely because the DBE was unable to provide performance and/or payment bonds.
2. Equipment idled by contract with DBE.
3. Rejection of a DBE because of its union or non-union status.

If more DBE firms have been contacted, please list with supplemental form(s) on additional pages.



**To Be Submitted with Bid if DBE is not listed In City DBE Directory**

CONTRACT: \_\_\_\_\_

FORM DBE-3  
(Rev. 10/09)

*Failure to submit this completed form will be cause for rejection of your proposal*

**CITY OF WILMINGTON  
DISADVANTAGED BUSINESS REGISTRATION VERIFICATION FORM**

1.	NAME:		
2.	ADDRESS:		
3.	PHONE:	PRODUCT OR SERVICE LINE:	
4.	TYPE OF FIRM: <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Individual <input type="checkbox"/> Other _____		
5.	EMAIL:		
6.	DATE OF ORIGINATION OF FIRM:	EMAIL:	
7.	BUSINESS LICENSES HELD:	City:	State: Other:
8.	DISADVANTAGED OWNERSHIP OF FIRM:		
	NAME	OWNERSHIP % OF FIRM	DISADVANTAGED BUSINESS
a.			
b.			
c.			
d.			
e.			
f.			
9.	NON-DISADVANTAGED OWNERSHIP OF FIRM:		
	NAME	OWNERSHIP % OF FIRM	
a.			
b.			
c.			
d.			
e.			
f.			
8.	I hereby certify that the information above is true and complete to the best of my knowledge and belief, and that I have been duly authorized to make this certification on behalf of the firm.		

NAME (printed) \_\_\_\_\_

SIGNATURE \_\_\_\_\_

DATE \_\_\_\_\_

TITLE \_\_\_\_\_

FOR OFFICE USE ONLY

DATE RECEIVED: \_\_\_\_\_  
DATE APPROVED: \_\_\_\_\_  
INFORMATION VERIFIED: \_\_\_\_\_

The General Contractor is required to submit this Compliance Report to the Disadvantaged Business Development Officer, City/County Building, 3<sup>rd</sup> Floor, 800 French Street, Wilmington, Delaware 19801, when the contract is entered into by the general contractor and the subcontractor, when 50% and when 100% of each DBE subcontractor's portion of a construction project has been completed.

**DISADVANTAGED BUSINESS ENTERPRISE**  
**CONTRACT PARTICIPATION REPORT**

1. Contract No. \_\_\_\_\_ Amount of Contract \$ \_\_\_\_\_
2. Name of General Contractor: \_\_\_\_\_
3. Address: \_\_\_\_\_
4. E-Mail Address: \_\_\_\_\_
5. The above-named contractor intends to fulfill its commitment to expend \$ \_\_\_\_\_  
(\_\_\_\_%), of its contract with Disadvantaged Business Enterprises ("DBEs"). The following year-to-date expenditure(s) has been made with a DBE Subcontractor(s):

Name/Address of DBE Subcontractor	Nature of Participation	Dollar Value/ Percent of Participation	Dollar Amount Expended to Date
1.			
2.			
3.			

CONTRACT COMPLETION DATE: \_\_\_\_\_

General Contractor

Name of Authorized Officer

Date

DBE Subcontractor

Signature of Authorized Officer

Date

Office Use Only  
(Prime)

Payment Received: \_\_\_\_\_

Amount: \_\_\_\_\_

Date: \_\_\_\_\_

Payment Received: \_\_\_\_\_

Amount: \_\_\_\_\_

Date: \_\_\_\_\_

City of Wilmington

Contract Compliance Officer's Name

Date

City of Wilmington

Contract Compliance Officer's Signature

Date

FORM DBE-5  
(Rev. 10/09)

**CITY OF WILMINGTON**  
**SUBCONTRACTOR LISTING**  
(Do not include DBE Firms to be utilized)

Subcontractor Name IRS Numbers	Mailing Address Contact Number or Email	Type of Service	Dollar Amount of Contract
Total Dollar Amount to Non-Disadvantaged Business Enterprises			
Total Amount of Contract			

Bidder acknowledges that he has identified all sub contractors that will be utilized as well as listing the amount of money that will be paid to each of the subcontractors as part of the contract (use additional pages if necessary).

**Title**

Date \_\_\_\_\_

STATE OF DELAWARE  
DEPARTMENT OF LABOR  
DIVISION OF INDUSTRIAL AFFAIRS  
OFFICE OF LABOR LAW ENFORCEMENT  
PHONE: (302) 761-8200

Mailing Address:  
4425 North Market Street  
3rd Floor  
Wilmington, DE 19802

Located at:  
4425 North Market Street  
3rd Floor  
Wilmington, DE 19802

PREVAILING WAGES FOR HIGHWAY CONSTRUCTION EFFECTIVE MARCH 15, 2019

CLASSIFICATION	NEW CASTLE	KENT	SUSSEX
BRICKLAYERS	55.89	55.89	55.89
CARPENTERS	55.95	55.63	44.22
CEMENT FINISHERS	35.48	35.70	28.39
ELECTRICAL LINE WORKERS	29.40	47.49	23.24
ELECTRICIANS	70.49	70.49	70.49
IRON WORKERS	65.24	26.10	27.72
LABORERS	45.30	41.69	40.93
MILLWRIGHTS	17.62	17.10	14.76
PAINTERS	71.29	71.29	71.29
PILEDRIVERS	72.65	25.98	29.47
POWER EQUIPMENT OPERATORS	67.07	43.32	39.68
SHEET METAL WORKERS	24.89	22.21	20.12
TRUCK DRIVERS	37.52	30.88	37.62

CERTIFIED: 03/15/2019

BY: 

ADMINISTRATOR, OFFICE OF LABOR LAW ENFORCEMENT

NOTE: THESE RATES ARE PROMULGATED AND ENFORCED PURSUANT TO THE PREVAILING WAGE REGULATIONS ADOPTED BY THE DEPARTMENT OF LABOR ON APRIL 3, 1992.

CLASSIFICATIONS OF WORKERS ARE DETERMINED BY THE DEPARTMENT OF LABOR. FOR ASSISTANCE IN CLASSIFYING WORKERS OR FOR A COPY OF THE REGULATIONS OR CLASSIFICATIONS, PHONE (302) 761-8200.

NON-REGISTERED APPRENTICES MUST BE PAID THE MECHANIC'S RATE.

THESE RATES ARE BEING PROVIDED IN ACCORDANCE WITH DELAWARE'S FREEDOM OF INFORMATION ACT.

THEY ARE NOT INTENDED TO APPLY TO ANY SPECIFIC PROJECT.

**Contractor/Subcontractor**  
**Responsibility Certification**

**Contractors:**

The City of Wilmington Division of Procurement and Records must receive this executed form not later than at the time of bid submission. It may be submitted prior to bid submission for review.

**Subcontractors:**

Must submit this form to requesting contractor.

CONTRACTOR/SUBCONTRACTOR RESPONSIBILITY CERTIFICATION  
FOR DEPARTMENT OF PUBLIC WORKS CONTRACTS  
VALUED AT MORE THAN \$100,000

Name of Company: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Contract/Project Name: \_\_\_\_\_

Contract Number: \_\_\_\_\_

As a condition of performing "City work" (all building or construction work or projects of any kind or nature as provided in City Code Sec. 2-651) for the City of Wilmington, Delaware, contractors and subcontractors (hereinafter referred to as "Bidders") must meet certain responsible contractor requirements and qualifications specified in the Wilmington City Code, Chapter 2, Article VI, Division 6, Subdivision III (Sec. 2-561 et seq.). Pursuant thereto, the Company named above certifies the following:

**PLEASE INITIAL EACH ITEM TO INDICATE COMPLIANCE**  
(Xs and check marks are *not* acceptable)

- \_\_\_\_\_ 1. The Bidder and its employees have all valid, effective licenses, registrations, or certificates required by federal, state, county, or local law, including, but not limited to, licenses, registrations, or certificates required to:
- a. do business in the City of Wilmington and the State of Delaware; and
  - b. perform the contract work, including, but not limited to, licenses, registrations or certificates for any type of construction or maintenance trade work or specialty work which the Bidder proposes to self-perform.

- \_\_\_\_\_ 2. The Bidder meets all:
- a. bonding requirements as required by the applicable law or contract specifications; and
  - b. insurance requirements per applicable law or contract specifications, including general liability insurance, workers' compensation insurance, and unemployment insurance.

- \_\_\_\_\_ 3. The Bidder has a satisfactory record of integrity in accordance with Sec. 2-537(4) of the City Code, which further states as follows:

The following provisions, while not exclusive, shall be sufficient to justify a finding of nonresponsibility:

- a. failure to pay taxes and fees due and owing to the City;
- b. a conviction of the contractor or a principal officer thereof for commission of a criminal offense, as incident to obtaining or attempting to obtain a public contract or in the performance of such contract;
- c. a conviction, of the contractor or principal officer thereof, under state or federal statutes, for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously and directly affects responsibility as a city contractor.

- \_\_\_\_\_ 4. The Bidder has a satisfactory record of timely performance of City contracts in accordance with Sec. 2-537(3) of the City Code, which further states as follows:

Contractors who are seriously deficient in current contract performance, when the number of contracts and the extent of deficiency of each are considered, shall, in the absence of evidence to the contrary or circumstances properly beyond the control of the contractor, be presumed to be unable to meet this requirement. Past unsatisfactory performance due to failure to apply necessary

tenacity, or perseverance to do an acceptable job, shall be sufficient to justify a finding of nonresponsibility.

- \_\_\_\_\_ 5. The Bidder has a satisfactory record of performance of contractual provisions in accordance with Sec. 2-537(5) of the City Code, which further states as follows:

Violation of contract provisions of a character which justify a finding of nonresponsibility include:

- a. deliberate failure without good cause to perform in accordance with the specifications provided in the contract;
- b. a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts;
- c. in particular, failure to comply with prevailing wage and related federal, state, and city requirements;

provided, however, that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for a finding of nonresponsibility.

- \_\_\_\_\_ 6. The Bidder has a satisfactory record of good faith efforts to achieve disadvantaged business enterprise participation in accordance with Sec. 2-537(8) of the City Code.

- \_\_\_\_\_ 7. The Bidder has not been debarred or suspended by any federal, state or local government agency or authority in the past three years.

- \_\_\_\_\_ 8. The Bidder has not defaulted on any project in the past three years.

- \_\_\_\_\_ 9. The Bidder has not had any type of business, contracting or trade license, registration, or other certification revoked or suspended in the past three years.

- \_\_\_\_\_ 10. The Bidder and its owners have not been convicted of any crime relating to the contracting business in the past ten years.

- \_\_\_\_\_ 11. The Bidder has not at any time been found in violation of any federal, state or local prevailing wage law.

- \_\_\_\_\_ 12. The Bidder has not within the past three years been found in violation of any law applicable to its contracting business, including, but not limited to, licensing laws, tax laws, prompt payment laws, wage and hour laws, environmental laws or others, where the result of such violation was the payment

of a fine, back pay damages or any other type of penalty in the amount of \$1,000 or more.

\_\_\_\_\_ 13. The Bidder will pay all craft employees that it employs on the project the current wage rates and fringe benefits as required under applicable federal, state or local wage laws.

\_\_\_\_\_ 14. All craft labor that will be employed by the Bidder for the project have completed at least the OSHA 10 hour training course for safety established by the U. S. Department of Labor, Occupational Safety & Health Administration.

\_\_\_\_\_ 15. The Bidder will employ craft employees in all classifications and individual trades required to successfully perform the work related to the project.

\_\_\_\_\_ 16. The Bidder has participated in a Class A Apprenticeship Program for the past twelve months, at a minimum, for each separate trade or classification in which it employs craft employees and shall continue to participate in such program or programs for the duration of the project. The twelve month participation requirement may be waived during the first year of implementation of this Ordinance, provided that the firm is participating in a Class A Apprenticeship Program at the time it submits its bid and submits information showing that the construction craft workers it plans to use have adequate skills to successfully perform the project. Once the Ordinance has been in effect for twelve months, i.e., September 4, 2013, a waiver of this requirement will no longer be available.

a. for purposes of this section, a Class A Apprenticeship Program is an apprenticeship program that is currently registered with and approved by the U.S. Department of Labor or a state apprenticeship agency and has graduated apprentices to journeyman status for at least three of the past five years;

b. to ensure compliance with this section, the Bidder shall provide, with this certification, a list of all trades or classifications of craft employees it will employ on the project and documentation verifying it participates in a Class A Apprenticeship Program for each trade or classification listed;

c. in order to enhance the training of its workforce and to comply with this subsection, the firm must enroll a new person in a Class A Apprenticeship Program for each bid submitted to the City.

\_\_\_\_\_ 17. The Bidder shall make all reasonable best efforts to ensure that fifteen percent (15%) of the workforce hired for the project, especially with respect to new workers recruited and hired for the project, includes City of Wilmington residents. To ensure compliance with this section, the Bidder will also make residency information on its workforce available to the City upon request.



- \_\_\_\_\_ 18. The Bidder has all other technical qualifications and resources, including equipment, personnel and financial resources, to perform the referenced contract, or will obtain same through the use of qualified, responsible contractors.
- \_\_\_\_\_ 19. The Bidder acknowledges that within seven (7) calendar days following the date of receipt of Notice of Intent to Award Contract, it will provide a list of subcontractors it plans to utilize for services in the performance of the contract. The list must include a brief description of the subcontractor's scope of work. In addition, each subcontractor providing services equaling or exceeding \$100,000 must provide executed Subcontractor Responsibility Certifications containing information equivalent to that required for the Bidder in the Contractor Responsibility Certification. Note: Bidder must initial this item regardless of the value of the subcontract services.
- \_\_\_\_\_ 20. If at any time during the past five (5) years the Bidder has controlled or has been controlled by another corporation, partnership or other business entity operating in the construction industry, it will disclose such facts by attaching a detailed statement to its Contractor Responsibility Certification explaining the nature of the relationship.
- \_\_\_\_\_ 21. The Bidder acknowledges that it shall be required to provide appropriate documentation of the conditions specified in this Contractor/Subcontractor Responsibility Certification. The Bidder also understands that the City of Wilmington may request additional information or documents at any time as the City of Wilmington deems necessary to evaluate the responsibility of Bidder. Bidder agrees to provide such additional information or supporting documentation for this Certification.
- \_\_\_\_\_ 22. If a Bidder fails to provide the Contractor Responsibility Certification required by this section, the Bidder shall be disqualified from bidding the contract. If a Bidder fails to provide other information or documentation required by the City of Wilmington, it may be disqualified from being awarded the contract.
- \_\_\_\_\_ 23. The Bidder shall notify the City within seven days of any material changes to all matters attested to in this certification.

Under the penalty of perjury, the Bidder's authorized representative hereby certifies that all information included in the Contractor Responsibility Certification or otherwise submitted for purposes of determining the Bidder's status as a responsible contractor is true, complete and accurate and that he/she has knowledge and authority to verify the information in this certification or otherwise submitted on behalf of the Bidder by his or her signature below.

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Date

PLEASE SUBMIT SIGNED ORIGINAL VERSION OF THIS FORM TO:

**CITY OF WILMINGTON  
DEPARTMENT OF FINANCE, DIVISION OF PROCUREMENT  
LOUIS REDDING CITY COUNTY BUILDING  
800 N. FRENCH STREET, 5<sup>TH</sup> FLOOR  
WILMINGTON, DE019801**

Questions regarding the this form can be sent to  
[procurement@wilmingtonde.gov](mailto:procurement@wilmingtonde.gov) or call 302.576.2423

## 20011PW - SEWER CONSTRUCTION

### I. GENERAL

This sewer infrastructure maintenance contract is for any work on the sanitary, storm, and/or combined sewer system and miscellaneous projects within the City of Wilmington, Delaware.

### II. DESCRIPTION

This Contract is for the installation and emergency repair of sewer branches within City of Wilmington right-of-way, sewer extensions, main sewer repair/installation, construction of new manholes, construction of lamp holes, and miscellaneous structures relating to sewer construction in the City of Wilmington. This is a maintenance Contract in nature, with work spread out during the fiscal year on an "as needed" basis, based upon service demand.

This maintenance contract will be for one (1) year, starting July 1, 2019 and ending June 30, 2020 with (2) 1-year renewal option. The dates of the contract may vary depending on the awarding of the contract and the option to renew. The (2) 1-year options will be based on a 2% increase on the original contracts base price for the year of the renewal if agreed upon by the City of Wilmington & Contractor prior to end of Contract.

### III. SPECIFICATIONS

- A. All construction must be done in compliance with the "Occupational Safety and Health Act" of 1970 and all rules and regulations thereto appurtenant.
- B. The chart, Appendix A, represents minimum trench shoring requirements that must be utilized on all trenches.
- C. The bidder shall document that they are capable of actively handling a minimum of four (4) projects at one time in the construction phase. It is estimated that 90% of the work will require only one crew. The four projects capability may be waived on a case-by-case situation (depending on the complexity of the projects) with written permission of the Engineer.
- D. All bids must be responsive and balanced. Any unbalanced bids shall be rejected at the discretion of the City of Wilmington.

- E. Bidder shall furnish the name and qualification of the general superintendent and his 24-hour contact phone number whose responsibility it will be to oversee all work for the City. This general superintendent may not be replaced without prior permission from the City.
- F. Per City Code, the Contractor and/or Subcontractor must have a trade license for plumbing and business license with the City of Wilmington.
- G. Bidder shall insure that a crew shall have appropriate equipment and personnel available for work, twenty-four (24) hours per day, seven (7) days per week. The Contractor shall start emergency repair projects within two (2) hours verbal notice by an authorized representative of the Department of Public Works, City of Wilmington. Emergency repair projects and/or work not covered by the contract shall be completed on a force account basis unless the parties mutually agree otherwise.
- H. All trenches shall be restored with clean fill. The Contractor will restore roadway in accordance with City of Wilmington Road Cut Specification/DelDOT Specifications.
- I. A separate contract pay item has been included for the mechanical saw cut. All trenches and excavations shall be neatly saw cut with the finished paving patch true and flush. Any street patch not installed to the satisfaction of the Engineer shall be removed, re-cut, and replaced at the Contractor's expense.
- J. The following pavement cross sections shall be used:
  - a. Hot Mix Surfaced Roadway: 8-12 inches Class B concrete base course, (City) or Class A concrete base course (State) 2 inches of hot mix type C.
  - b. Concrete Roadway: 10-12 inches Class A concrete, reinforced with WWF 66 x 44 wire mesh.

- K. Polyvinyl Chloride pipe (PVC) shall be used on each project unless another type pipe (concrete, ductile iron, HDPE, etc.) is specified by the Engineer. This pipe will be suitable for non-pressure drainage of sewage and surface water. The pipe shall conform to ASTM Designation: D 3033, Type PSP or D 3034, Type PSM. The SDR number which expresses the ratio of pipe diameter to wall thickness that will be acceptable is SDR-26 and Schedule 40. The Engineer has the authority to specify the desired SDR number, or pipe schedule for each individual project. All fittings and saddles shall be made of PVC plastic and will be subject to the approval of the Engineer. Ferncos will have to be approved by the City representative. The two joining systems are:
- a. Solvent Cement Joints: The pipe spigot wedges into the tapered socket and the two surfaces fuse together.
  - b. Elastomeric Gasket Joints: Assembly shall be in accordance with pipe manufacturer's recommendation.

#### IV. CONTRACTOR RESPONSIBILITIES

The awarded Contractor shall be responsible for the requirements, specific to this contract, as outlined below.

- A. All castings shall be supplied by the City at no cost to the Contractor. If the City does not have these items in stock, the City has the option to require the Contractor to furnish the item and charge the City for this item or have the item supplied by the Contractor and the City return the item to the Contractor at a later date.
- B. Contractor to furnish all backfill and restoration materials. Contractor has to be familiar with State and City specifications and have current licenses for applicable work, (i.e., blasting, repaving, sidewalks, etc.)
- C. Contractor shall work under direction of a City representative. The City shall have complete discretion as to the sequence and priority of the work. The City will secure State street opening permits and inform applicable City departments as to schedule of work if required. Contractor has to work in accordance with permits and applicable City procedures. All work must be approved by City of Wilmington Representative before backfill.
- D. Traffic Control Devices shall be provided by the Contractor and charged according to the rates listed on the proposal form. The Contractor shall have barricades and signs picked up as soon as roadway work is completed.
- E. All road cuts and restorations shall comply with the City's Road Cut Management System's (RCMS) requirements for City maintained roads and DelDOT requirements for State maintained roads. The Contractor shall notify the Engineer

upon starting work to determine which permit must be obtained.

- F. The Contractor shall be responsible to notify the following utilities before commencing work:

- (1) Delmarva Power (Gas)
- (2) Verizon
- (3) Delmarva Power (Electric)
- (4) Wilmington Department of Public Works, Water and Sewer Divisions
- (5) Fiber Optic Companies
- (6) Comcast Cable

Extreme caution shall be exercised by the Contractor at all times. Any damage caused to existing utility lines, conduits, etc., directly or indirectly, shall be repaired immediately at the Contractor's expense.

Miss Utility of Delaware shall be notified at 1-800-282-8555.

- G. The Contractor shall erect and maintain suitable barricade protection and signs for public safety throughout the project and provide sufficient walking areas and travel ways where required. All barricades shall be mounted with dual, yellow flashing battery-powered lights.

Construction signing and maintenance of traffic shall conform to the "Manual on Uniform Traffic Control Devices for Streets and Highways" published by the U.S. Department of Transportation, Federal Highway Administration.

- H. The Contractor shall keep the trench to a maximum width of five feet (5') unless otherwise instructed by the Engineer. Any material excavated in excess of this limit shall be replaced at the Contractor's expense unless approved by engineer. All trench walls shall be well supported at all times at the expense of the Contractor. The City will pay the Contractor for trench wall support only when the sewer project is completed on a force account (time and material) basis.
- I. Existing sewer lines must be kept free and clear of obstruction and debris at all times; nor shall any part of the construction site be left in an offensive or unsanitary condition. If dirt, construction material, or any other debris enters the sewer line during the construction of the individual project, the Contractor will be required to clean the sewer line, at his expense, to the satisfaction of the Engineer/Inspector.
- J. The Contractor shall remove all unsuitable materials from the job site and dispose of same to the satisfaction of the Engineer. This will be done at the Contractor's expense unless work is being done under force account basis or contaminated soils are involved. Select backfill or approved fill shall be used to replace unsuitable material.

- K. The Contractor and/or his subcontractor shall verify all measurements daily and include on Daily Work Authorization for Itemized Projects. No extra compensation shall be allowed unless approved by the Engineer in writing before proceeding with the work.
- L. The Contractor shall guarantee all work for a period of one (1) year. Any defects appearing before this time shall be repaired upon demand by the City of Wilmington.
- M. Each project under this Contract shall be completed within 10 working days, unless otherwise specified by the Engineer. The owner shall deduct three hundred (\$300) dollars for each and every day beyond the allowed time that is required to complete the project. Liquidated damages are not to be construed in any sense as a penalty.
- N. The Contractor shall post "No Parking" signs at the construction site twenty-four (24) hours prior to commencing with the work. "No Parking" signs shall be supplied by the Department of Public Works at no cost to the Contractor.
- O. All available sewer information on existing lines in the City of Wilmington shall be supplied by the Department of Public Works at no cost to the Contractor. The Contractor will be supplied with plans for each project. Detail plans of standard manholes, sewer inlets, and lamp holes to which the Contractor has to conform on all the projects, shall be supplied to the Contractor by the City.
- P. The Contractor shall meet with the property owners' plumbing contractor prior to construction in order to ascertain the exact location and grade of a new lateral at the curb. The Contractor shall construct new laterals or sewer branches to the curb only or within the City of Wilmington right-of-way.

## V. Method of Payment

Individual projects assigned by the Engineer shall be paid for at the unit price bid for each item. Payment shall be made for individual construction projects upon inspection and acceptance by the Department of Public Works. The provisions of the General Conditions pertaining to work performed on a "force account" basis will be modified in this section. All work done by "force account" will be paid for in the following manner:

### A. Labor

1. Shall be in accordance with unit pricing on the proposal form
2. The contractor, upon approval by the City, may utilize and bill for overtime hours to perform work related to this contract in accordance with the following conditions:
  - a. Overtime hours shall be defined as any hours outside of the regular workday as described herein. The regular workday shall consist of eight (8) hours (plus ½ hour for lunch breaks) and the workweek shall consist of forty (40) hours (plus 2½ hours for lunch breaks, per week) Monday through Friday inclusive.
  - b. Time and one-half shall be paid for hours worked in excess of eight (8) hours in any continuous twenty-four (24) hour period or in excess of forty (40) hours per workweek.
  - c. Time and one half shall be paid for work performed on Saturday and double time for work performed on Sunday and holidays. Contractor shall furnish a list of the company's observed holidays with its bid.
  - d. Work prior to or beyond the contractor's regular starting and quitting time shall be compensated at the rate of time and one half. The hours for a regular workday for this contract shall be submitted with the proposal forms.
3. For all laborer classification not included in the contract, the contractor and the City shall mutually agree on rates to be used.



- B. Contractor to furnish the City's representative with daily copy of labor and equipment time sheets (daily work authorizations (DWA)) and copy of delivery receipts for Contractor's furnished materials. The DWAs shall be signed by a City inspector, each day, with carbon copies provided to the Engineer.
- C. The Contractor is to bill the City every other week for work that has occurred in that time frame. The Contractor shall provide electronic copies of the invoices to the City's Finance Department, Accounts Payable, and hard copies to the Department of Public Works.
- D. Mobilization/Demobilization: The cost for mobilization and demobilization shall be included in the bid items for Itemized and Force Account Projects. There will be no separate billing for mobilization and demobilization or extra hours.
- E. The bidder shall fill out the supplemental equipment rental schedule included on the proposal forms. These items are not included in the totals used for the evaluation of bids; however, the City may request clarification for any rates that are excessive when compared with other qualified bidders. If the Contractor uses any equipment on a job site, which is not listed on the proposal forms, the Contractor shall request approval for the rates by the City's Representative before use of the equipment. Materials furnished by the Contractor will be charged at cost, plus 10%. Cost will be supported by vendor's invoice.
- F. Before employing a subcontractor, the Contractor shall request written approval from the City by submitting subcontractor information as outlined in Construction Contracts General Conditions.
- G. For administrative costs in connection with approved subcontract work, the contractor shall receive an amount equal to 5% of the total cost of such work computed. The City will not pay for a subcontractor for equipment, personnel, or material that has been specified in the contract.
  - 1. Approved subcontracted services will be charged at Cost, plus 5%. Cost shall be supported by subcontractor's invoice.
- H. On Item #4, ROCK EXCAVATION, Rock excavation shall consist of the removal and final disposal of all hard ledge rock and boulders of more than 1/3 cubic yard in volume, as determined by the Engineer. Rock Excavation shall not include soft or disintegrated rock, bituminous surface treatment, gravel, broken stone, slag, cobblestones, or any material which can be removed by ordinary power equipment or hand methods, but shall be confined to materials so hard and firmly cemented that in the opinion of the Engineer, it is not practicable to excavate or remove except after drilling, splitting, and/or wedging. The price and payment shall be full compensation for furnishing all equipment, tools, labor, and incidentals necessary to complete the item.
- I. Materials. For materials accepted by the Engineer and used, the contractor shall receive the actual cost of such materials delivered on the work, including

transportation charges paid by him/her (exclusive of machinery rentals as hereinafter set forth), to which cost 10% will be added.

- J. Statements shall be accompanied and supported by invoices for all materials used and transportation charges. However, if materials used on the force account work are not specifically purchased for such work but are taken from the contractor's stock, then in lieu of the invoices the contractor shall furnish an affidavit certifying that such materials were taken from his stock, that the quantity claimed was actually used, and that the price and transportation claimed represent the actual cost to the contractor. If unit measurement is by weight, certified weight slips will be required.
- K. Equipment. Payments for equipment shall be in accordance with unit prices in the proposal form and supplemental equipment form. For any other machinery or special equipment (other than small tools) including fuel and lubricants, plus transportation costs not included on the proposal form or supplemental equipment form, and the use of which has been authorized by the Engineer, the contractor shall receive the rental rates agreed upon in writing before such work is begun for the actual time that such equipment is in operation on the project, to which rental sum 10% will be added. Rates may be revised using the Rental Rate Blue Book for Construction Equipment as a guide for determining the rates.
- L. The bidder shall fill out the supplemental equipment form included with proposal forms. These items are not included in the totals used for the evaluation of bids; however, the City may request clarification for any rates which are excessive when compared to other qualified bidders or the rental rate blue book. If the contractor uses any equipment on a job site which is not listed on the proposal form, the contractor shall request approval for the rates by the City's representative.
- M. Miscellaneous. No additional allowances will be made for general superintendent, the use of small tools, or other costs for which no specific allowance is herein provided.
- N. Compensation. The contractor's representative and the Engineer/Inspector shall compare records daily of the cost of work done as ordered on a force account basis.
- O. All hot mix paving will be performed by the Contractor unless otherwise specified by an authorized representative.
- P. Pipe-in-place shall be paid at unit price bid per linear foot. Price and payment shall include full compensation for furnishing, transport, and placing all materials for all labor, equipment, tools, and miscellaneous structures including reducers

(P.V.C.P.), 1/8 bends, saddles, 1/4 bends, etc., to connect to existing main sewer lines.

- Q. Item 16 (with the exception of 16A2-Manholes) price and payment shall include full compensation for furnishing, transport, installing, and placing all materials for all labor, equipment, tools, and miscellaneous structures. Excavation & Removal, Roadway Restoration, and Saw cutting will be paid for separately per bid items in contract. These items will be the same for City-maintained or State-maintained highways, streets, and sidewalks.
- R. Item 16A2-Manholes price and payment shall include full compensation for Excavation & Removal, Roadway Restoration, Saw cutting, transport, furnishing, installing, and placing all the material, for all labor, equipment, tools, and miscellaneous structures. This item will be the same for City-maintained and State-maintained highways, streets, and sidewalks.
- S. All item numbers in Section I price and payment shall include full compensation for furnishing, transport, installing, and placing all materials including all labor equipment, and tools. These items shall remain the same for City-maintained and state-maintained roads, highways, and sidewalks.
- T. Exceptions to the Construction Contracts General Conditions:
  - 1. Force Account Work: Unless otherwise agreed to in writing by the City and the Contractor, all Force Account Work shall be paid according to the prices listed on the proposal forms and the designated materials and subcontractor mark-ups listed in the Specifications.
  - 2. Maintenance of Traffic: The contractor shall conform to all State and City regulations/requirements governing maintenance of traffic.
  - 3. Partial Payment: Unless otherwise agreed to in writing by the City and the Contractor, the City will not withhold 10% from payment requests submitted by the Contractor.
  - 4. Last Payment to Terminate Liability of Owner: Any invoices not submitted within 3 months of the last day of the yearly contract shall not be paid by the City. Conditional Acceptance/Final Acceptance of Payment: Unless otherwise agreed to in writing by the City and the Contractor, this section shall not apply to this contract.
  - 5. Night Weekend and Holiday Work: The Contractor shall be required to work night weekend and holiday work at the verbal or written request of the Engineer or other City representatives as designated by the Engineer. The contractor will not be required to reimburse the City for Construction Inspectors and their related expenses. The Contractor will be compensated as described in the Specifications.

6. Hours of Labor: The Contractor and their employees shall be permitted to work greater than 8 hours of work in one calendar day as necessary to complete necessary work and safely secure each job site.
7. Wages Payable Under Municipal Contracts, Etc.: Highway Wage Rates as defined by the State Department of Labor shall be considered the Prevailing Wage Rate applicable to this contract.
8. Final Restoration: In all cases where pavement restoration is required, the Contractor will be responsible for restoration according to City or State Road Inspector/ Engineer designation and/ or according to applicable standards.

Should the contractor refuse or fail to prosecute the work as directed or to submit its claim as required, the Engineer may withhold payment on all current estimates relating to a disputed claim until the contractor complies with these requirements or, after giving the contractor due notice, the Engineer may make payment for said work on the basis of a reasonable estimate of the value of the work performed.

Work At or Near Known or Suspected Contaminated Sites: See Special Provisions

Protection of Trees Within Project Limits: See Special Provisions

Sample Invoice: The attached invoice is a sample of the information required for invoicing. See Special Provisions

## SPECIAL PROVISIONS

### Work At or Near Known or Suspected Contaminated Sites

The City of Wilmington has an industrial history dating back to the mid 1600's. As a result, there are many sites within the City that have known or potential contamination located in either the soil and/or the groundwater. Some of these contaminated properties are known, others are yet to be discovered. Therefore, contractors responding to this request for proposal ("RFP") which involves intrusive ground work in various undetermined locations throughout the City must be prepared to properly deal with the site contamination issues. The contractor should be aware that often if soil or water is contaminated, it must be managed in a manner different from normal protocols. In addition, often if hazardous soil or water is disturbed, it must be disposed of off site. The contractor must also make every effort to ensure that there is no exacerbation of contamination when performing work at a contaminated site. Accordingly, the contractor must provide details on two items in its response to the RFP: (1) demonstrate that the contractor is certified by the Delaware Department of Natural Resources and Environmental Control ("DNREC") pursuant to the requirements of Delaware's Hazardous Substance Cleanup Act ("HSCA") as a "Certified HSCA Consultant" for work at or near contaminated sites or provide proof of a contract with Certified HSCA Consultant who will provide oversight for the contractor at or near contaminated sites; and (2) provide an estimate to prepare a Site Safety, Health, and Emergency Response Plan ("SSHERP") for performing intrusive ground work at or near contaminated sites.

Environmental Consultant. The Certified HSCA Consultant selected by the contractor must be certified by DNREC pursuant to the requirements of HSCA, 7 Del. Code, Chapter 91. (DNREC's website contains the current list of HSCA Certified Consultants.) The HSCA Certified Consultant shall assist with the environmental aspect of the work to be performed including discussions with DNREC, management of worker exposure issues, proper management and disposal of soil and water discharged from the dewatering activities and safety oversight. The HSCA Certified Consultant selected must demonstrate the capacity to provide oversight of intrusive work on a contaminated site 24 hours a day, seven days a week in the event of an emergency repair. The HSCA Certified Consultant will be responsible for all state, federal and local reporting requirements, which may be triggered when working at a contaminated site.

If and when a HSCA Certified Consultant is needed during the course of this contract, this item/payment will be discussed by the Contractor and The City of Wilmington as to how the cost will be handled.

Site Safety, Health and Emergency Response Plan (SSHERP). It is the responsibility of the contractor to develop and implement a SSHERP to assure that all federal, state and local statutes and regulations are complied with when performing work at a contaminated site and that the health and safety of employees are protected. The SSHERP must also include an excavation of materials handling plan. The City will make available its own SSHERP in draft-final format, which the selected HSCA Certified Consultant may choose to review and adopt. However, the City makes no representations as to the completeness or sufficiency of this plan and the document is supplied only for informational purposes. No fieldwork shall begin until the SSHERP has been submitted to DNREC and the City engineer or his/her designated representative for review.

### **Tree Protections.**

Extreme caution shall be exercised so as not to damage existing trees, shrubbery, buildings, and fixtures in the immediate construction area; any damages caused directly or indirectly shall be repaired immediately at the Contractor's expense. Contractor shall restore resources within the project boundaries to a condition that will appear to be natural or match the conditions existing prior to the start of work.

- Extreme caution shall be exercised so as to not damage existing trees in the construction area, which includes protecting roots, stems, and branches. Vehicular traffic, storage of material and equipment, soil disturbance, and root cutting of roots greater than 2" in diameter is prohibited within tree drip lines, i.e. the width of a tree's canopy as measured by a circle extending perpendicularly from the outermost tips of branches to the ground.
- Contractor shall obtain a tree permit from Public Works for all necessary root pruning, tree removal and tree replacement.
- In the event that disturbance within the dripline is unavoidable during trenching/repairs, the Contractor shall inform the Public Works certified arborist (302.576.2582) immediately to determine if the tree should be treated (i.e. improve aeration of the root zones) or be removed and replaced, at the cost of the contractor.
- 2 trees shall be planted for each public tree removed and 1 tree shall be replanted for each tree removed on private property.
- The Public Works certified arborist shall evaluate construction damage/root pruning of trees and reserves the right to determine if the extent of damage significantly affects tree health and stability and requires removal and replacement.
- Tree replacements shall conform to size and species requirements deemed appropriate by the city for the space and locations in which each tree is to be planted. Replacement trees shall be in accordance with American Standard for Nursery Stock, be 2" caliper, balled and burlapped, include stakes, mulch and gator bags, be guaranteed for a minimum of 1-year from the date of acceptance by the city, and include maintenance watering of 20 gallons/tree/week during the growing season of April through October.
- All tree work shall conform to ANSI A300 arboriculture standards and an ISA certified arborist must supervise tree work.

**COMPANY LOGO****INVOICE**

Invoice #  
Invoice date  
PO #  
City Contract #  
Billing Period  
Job Number if needed/contractor

**JOB SITE LOCATION**  
Brief description of work

Invoices should be broken down according to>>>>>

**PERSONNEL**

	<u>AMT</u> HRS	RATE/HR	SUB TOTAL	TOTAL
	xx	\$	\$	\$
Forman:				
OT				
Laborer:				
OT				
Operator				
OT				
Driver				
OT				
Etc				

**EQUIPMENT:**

Type	xx	\$	\$	\$
------	----	----	----	----

**MATERIAL:**

All material must be listed according to paid receipts that are to be provided with each invoice.

\*\*\*\* Daily reports are also to be attached to the invoice – daily reports will include all information listed above. Certified payroll is to be attached to each invoice. The invoice is actually a summary of the attached information behind the invoice.

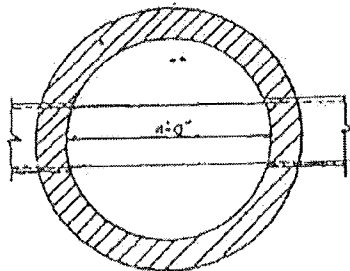
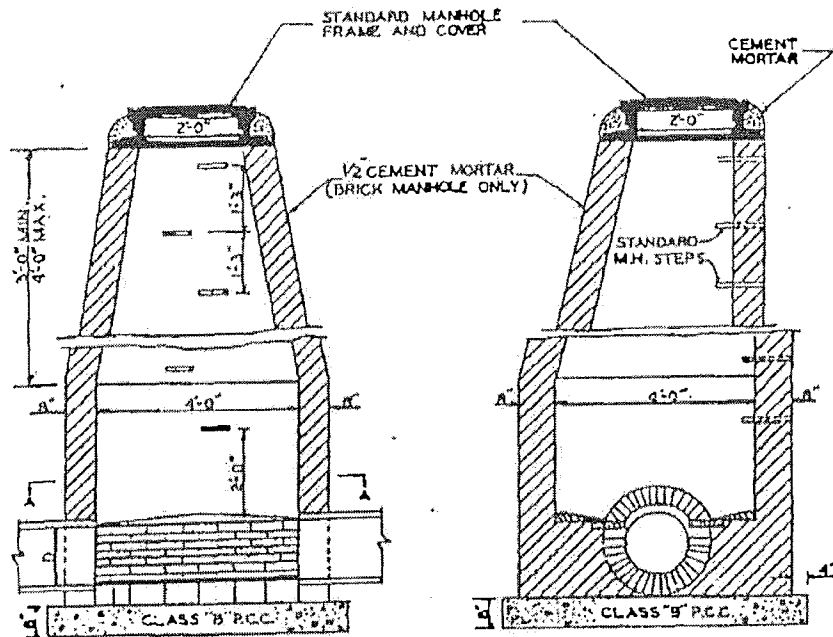
# APPENDIX "A"

## TRENCH SHORING MINIMUM REQUIREMENTS

Size and Spacing of Members																		
Depth of Trench	Kind of Condition of Earth	Minimum Dimension	Maximum Spacing	Uprights	Stringers	Cross Braces	Width of Trenches										Maximum Spacing	
							Up to 3	3 to 6	6 to 9	9 to 12	12 to 15	Vertical	Horizontal					
																Feet	Feet	Feet
Feet		Inches	Feet		Inches		Feet	Inches	Feet	Inches	Feet	Inches	Feet	Inches	Feet	Inches		
5 to 10	Hard, compact Likely to crack	3/4 or 2x6	6				2 x 6	4 x 4	4 x 6	6 x 6	8 x 8	4	6					
		3/4 or 2x6	Close				2 x 6	4 x 4	4 x 6	6 x 6	8 x 8	4	6					
10 to 15	Soft, sandy, or filled Hydrostatic pressure Likely to crack	3/4 or 2x6	Close				4 x 4	4 x 6	6 x 6	8 x 8	10 x 10	4	6					
		3/4 or 2x6	Sheeting	4 x 6	4		4 x 4	4 x 6	6 x 6	8 x 8	10 x 10	4	6					
		3/4 or 2x6	Sheeting	6 x 8	4		4 x 4	4 x 6	6 x 6	8 x 8	10 x 10	4	6					
		3/4 or 2x6	4	4 x 6	4		4 x 4	4 x 6	6 x 6	8 x 8	10 x 10	4	6					
15 to 20	Soft, sandy, or filled Static pressure	3/4 or 2x6	Close				4 x 6	6 x 6	8 x 8	10 x 10	4	6						
		3/4	Sheeting	8 x 10	4		4 x 6	6 x 6	8 x 8	10 x 10	4	6						
20 to 30	Hard, compact Likely to crack	3/4 or 2x6	Close				4 x 6	6 x 6	8 x 8	10 x 10	4	6						
30 to 40	Soft, sandy, or filled	3/4 or 2x6	Sheeting	4 x 6	4		4 x 4	4 x 6	6 x 6	8 x 8	10 x 10	4	6					

Trench jacks may be used in lieu of, or in combination with, cross braces. Shoring is not required in solid rock, or hard shale, or hard slag. Where desirable, steel sheet piling and bracing of equal strength may be substituted for wood.





SECTION A-A

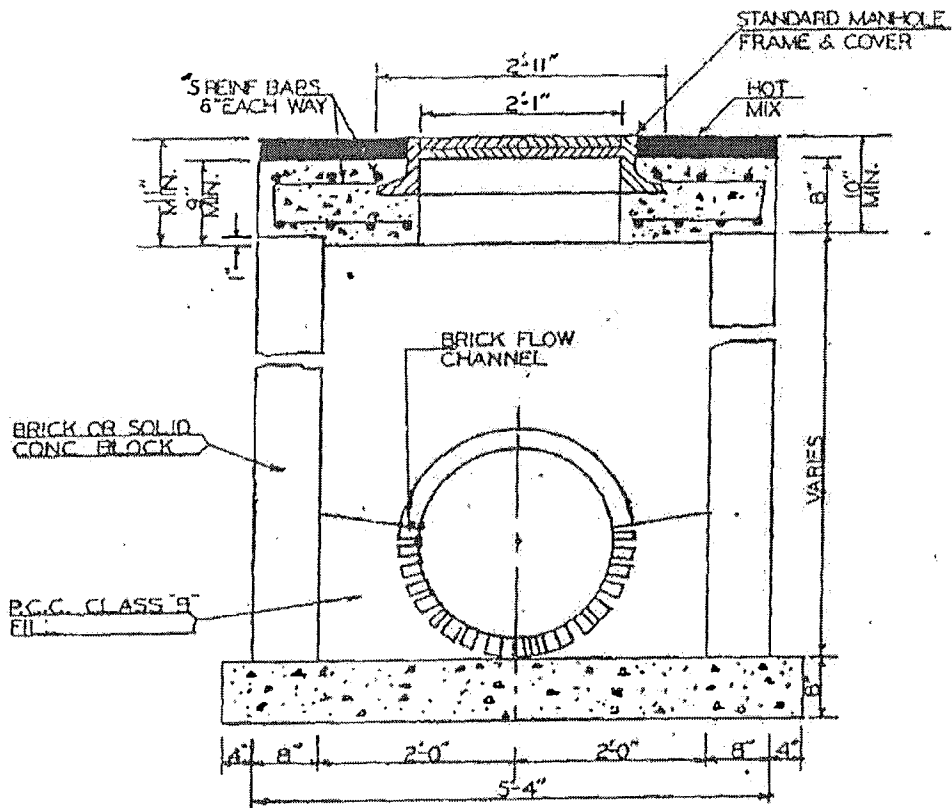
NOTE:

1. WALLS AND BOTTOM SHALL BE BRICK OR CLASS "A" CONCRETE PCURED IN PLACE. INVERT SHALL BE BRICK LAID ON EDGE.
2. WHERE COVER OVER PIPE IS LESS THAN 5" USE SHALLOW MANHOLE.
3. THICKNESS OF WALLS TO BE INCREASED TO 12", 12'-0" BELOW UNDERSIDE OF FRAME.
4. IN LOW WET GROUND WALLS SHALL BE 12" THICK THROUGHOUT AS DIRECTED
5. MAXIMUM DROP ACROSS CHANNEL SHALL BE 0.3 FOOT.

DEPARTMENT OF  
PUBLIC WORKS  
WILMINGTON, DELAWARE

STANDARD MANHOLE

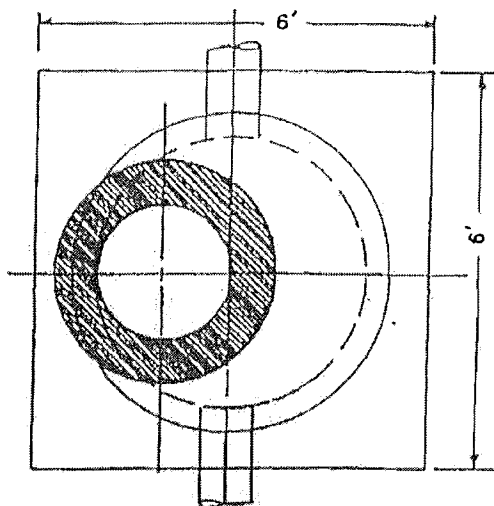
DATE: 10-18-77  
REVIS: -----  
REVIS: -----  
PLATE: 5-1



DEPARTMENT OF  
PUBLIC WORKS  
WILMINGTON, DELAWARE

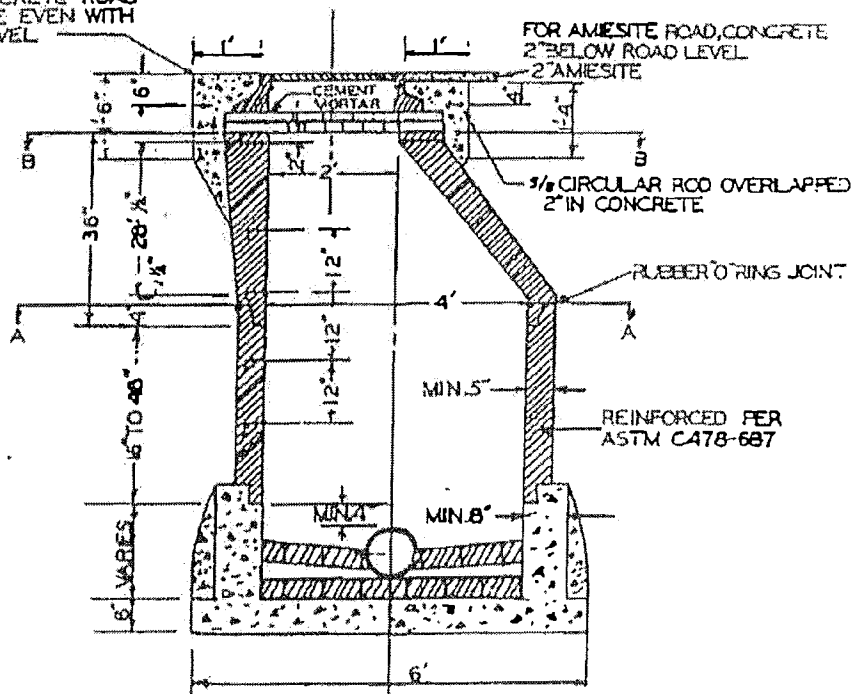
MANHOLE  
TYPE -W  
SCALE: 3/4" = 1'-0"

DATE: 12-18-77  
REVISED: \_\_\_\_\_  
REVISED: \_\_\_\_\_  
PLATE: 5-1



PLAN SECTION A-A B-B

FOR CONCRETE ROAD  
CONCRETE EVEN WITH  
ROAD LEVEL

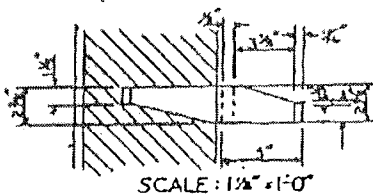
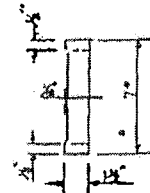
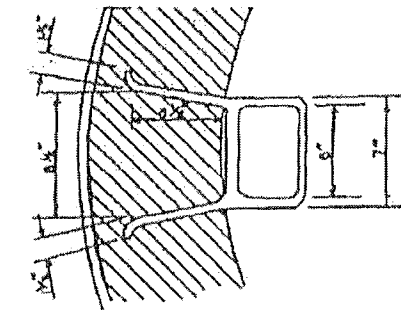
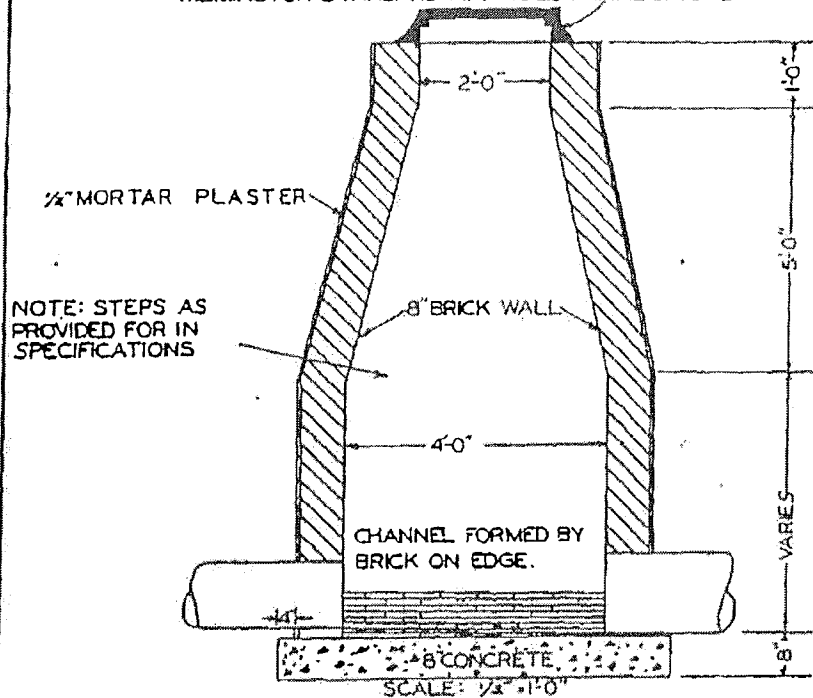


DEPARTMENT OF  
PUBLIC WORKS  
WILMINGTON, DELAWARE

48" PRECAST REINFORCED  
CONCRETE MANHOLE  
SCALE:  $\frac{1}{2}" = 1'-0"$

DATE: 10-18-77  
REVISED: -----  
REVISED: -----  
PLANT: 5-4

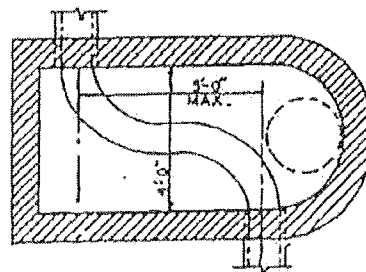
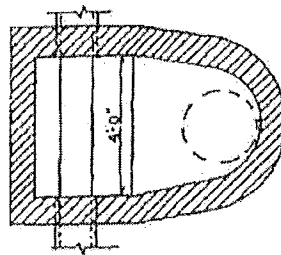
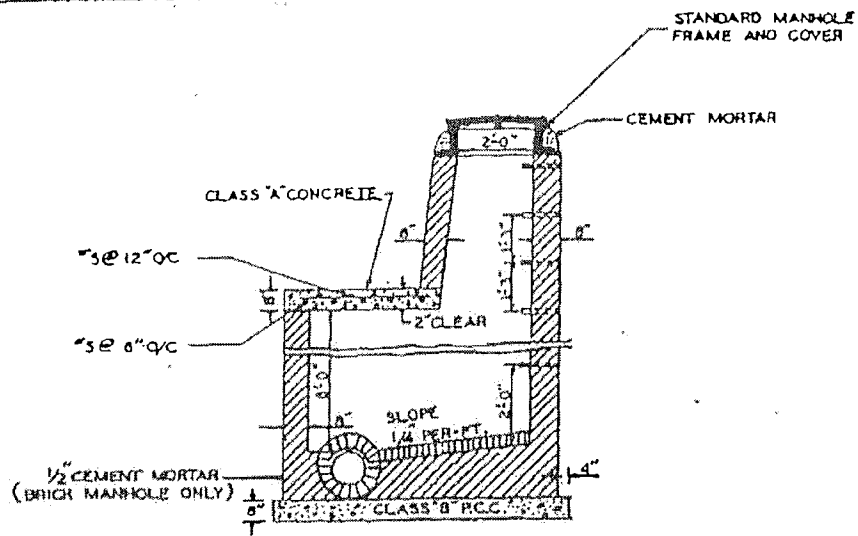
# WILMINGTON STANDARD MANHOLE FRAME & COVER



DEPARTMENT OF  
PUBLIC WORKS  
WILMINGTON, DELAWARE

STANDARD MANHOLE  
SECTION & STEP

DATE: 10-18-77  
REVISED: .....  
REVISIONS: .....  
PLATE: S-7



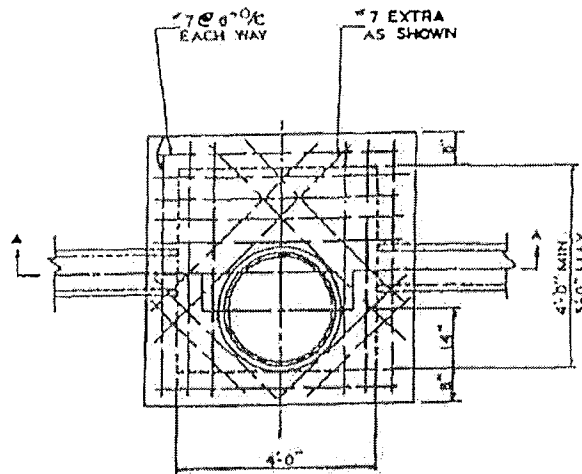
#### NOTES

1. WALLS AND BOTTOM SHALL BE BRICK OR CLASS "A" CONCRETE POURED IN PLACE, INVERT SHALL BE BRICK LAID ON EDGE.
2. WHERE COVER OVER PIPE IS LESS THAN 5' USE SHALLOW MANHOLE
3. THICKNESS OF WALLS TO BE INCREASED TO 12" 12'-0" BELOW UNDERSIDE OF FRAME.
4. IN LOW WET GROUND, WALLS SHALL BE 12" THICK THROUGHOUT AS DIRECTED
5. MAXIMUM DROP ACROSS CHANNE SHALL BE 0.3 FOOT.

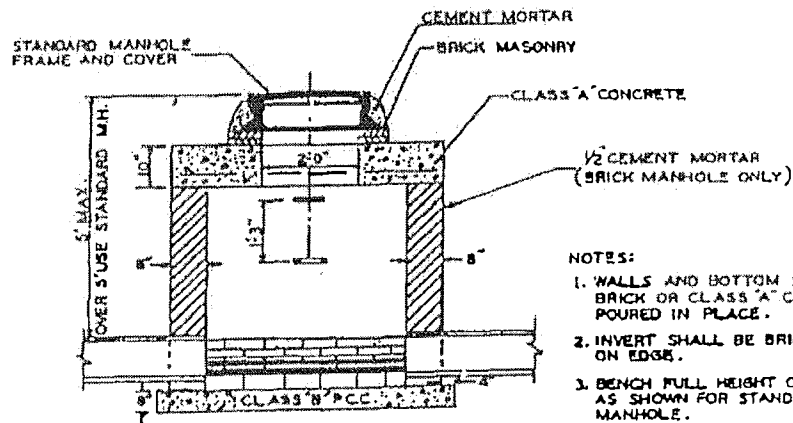
DEPARTMENT OF  
PUBLIC WORKS

OFFSET MANHOLE  
WITH CONCRETE SLAB

DATE: 10-18-77  
REVIS: -----  
REVIS: -----  
PLATE: 5-B



PLAN



NOTES:

1. WALLS AND BOTTOM SHALL BE BRICK OR CLASS "A" CONCRETE POURED IN PLACE.
2. INVERT SHALL BE BRICK LAID ON EDGE.
3. BENCH FULL HEIGHT OF PIPE AS SHOWN FOR STANDARD MANHOLE.

SECTION A-A

DEPARTMENT OF  
PUBLIC WORKS  
WILMINGTON, DELAWARE

SHALLOW MANHOLE

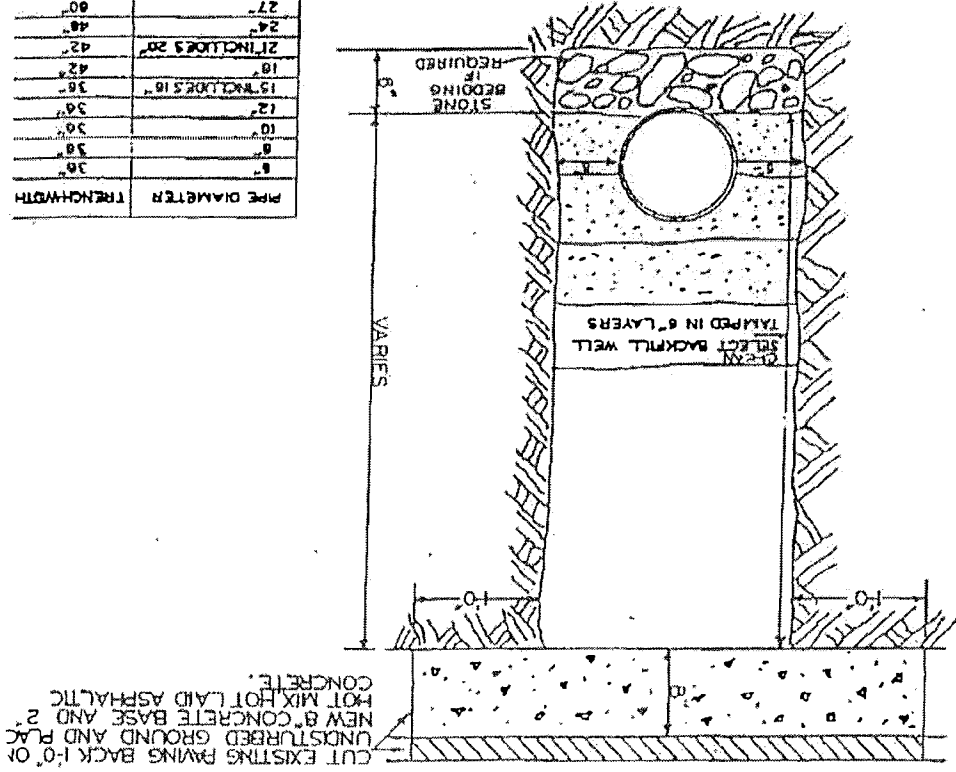
DATE: 10-18-77  
REVIS: \_\_\_\_\_  
REVIS: \_\_\_\_\_  
PLATE: 5-9

DEPARTMENT OF  
PUBLIC WORKS  
WILMINGTON, DELAWARE

TRENCH AND PAVING  
REPAIR DETAIL  
SCALE: 1"=1'-0"

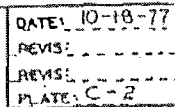
DATE: 10-18-71  
REVS: 5  
PLATE: 5-13

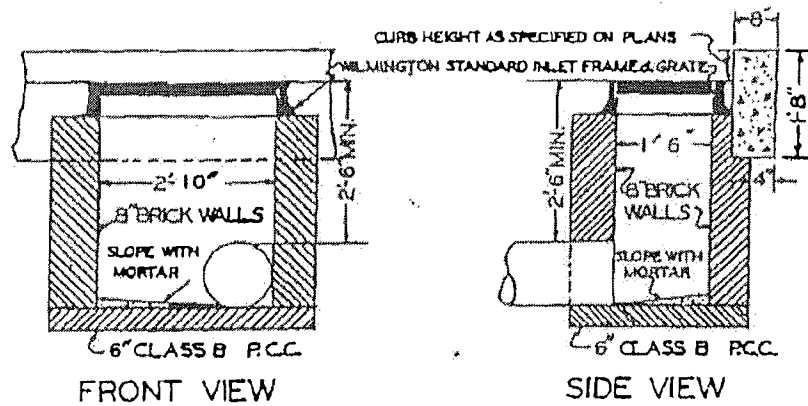
PIPE DIAMETER	TRENCH WIDTH
6"	36"
8"	36"
10"	36"
12"	36"
15" INCLUDES 16"	36"
21" INCLUDES 20"	42"
24"	48"
27"	60"
30"	60"
33"	60"
36"	60"
42"	78"
48"	84"
54"	96"
60"	102"
66"	108"
72"	120"
78"	132"
84"	138"
90"	144"
102"	156"
108"	168"









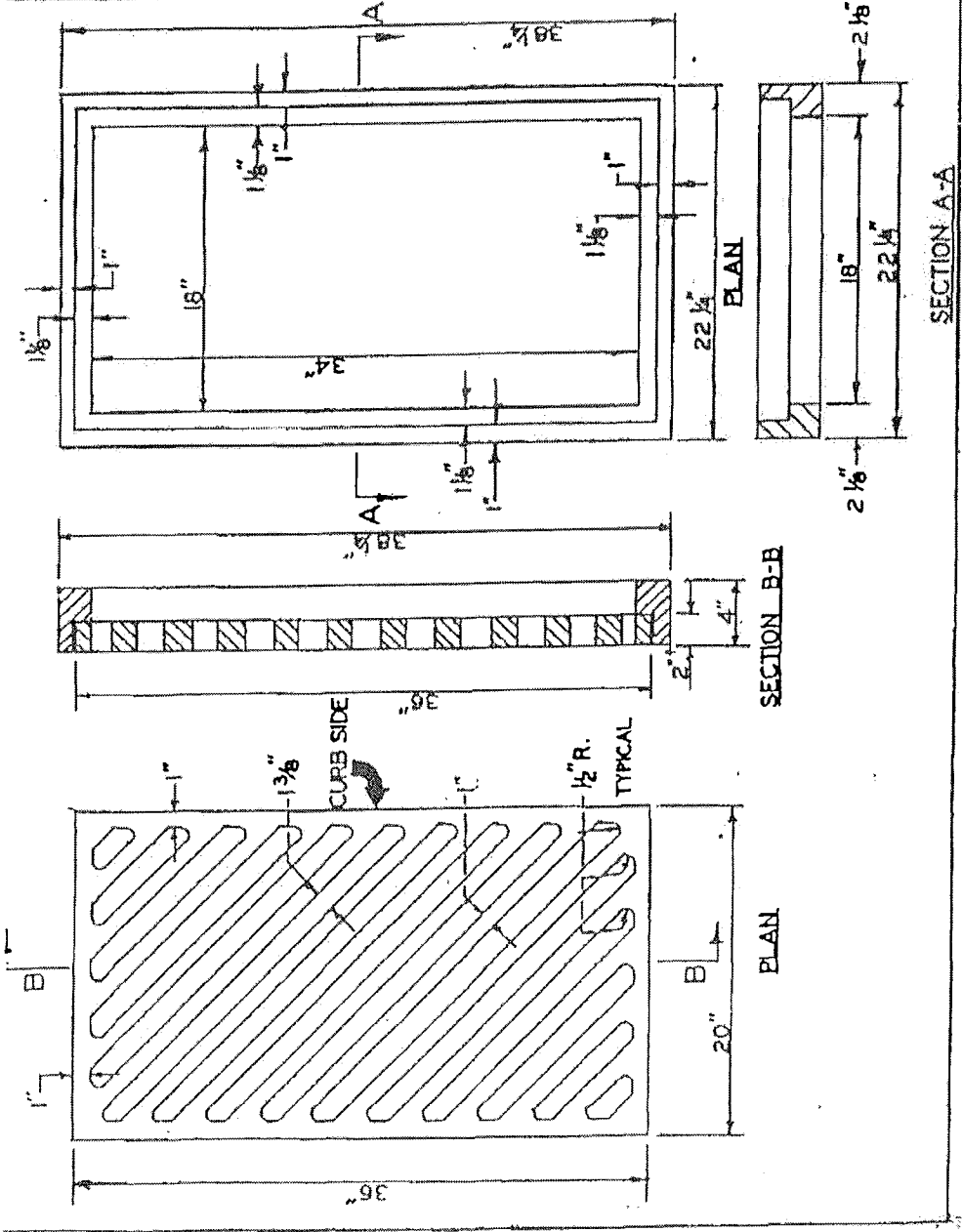


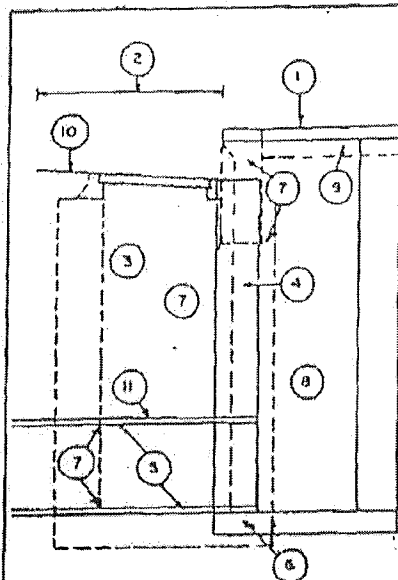
DEPARTMENT OF  
PUBLIC WORKS  
WILMINGTON, DELAWARE

TYPICAL TYPE "A" INLET  
SCALE:  $\frac{1}{2}" = 1'-0"$

DATE: 10-18-77  
REVIS: 12-1-77  
REVIS: 5-3-77  
PLATE: 5-3

DEPARTMENT OF PUBLIC WORKS  
 WILMINGTON, DELAWARE  
 STANDARD CATCH BASIN FRAME & 45° GRATE  
 SCALE: 1 1/2" = 1'-0"  
 DATE: 10-18-77  
 REVISED: C-4  
 PLATE: C-4





DETAIL "A"

NOTES

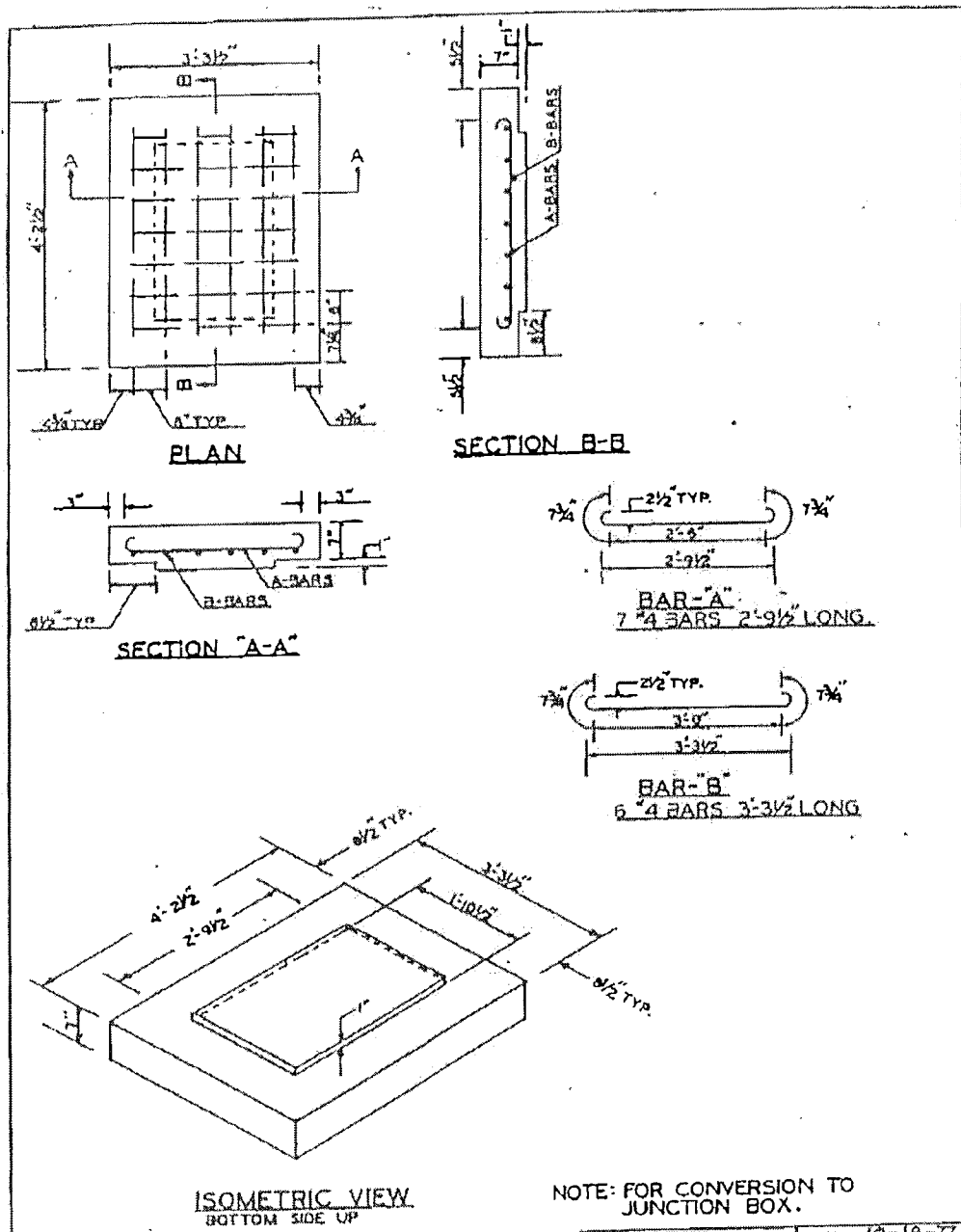
1. THE ILLUSTRATED CONSTRUCTION PROCEDURE SHALL BE FOLLOWED WHERE EXISTING TYPE "P" OR TYPE "O" INLETS ARE REPLACED WITH STANDARD INLETS.
2. ALL MATERIALS AND WORKMANSHIP SHALL BE IN ACCORDANCE WITH THE CITY OF WILMINGTON STANDARD SPECIFICATIONS.
3. SEE PLAN FOR TYPE INLET.

- ① REMOVE EXISTING METAL PLATE AND RETURN TO THE CITY.
- ② REMOVE PORTION OF EXISTING PAVING AS DIRECTED BY THE ENGINEER.
- ③ EXCAVATE FOR CONSTRUCTION (4± CUBIC YARDS).
- ④ REMOVE EXISTING FRONT WALL AND REQUIRED PORTIONS OF SIDE WALLS.
- ⑤ REMOVE PORTIONS OF EXISTING PIPE.
- ⑥ REMOVE PORTIONS OF EXISTING BASE.
- ⑦ CONSTRUCT NEW INLET AND CURB, CONNECT PIPE(S) TO NEW TYPE INLET AS DIRECTED BY THE ENGINEER OR PLAN.
- ⑧ PLACE COMPACTED SELECT BETWEEN BACK WALL OF NEW INLET AND REMAINS OF OLD INLET (3± CUBIC YARDS).
- ⑨ CONSTRUCT 4" CONCRETE SIDEWALK AS REQUIRED MECHANICAL SAW EXISTING WALK FOR NEW JOINT.
- ⑩ BACKFILL AND PATCH PAVING AROUND NEW INLET.
- ⑪ PROVIDE & INSTALL S.L.F. OF 10" E.S.V.C. & 2-10" E.S.V.C. VB BEAMS TO CONNECT TO NEW INLET.

DEPARTMENT OF  
PUBLIC WORKS  
WILMINGTON, DELAWARE.

CONSTRUCTION PROCEDURE  
FOR REPLACEMENT OF  
EXISTING INLETS

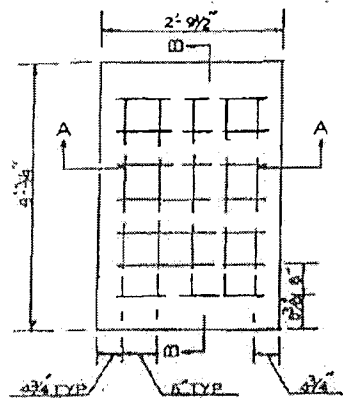
DATE: 10-18-77  
REVIS: \_\_\_\_\_  
REVIS: \_\_\_\_\_  
PLATE: C-5



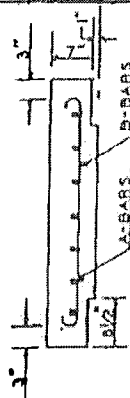
DEPARTMENT OF  
PUBLIC WORKS  
WILMINGTON, DELAWARE

REINF CONCRETE COVER  
FOR TYPE 1 (SINGLE C.B.)  
SCALE: 1/2" = 1'-0"

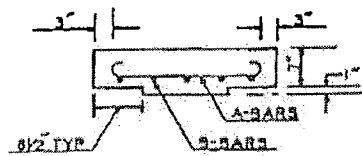
DATE: 10-18-77  
REVIS: \_\_\_\_\_  
REVIS: \_\_\_\_\_  
PLATE: C-6



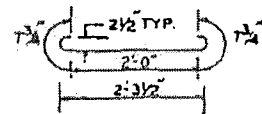
PLAN



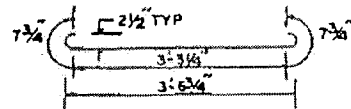
SECTION "B-B"



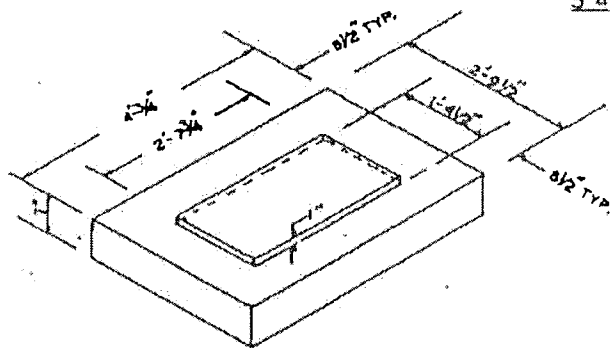
SECTION "A-A"



BAR "A"  
7 1/4 BARS 2'-3 1/2" LONG



BAR "B"  
5 1/4 BARS 3'-6 3/4" LONG



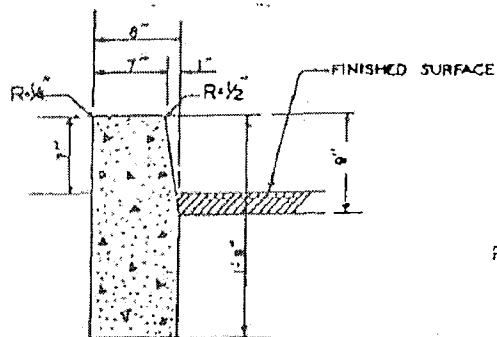
ISOMETRIC VIEW  
BOTTOM SIDE UP

NOTE: FOR CONVERSION TO  
JUNCTION BOX.

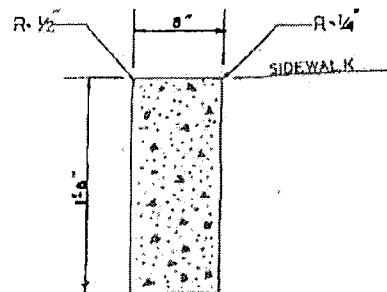
DEPARTMENT OF  
PUBLIC WORKS  
WILMINGTON, DELAWARE

REINF CONCRETE COVER  
FOR TYPE A (SINGLE C.B.)  
SCALE: 1/2" = 1'-0"

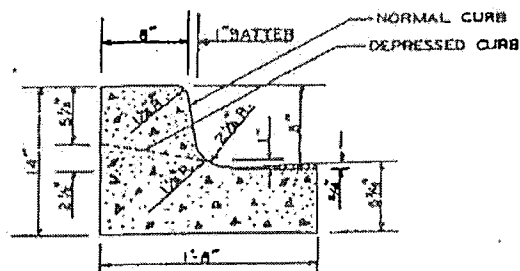
DATE: 10-18-77  
REVS: \_\_\_\_\_  
REVIS: \_\_\_\_\_  
PLATE: C-7



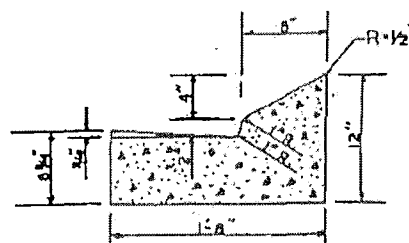
TYPE "A"



TYPE "1"



INTERGRAL P.C.C. CURB & GUTTER  
TYPE "3"

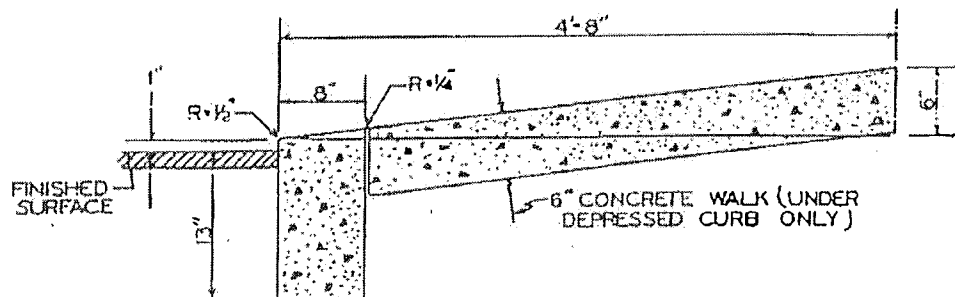
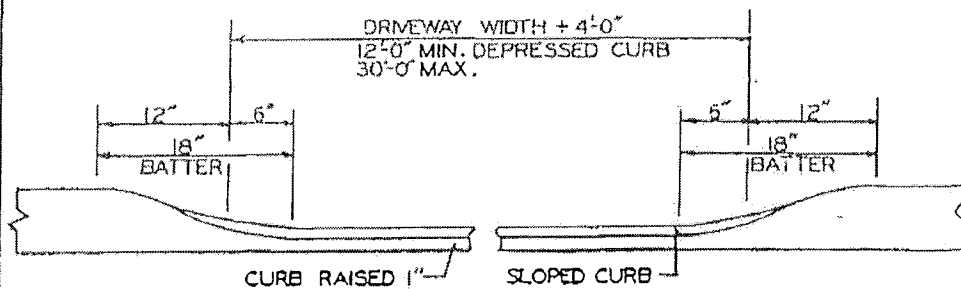


P.C.C. PARKWAY CURB  
TYPE "3"

DEPARTMENT OF  
PUBLIC WORKS  
WILMINGTON, DELAWARE

STANDARD CURB DETAILS  
SCALE: 1" = 1'-0"

DATE: 10-18-77  
REVIS: \_\_\_\_\_  
REVIS: \_\_\_\_\_  
PLATE: P-1

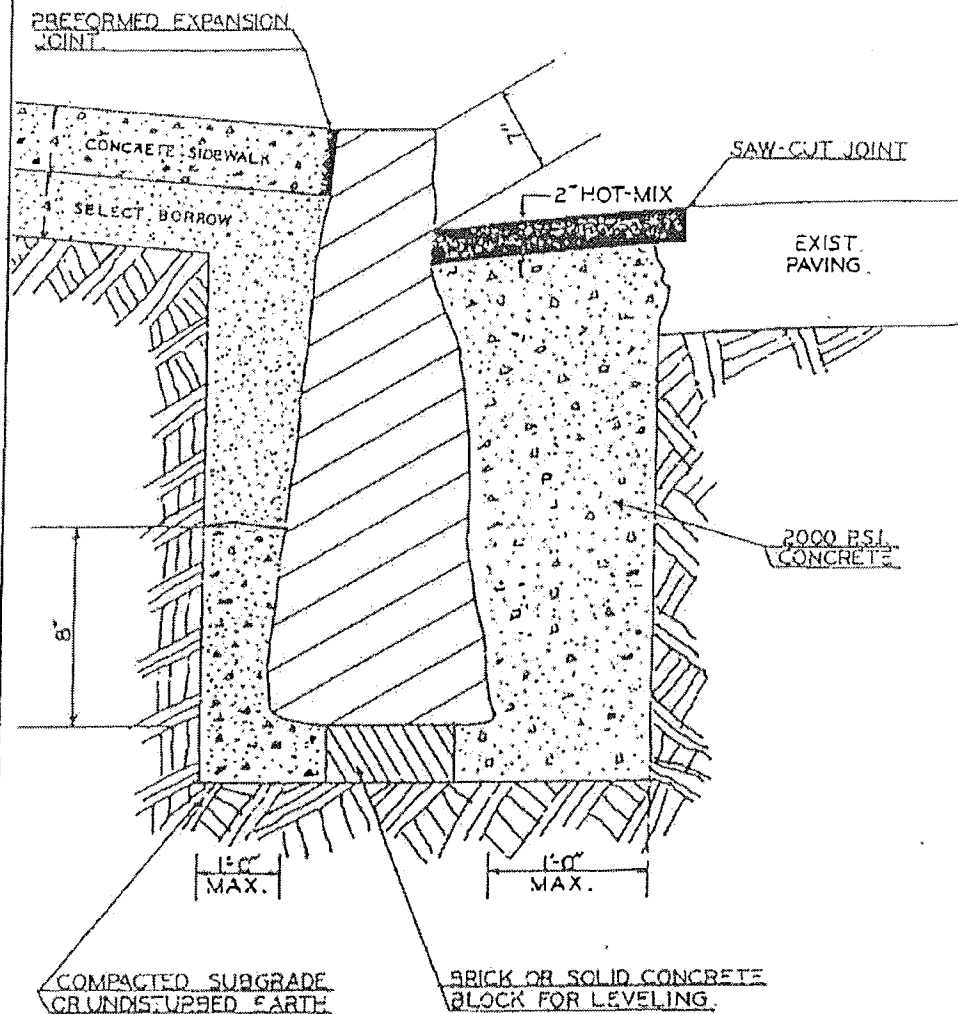


DEPARTMENT OF  
PUBLIC WORKS  
WILMINGTON, DELAWARE

DRIVEWAY APPROACH (TYP)  
& DEPRESSED CURB (TYP)

DATE: 10-18-71  
REVIS: \_\_\_\_\_  
REVIS: \_\_\_\_\_  
PLATE: P-2

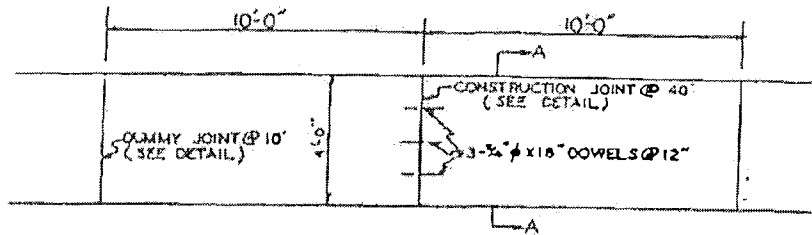




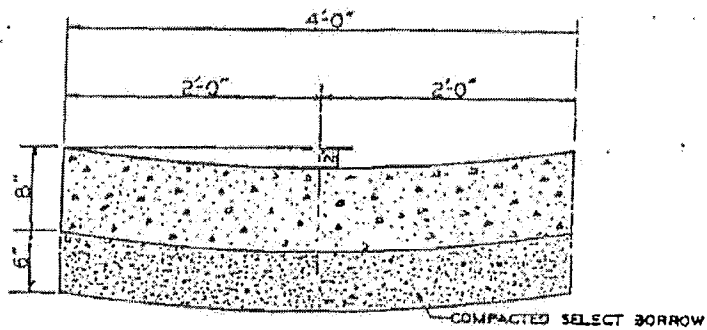
DEPARTMENT OF  
PUBLIC WORKS  
WILMINGTON, DELAWARE

RESET GRANITE CURB  
NO SCALE

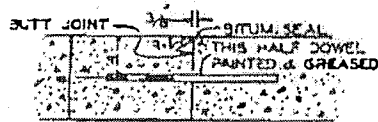
DATE: 02-19-77  
REVIS: \_\_\_\_\_  
REVIS: \_\_\_\_\_  
PLATE: P-3



PLAN  
SCALE: 1/4" = 1'-0"



SECTION A-A  
SCALE: 1" = 1'-0"



CONSTRUCTION JOINT DETAIL  
SCALE: 1" = 1'-0"

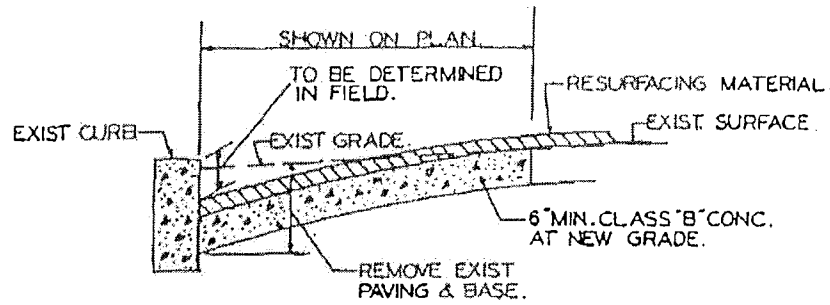


DUMMY JOINT DETAIL  
SCALE: 1" = 1'-0"

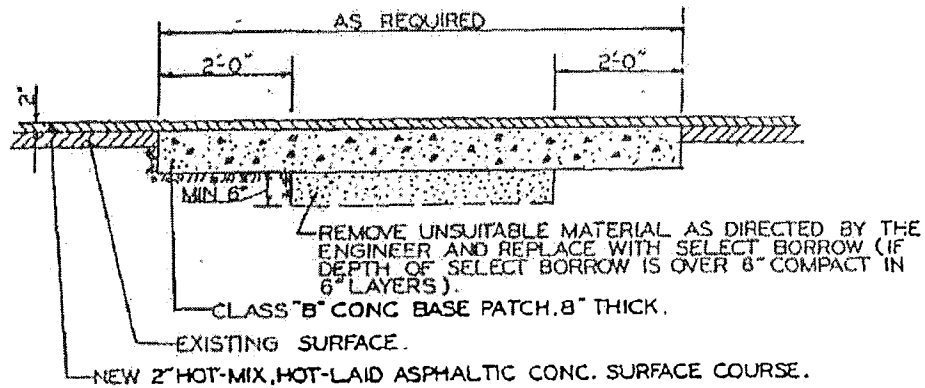
DEPARTMENT OF  
PUBLIC WORKS

P.C.C. VALLEY GUTTER  
SCALE: AS SHOWN

DATE: 10-18-77  
REVIS: \_\_\_\_\_  
REVIS: \_\_\_\_\_  
PLATE: P-4



TYPICAL GRADE ADJUSTMENT PATCH.  
NOT TO SCALE

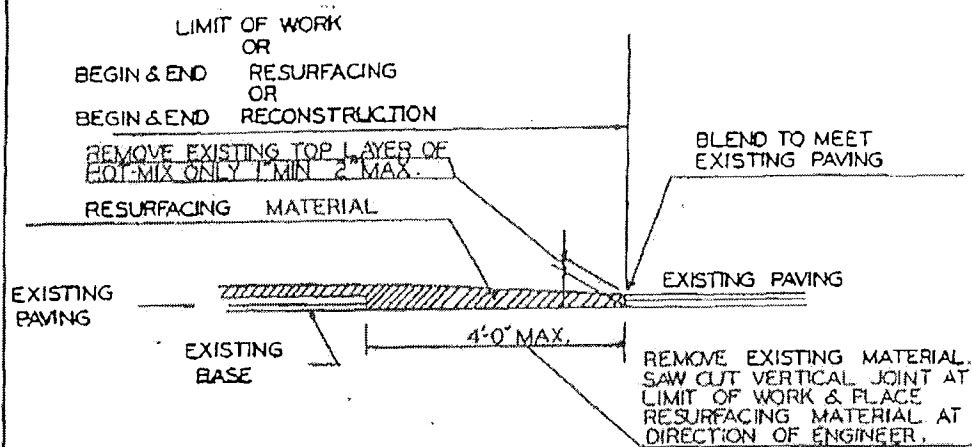


TYPICAL STREET PATCH.  
SCALE: 1/2\"/>

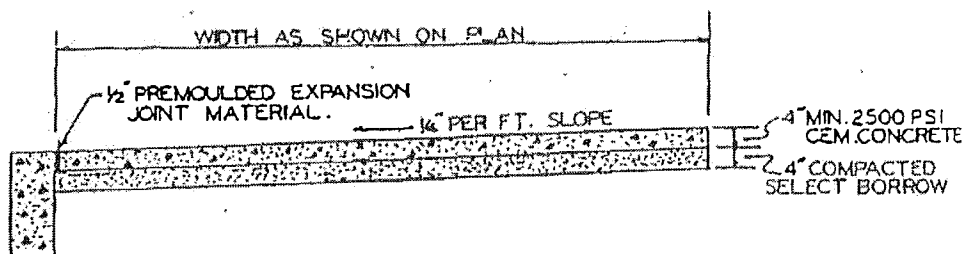
DEPARTMENT OF  
PUBLIC WORKS  
WILMINGTON, DELAWARE

STANDARD PATCH DETAILS  
SCALE: AS NOTED

DATE: 10-18-77  
REVIS: \_\_\_\_\_  
REVIS: \_\_\_\_\_  
PLATE: P-5



TYPICAL CUT JOINT DETAIL

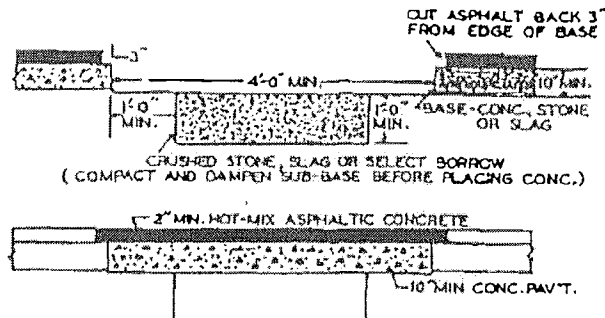


TYPICAL CEMENT CONCRETE WALK

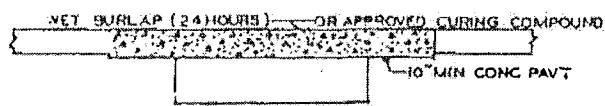
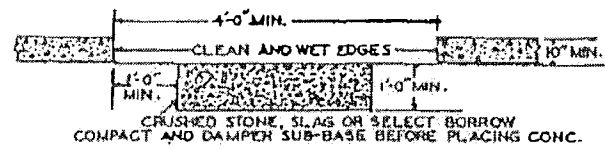
DEPARTMENT OF  
PUBLIC WORKS  
WILMINGTON, DELAWARE

CUT JOINT DETAIL (TYP) &  
CEMENT CONCRETE WALK (TYP)  
SCALE: 1/2" = 1'-0"

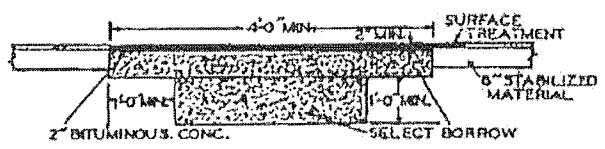
DATE: JQ-38-77  
REVS: ---  
REVS: ---  
PLATE: P-6



BITUMINOUS SURFACED-FLEXIBLE OR RIGID BASE



CONCRETE ROADWAY



SURFACE TREATED ROADWAY

FOR STATE MAINTAINED STREET'S

DEPARTMENT OF PUBLIC WORKS WILMINGTON, DELAWARE	CUTTING AND REPLACING PAVEMENTS FOR UTILITY INSTALLATIONS	DATE: 10-18-77 REVIS: _____ REVS: _____ PLATE: P-1
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DEPARTMENT OF PUBLIC WORKS  
WILMINGTON, DELAWARE

PROPOSAL FORM

16010PW- SEWER CONSTRUCTION

DATE: \_\_\_\_\_

Our City of Wilmington Business License is Number \_\_\_\_\_.

This Proposal is submitted with the knowledge that the Department of Finance, Procurement and Records Division, reserves the right to reject any and all proposals when in its judgment is it in the best interest of the City of Wilmington to do so.

We, the undersigned, hereby agree to furnish and deliver, per specifications, the item(s) listed below to the Department of Public Works, Wilmington, Delaware.

**Section I** -- The estimated items below will be used as the method of payment for the Scope of Work stated in the General Requirement section of the specifications.

<u>ITEM NO.</u>	<u>APPROXIMATE QUANTITY AND DESCRIPTION</u>	<u>UNIT PRICE</u>	<u>TOTAL PRICE</u>
Item 3	<u>EXCAVATION &amp; REMOVAL:</u>  2000 Cubic yards at _____ Dollars and _____ Cents per cubic yard.	(\$ _____)	\$ _____
Item 4	<u>ROCK EXCAVATION:</u>  40 Cubic yards at _____ Dollars and _____ Cents per cubic yard.	(\$ _____)	\$ _____
Item 6A	<u>SELECT BORROW:</u>  1,000 Tons at _____ Dollars and _____ Cents per ton.	(\$ _____)	\$ _____

<u>ITEM NO.</u>	<u>APPROXIMATE QUANTITY AND DESCRIPTION</u>	<u>UNIT PRICE</u>	<u>TOTAL PRICE</u>
Item 6B	<u>CRUSHER RUN (CR-1):</u>  500 Tons at _____ Dollars and _____ Cents per ton.	(\$ _____)	\$ _____
Item 6C	<u>106A STONE:</u>  200 Tons at _____ Dollars and _____ Cents per ton.	(\$ _____)	\$ _____
Item 6D	<u>TOPSOIL</u>  3 Tons at _____ Dollars and _____ Cents per lineal feet.	(\$ _____)	\$ _____
Item 6E	<u>RECYCLED/CRUSHED CONCRETE:</u>  500 Tons at _____ Dollars and _____ Cents per lineal feet.	(\$ _____)	\$ _____
Item 9	<u>P.C.C. BASE COURSE:</u>  #9A-Class A Portland Cement Concrete 30 Cubic Yards at _____ Dollars and _____ Cents per cubic yard.  #9B-Class B Portland Cement Concrete 560 Cubic Yards at _____ Dollars and _____ Cents per cubic yard.	(\$ _____)  (\$ _____)	\$ _____  \$ _____
Item 10	<u>HOT MIX C</u>  10A-Hot Mix 300 Tons at _____ Dollars and _____ Cents per ton.  10B-Cold Patch 50 Tons at _____ Dollars and _____ Cents per ton.	(\$ _____)  (\$ _____)	\$ _____  \$ _____

<u>ITEM NO.</u>	<u>APPROXIMATE QUANTITY AND DESCRIPTION</u>	<u>UNIT PRICE</u>	<u>TOTAL PRICE</u>
Item 15	<u>SEWER CONSTRUCTION:</u>		
	#15A-6-inch P.V.C. Pipe 600 Lineal Feet at _____ Dollars and _____ Cents per lineal foot.	(\$ _____)	\$ _____
	#15B-8-inch P.V.C. Pipe 300 Linear Feet at _____ Dollars and _____ Cents per lineal foot.	(\$ _____)	\$ _____
	#15C-10-inch P.V.C. Pipe 300 Lineal Feet at _____ Dollars and _____ Cents per lineal foot.	(\$ _____)	\$ _____
	#15D-12-inch P.V.C. Pipe 200 Lineal Feet at _____ Dollars and _____ Cents per lineal foot.	(\$ _____)	\$ _____
	#15E-16-inch P.V.C. Pipe 100 Lineal Feet at _____ Dollars and _____ Cents per lineal foot.	(\$ _____)	\$ _____
	#15F-18-inch P.V.C. Pipe 100 Lineal Feet at _____ Dollars and _____ Cents per lineal foot.	(\$ _____)	\$ _____
Item 16	<u>STRUCTURES (REPAIR AND INSTALLATION):</u> (All castings supplied by City)		
	#16A-Brick Manhole 300 Vertical Feet at _____ Dollars and _____ Cents per vertical foot.	(\$ _____)	\$ _____
	#16A2-Manholes (replace lid and frame assembly only) 20 each of _____ Dollars and _____ Cents each.	(\$ _____)	\$ _____
	#16A3-Pre-cast Reinforced Concrete Manholes 200 Vertical Feet at _____ Dollars and _____ Cents each.	(\$ _____)	\$ _____



<u>ITEM NO.</u>	<u>APPROXIMATE QUANTITY AND DESCRIPTION</u>	<u>UNIT PRICE</u>	<u>TOTAL PRICE</u>
	#16B-Lamphole 4 Each at _____ Dollars and _____ Cents each.	(\$_____)	\$_____
	#16C-Install, Repair and Restore (paring catch basin walls) Catch Basin Type "A" or "I" 160 Vertical Feet at _____ Dollars and _____ Cents per vertical foot.	(\$_____)	\$_____
	#16D-Install, repair, and restore (paring catch basin walls) double Catch Basin Type "A" or "I" 60 Vertical Feet at _____ Dollars and _____ Cents per vertical foot.	(\$_____)	\$_____
Item 19	<u>Curb 19A-PORTLAND CEMENT CURB</u>  120 Lineal Feet at _____ Dollars and _____ Cents per lineal foot.	(\$_____)	\$_____
	<u>19B-GRANITE CURB</u>  20 Lineal Feet at _____ Dollars and _____ Cents per lineal foot.	(\$_____)	\$_____
Item 20	<u>PORTLAND CEMENT CONCRETE SIDEWALK:</u>  4-inch Thick Sidewalk 800 Square Feet at _____ Dollars and _____ Cents per square foot.	(\$_____)	\$_____
Item 35	<u>CUT-INS (CORE-DRILLED):</u>  #35A*-100 Cut-Ins at _____ Dollars and _____ Cents each.	(\$_____)	\$_____
	#35C-Mechanical Saw Cut 2,100 Lineal Feet at _____ Dollars and _____ Cents per lineal foot.	(\$_____)	\$_____

**Section II** -- The items below will be used as a method of payment for work not covered by the items in Section I and for force account work. This section will be estimated for a time period of 120 days.

Bricklayer (1)	8 hour/day @	\$ _____	=	\$ _____
Working Foreman (1)	8 hour/day @	\$ _____	=	\$ _____
Laborer (1)	8 hour/day @	\$ _____	=	\$ _____
Radio Pick-Up Truck (1)	8 hour/day @	\$ _____	=	\$ _____
Pick-Up/Tool/Crew Truck (1)	8 hour/day @	\$ _____	=	\$ _____
Air Compressor w/Tools (125 CFM) (1)	4 hour/day @	\$ _____	=	\$ _____
2" - 3" Submersible Pump	4 hour/day @	\$ _____	=	\$ _____
Dump Truck (Single Axle)	8 hour/day @	\$ _____	=	\$ _____
Dump Truck (Tri Axle)	8 hour/day @	\$ _____	=	\$ _____
Trackhoe (5/8 to ¾ yard)	8 hour/day @	\$ _____	=	\$ _____
Flagger	8 hour/day @	\$ _____	=	\$ _____
Flatbed/ Stake body or Winch Truck	8 hour/day @	\$ _____	=	\$ _____
Tractor Truck w/ Lowboy Trailer	2 hour/day @	\$ _____	=	\$ _____
Tamper (Gas) (1)	2 hour/day @	\$ _____	=	\$ _____
Road Sign (1)	each per day @	\$ _____	=	\$ _____
Barrels/Barricades/Cones (1)	each per day @	\$ _____	=	\$ _____
Driver (1)	8 hour/day @	\$ _____	=	\$ _____
Equipment Operator (1)	8 hour/day @	\$ _____	=	\$ _____
Backhoe/Loader (1)	8 hour/day @	\$ _____	=	\$ _____
Trailer/Boom Truck (1)	2 hour/day @	\$ _____	=	\$ _____
Trench Shoring (5 ft.-10 ft. depth)	8 hour/day @	\$ _____	=	\$ _____
Backhoe w/Hydro Hammer	4 hour/day @	\$ _____	=	\$ _____
Steel Road Plate (1)	each per day @	\$ _____	=	\$ _____
Arrow Board (1)	8 hour/day @	\$ _____	=	\$ _____
Pipe Saw/Chain Saw (1)	2 hour/day @	\$ _____	=	\$ _____
Large Paving Saw (Walk Behind) (1)	2 hour/day @	\$ _____	=	\$ _____
Paving Roller (1)	2 hour/day @	\$ _____	=	\$ _____
Cement Finisher	8 hour/day @	\$ _____	=	\$ _____

**Subtotal of all items listed for Section II times 120 days \$ \_\_\_\_\_**

**Section III-** The items below will be used as a method of payment for work not covered by the items in Section I and Section II for force account work. This section will be estimated for a time period of 30 days.

Sewer Jet/ Vacuum Truck                      4 hour/day @    \$ \_\_\_\_\_ =    \$ \_\_\_\_\_

**Subtotal of all Items above in Section III times 30 days = \$ \_\_\_\_\_**

**Grand Total:**

**Subtotal Section I + Subtotal Section II + Subtotal Section III =  
\$ \_\_\_\_\_**

Please note if it is decided by the City of Wilmington to utilize one or both of the (2) 1-year options all the prices above will change by 2% on original contracts base price. This will be based on mutual agreement by the City of Wilmington and the Contractor.

Supplemental Equipment for Force Account Work (only) (not to be calculated with bid prices).

<u>Item</u>	<u>Proposal Substitution</u>	<u>Rate Type</u>	<u>Unit Price</u>
Welding Rig		Hourly	
Water Truck		Hourly	
Nu-Mo Gopher		Hourly	
Air Drill		Hourly	
Small Paving Hand Saw		Hourly	
Generator (2,500 W)		Hourly	
Tri-Pod Work Light		Hourly	
Electric Sump Pump		Hourly	
Rammax Compactor		Hourly	
Mueller Tap Machine 3/4" - 2"		Hourly	
Mueller Tap Machine 4" - 12"		Hourly	
4" Cut-Off Grinder		Hourly	
Acetylene Torch Outfit		Hourly	
Hilti Drill		Hourly	
Rigid Pipe Threader (with cutters)		Hourly	
Impact Gun		Hourly	
Air Ventilator with Hose		Daily	
Pump (1-5 MGD)		Hourly	
Trench Shoring (10.1 ft.-16 ft. depth)		Hourly	
Trench Shoring (16.1 ft.-23 ft. depth)		Hourly	

Supplemental Labor

<u>Labor Type</u>	<u>Rate Type</u>	<u>Rate</u>
Licensed Plumber	Hourly	
Welder w/Certificate	Hourly	
Electrician	Hourly	

*Please note if it is decided by the City of Wilmington to utilize one or both of the (2) 1-year options all the prices above will change by 2% on original contracts base price. This will be based on mutual agreement by the City of Wilmington and the Contractor.*

LIST SUBCONTRACTORS BELOW:

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FIRM: \_\_\_\_\_

\_\_\_\_\_  
CORPORATION/PARTNERSHIP/INDIVIDUAL

PER: \_\_\_\_\_

\_\_\_\_\_  
NAME (Typed or Printed)

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

ADDRESS: \_\_\_\_\_

\_\_\_\_\_  
ZIP

FED. ID NUMBER: \_\_\_\_\_

PHONE NUMBER: \_\_\_\_\_

FAX NUMBER: \_\_\_\_\_

EMAIL: \_\_\_\_\_

CONSENT OF SURETY

DATE: \_\_\_\_\_

TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Gentlemen:

We, the \_\_\_\_\_

\_\_\_\_\_  
(Surety Company's Address)

a Surety Company authorized to do business in the State of Delaware, hereby agree that if

\_\_\_\_\_  
(Contractor)

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

is awarded Contract \_\_\_\_\_. We will write the required Performance and/or Labor and Materials  
Bond required by Paragraph 6 of the Instructions to Bidders.

\_\_\_\_\_  
Surety Company

BY: \_\_\_\_\_  
Attorney-in-Fact

DEPARTMENT OF PUBLIC WORKS  
WILMINGTON, DELAWARE

PROPOSAL FORM

20011PW  
~~16010PW~~ SEWER CONSTRUCTION

DATE: 5/7/19

Our City of Wilmington Business License is Number 001254

This Proposal is submitted with the knowledge that the Department of Finance, Procurement and Records Division, reserves the right to reject any and all proposals when in its judgment is it in the best interest of the City of Wilmington to do so.

We, the undersigned, hereby agree to furnish and deliver, per specifications, the item(s) listed below to the Department of Public Works, Wilmington, Delaware.

**Section I** -- The estimated items below will be used as the method of payment for the Scope of Work stated in the General Requirement section of the specifications.

<u>ITEM NO.</u>	<u>APPROXIMATE QUANTITY AND DESCRIPTION</u>	<u>UNIT PRICE</u>	<u>TOTAL PRICE</u>
Item 3	<u>EXCAVATION &amp; REMOVAL:</u>  2000 Cubic yards at <u>Fifty</u> Dollars and <u>zero</u> Cents per cubic yard.	(\$ <u>50.00</u> )	\$ <u>100,000.00</u>
Item 4	<u>ROCK EXCAVATION:</u>  40 Cubic yards at <u>Seventy-five</u> Dollars and <u>zero</u> Cents per cubic yard.	(\$ <u>75.00</u> )	\$ <u>3,000.00</u>
Item 6A	<u>SELECT BORROW:</u>  1,000 Tons at <u>Twenty</u> Dollars and <u>zero</u> Cents per ton.	(\$ <u>20.00</u> )	\$ <u>20,000.00</u>

✓ MATH CHECK

<u>ITEM NO.</u>	<u>APPROXIMATE QUANTITY AND DESCRIPTION</u>	<u>UNIT PRICE</u>	<u>TOTAL PRICE</u>
Item 6B	<u>CRUSHER RUN (CR-1):</u>  500 Tons at <u>Forty</u> Dollars and <u>zero</u> Cents per ton.	(\$ <u>40.00</u> )	\$ <u>20,000.00</u>
Item 6C	<u>106A STONE:</u>  200 Tons at <u>Forty</u> Dollars and <u>zero</u> Cents per ton.	(\$ <u>40.00</u> )	\$ <u>8,000.00</u>
Item 6D	<u>TOPSOIL</u>  3 Tons at <u>Fifty</u> Dollars and <u>zero</u> Cents per lineal feet.	(\$ <u>50.00</u> )	\$ <u>150.00</u>
Item 6E	<u>RECYCLED/CRUSHED CONCRETE:</u>  500 Tons at <u>Forty</u> Dollars and <u>zero</u> Cents per lineal feet.	(\$ <u>40.00</u> )	\$ <u>20,000.00</u>
Item 9	<u>P.C.C. BASE COURSE:</u>  #9A-Class A Portland Cement Concrete 30 Cubic Yards at <u>Three-hundred twenty-five</u> Dollars and <u>zero</u> Cents per cubic yard.	(\$ <u>325.00</u> )	\$ <u>9,750.00</u>
	#9B-Class B Portland Cement Concrete 560 Cubic Yards at <u>Two-hundred fifty</u> Dollars and <u>zero</u> Cents per cubic yard.	(\$ <u>250.00</u> )	\$ <u>140,000.00</u>
Item 10	<u>HOT MIX C</u>  10A-Hot Mix 300 Tons at <u>One-hundred fifty</u> Dollars and <u>zero</u> Cents per ton.	(\$ <u>150.00</u> )	\$ <u>45,000.00</u>
	10B-Cold Patch 50 Tons at <u>One-hundred fifty</u> Dollars and <u>zero</u> Cents per ton.	(\$ <u>150.00</u> )	\$ <u>7,500.00</u>



<u>ITEM NO.</u>	<u>APPROXIMATE QUANTITY AND DESCRIPTION</u>	<u>UNIT PRICE</u>	<u>TOTAL PRICE</u>
Item 15	<u>SEWER CONSTRUCTION:</u>		
	#15A-6-inch P.V.C. Pipe 600 Lineal Feet at <u>Fifty</u> Dollars and <u>zero</u> Cents per lineal foot.	(\$ <u>50.00</u> )	\$ <u>30,000.00</u>
	#15B-8-inch P.V.C. Pipe 300 Lineal Feet at <u>Fifty</u> Dollars and <u>zero</u> Cents per lineal foot.	(\$ <u>50.00</u> )	\$ <u>15,000.00</u>
	#15C-10-inch P.V.C. Pipe 300 Lineal Feet at <u>Fifty</u> Dollars and <u>zero</u> Cents per lineal foot.	(\$ <u>50.00</u> )	\$ <u>15,000.00</u>
	#15D-12-inch P.V.C. Pipe 200 Lineal Feet at <u>Fifty</u> Dollars and <u>zero</u> Cents per lineal foot.	(\$ <u>50.00</u> )	\$ <u>10,000.00</u>
	#15E-16-inch P.V.C. Pipe 100 Lineal Feet at <u>Fifty</u> Dollars and <u>zero</u> Cents per lineal foot.	(\$ <u>50.00</u> )	\$ <u>5,000.00</u>
	#15F-18-inch P.V.C. Pipe 100 Lineal Feet at <u>Fifty</u> Dollars and <u>zero</u> Cents per lineal foot.	(\$ <u>50.00</u> )	\$ <u>5,000.00</u>
Item 16	<u>STRUCTURES (REPAIR AND INSTALLATION):</u> (All castings supplied by City)		
	#16A-Brick Manhole 300 Vertical Feet at <u>Fifty</u> Dollars and <u>zero</u> Cents per vertical foot.	(\$ <u>50.00</u> )	\$ <u>15,000.00</u>
	#16A2-Manholes (replace lid and frame assembly only) 20 each of <u>Seventeen-hundred Fifty</u> Dollars and <u>zero</u> Cents each.	(\$ <u>1,750.00</u> )	\$ <u>35,000.00</u>
	#16A3-Pre-cast Reinforced Concrete Manholes 200 Vertical Feet at <u>Two-hundred Fifty</u> Dollars and <u>zero</u> Cents each.	(\$ <u>250.00</u> )	\$ <u>50,000.00</u>

<u>ITEM NO.</u>	<u>APPROXIMATE QUANTITY AND DESCRIPTION</u>	<u>UNIT PRICE</u>	<u>TOTAL PRICE</u>
	#16B-Lamphole 4 Each at <u>Two-hundred Fifty</u> Dollars and <u>zero</u> Cents each.	(\$ <u>250.00</u> )	\$ <u>1,000.00</u>
	#16C-Install, Repair and Restore (paring catch basin walls) Catch Basin Type "A" or "I" 160 Vertical Feet at <u>Three-hundred</u> Dollars and <u>zero</u> Cents per vertical foot.	(\$ <u>300.00</u> )	\$ <u>48,000.00</u>
	#16D-Install, repair, and restore (paring catch basin walls) double Catch Basin Type "A" or "I" 60 Vertical Feet at <u>Four-hundred</u> Dollars and <u>zero</u> Cents per vertical foot.	(\$ <u>400.00</u> )	\$ <u>24,000.00</u>
Item 19	<u>Curb 19A-PORTLAND CEMENT CURB</u>  120 Lineal Feet at <u>Thirty-five</u> Dollars and <u>zero</u> Cents per lineal foot.	(\$ <u>35.00</u> )	\$ <u>4,200.00</u>
	<u>19B-GRANITE CURB</u>  20 Lineal Feet at <u>Thirty-five</u> Dollars and <u>zero</u> Cents per lineal foot.	(\$ <u>35.00</u> )	\$ <u>700.00</u>
Item 20	<u>PORTLAND CEMENT CONCRETE SIDEWALK:</u>  4-inch Thick Sidewalk 800 Square Feet at <u>Nine</u> Dollars and <u>zero</u> Cents per square foot.	(\$ <u>9.00</u> )	\$ <u>7,200.00</u>
Item 35	<u>CUT-INS (CORE-DRILLED):</u>  #35A*-100 Cut-Ins at <u>One-hundred</u> Dollars and <u>zero</u> Cents each.	(\$ <u>100.00</u> )	\$ <u>10,000.00</u>
	#35C-Mechanical Saw Cut 2,100 Lineal Feet at <u>Five</u> Dollars and <u>zero</u> Cents per lineal foot.	(\$ <u>5.00</u> )	\$ <u>10,500.00</u>
			\$ <u>659,000.00</u> ✓

**Section II** – The items below will be used as a method of payment for work not covered by the items in Section I and for force account work. This section will be estimated for a time period of 120 days.

Bricklayer (1)	8 hour/day @	\$ 68.00	=	\$ 544.00
Working Foreman (1)	8 hour/day @	\$ 68.00	=	\$ 544.00
Laborer (1)	8 hour/day @	\$ 56.00	=	\$ 448.00
Radio Pick-Up Truck (1)	8 hour/day @	\$ 1.00	=	\$ 8.00
Pick-Up/Tool/Crew Truck (1)	8 hour/day @	\$ 10.00	=	\$ 80.00
Air Compressor w/Tools (125 CFM) (1)	4 hour/day @	\$ 5.00	=	\$ 20.00
2" – 3" Submersible Pump	4 hour/day @	\$ 1.25	=	\$ 5.00
Dump Truck (Single Axle)	8 hour/day @	\$ 25.00	=	\$ 200.00
Dump Truck (Tri Axle)	8 hour/day @	\$ 33.00	=	\$ 264.00
Trackhoe (5/8 to ¾ yard)	8 hour/day @	\$ 45.00	=	\$ 360.00
Flagger	8 hour/day @	\$ 56.00	=	\$ 448.00
Flatbed/ Stake body or Winch Truck	8 hour/day @	\$ 5.00	=	\$ 40.00
Tractor Truck w/ Lowboy Trailer	2 hour/day @	\$ 30.00	=	\$ 60.00
Tamper (Gas) (1)	2 hour/day @	\$ 1.50	=	\$ 3.00
Road Sign (1)	each per day @	\$ 1.50	=	\$ 1.50
Barrels/Barricades/Cones (1)	each per day @	\$ 1.50	=	\$ 1.50
Driver (1)	8 hour/day @	\$ 55.00	=	\$ 440.00
Equipment Operator (1)	8 hour/day @	\$ 83.00	=	\$ 664.00
Backhoe/Loader (1)	8 hour/day @	\$ 25.00	=	\$ 200.00
Trailer/Boom Truck (1)	2 hour/day @	\$ 2.50	=	\$ 5.00
Trench Shoring (5 ft.-10 ft. depth)	8 hour/day @	\$ 5.00	=	\$ 40.00
Backhoe w/Hydro Hammer	4 hour/day @	\$ 30.00	=	\$ 120.00
Steel Road Plate (1)	each per day @	\$ 10.00	=	\$ 10.00
Arrow Board (1)	8 hour/day @	\$ 5.00	=	\$ 40.00
Pipe Saw/Chain Saw (1)	2 hour/day @	\$ 1.00	=	\$ 2.00
Large Paving Saw (Walk Behind) (1)	2 hour/day @	\$ 15.00	=	\$ 30.00
Paving Roller (1)	2 hour/day @	\$ 13.00	=	\$ 26.00
Cement Finisher	8 hour/day @	\$ 40.00	=	\$ 320.00

**Subtotal of all items listed for Section II times 120 days \$** 590,880.00 ✓

**Section III-** The items below will be used as a method of payment for work not covered by the items in Section I and Section II for force account work. This section will be estimated for a time period of 30 days.

Sewer Jet/ Vacuum Truck                      4 hour/day @    \$ 300.00        =    \$ 1,200.00

**Subtotal of all Items above in Section III times 30 days = \$ 36,000.00**

**Grand Total:**

**Subtotal Section I + Subtotal Section II + Subtotal Section III =**  
**\$ 1,285,880.00**

Please note if it is decided by the City of Wilmington to utilize one or both of the (2) 1-year options all the prices above will change by 2% on original contracts base price. This will be based on mutual agreement by the City of Wilmington and the Contractor.

Supplemental Equipment for Force Account Work (only) (not to be calculated with bid prices).

<u>Item</u>	<u>Proposal Substitution</u>	<u>Rate Type</u>	<u>Unit Price</u>
Welding Rig		Hourly	50.00
Water Truck		Hourly	50.00
Nu-Mo Gopher		Hourly	35.00
Air Drill		Hourly	25.00
Small Paving Hand Saw		Hourly	35.00
Generator (2,500 W)		Hourly	30.00
Tri-Pod Work Light		Hourly	30.00
Electric Sump Pump		Hourly	30.00
Rammax Compactor		Hourly	50.00
Mueller Tap Machine 3/4" - 2"		Hourly	50.00
Mueller Tap Machine 4" - 12"		Hourly	75.00
4" Cut-Off Grinder		Hourly	20.00
Acetylene Torch Outfit		Hourly	20.00
Hilti Drill		Hourly	20.00
Rigid Pipe Threader (with cutters)		Hourly	30.00
Impact Gun		Hourly	20.00
Air Ventilator with Hose		Daily	250.00
Pump (1-5 MGD)		Hourly	75.00
Trench Shoring (10.1 ft.-16 ft. depth)		Hourly	150.00
Trench Shoring (16.1 ft.-23 ft. depth)		Hourly	300.00

Supplemental Labor

<u>Labor Type</u>	<u>Rate Type</u>	<u>Rate</u>
Licensed Plumber	Hourly	150.00
Welder w/Certificate	Hourly	150.00
Electrician	Hourly	100.00

Please note if it is decided by the City of Wilmington to utilize one or both of the (2) 1-year options all the prices above will change by 2% on original contracts base price. This will be based on mutual agreement by the City of Wilmington and the Contractor.

LIST SUBCONTRACTORS BELOW:

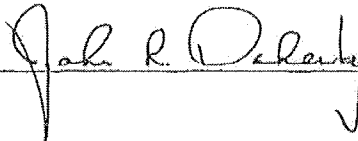
Rock Solid Contracting

FIRM: Brandywine Construction Co., Inc.

a Corporation

~~CORPORATION/PARTNERSHIP/INDIVIDUAL~~

PER:



John R. Doherty

NAME (Typed or Printed)

TITLE: President

ADDRESS: 101 Pigeon Point Road

New Castle, DE 19720

ZIP

FED. ID NUMBER: 51-0080296

PHONE NUMBER: 302-571-9773

FAX NUMBER: 302-571-9775

EMAIL: info@bccico.com

\*\*\*\*\*NOT APPLICABLE PER ADDENDUM #1\*\*\*\*\*

## CONSENT OF SURETY

DATE: \_\_\_\_\_

TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Gentlemen:

We, the \_\_\_\_\_

\_\_\_\_\_  
(Surety Company's Address)

\_\_\_\_\_ ) a Surety Company authorized to do business in the State of Delaware, hereby agree that if

\_\_\_\_\_  
(Contractor)

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

is awarded Contract \_\_\_\_\_. We will write the required Performance and/or Labor and Materials  
Bond required by Paragraph 6 of the Instructions to Bidders.

\_\_\_\_\_  
Surety Company

BY: \_\_\_\_\_  
Attorney-in-Fact

**To Be Submitted with Bid**

CONTRACT: 20011PW

FORM DBE-1  
(Rev. 10/09)

**Failure to submit this completed form will be cause for rejection of your proposal**

Bidder acknowledges that he has read the D.B.E. goal provisions of the City for this fiscal year and that bidder will expend the dollar amount of the contract for D.B.E. subcontractors through the use of the following disadvantaged business enterprises, subject to the certification by the City, as subcontractors and that Bidder has made good faith efforts\* as evidenced by its listing of disadvantaged businesses that were contacted as detailed herein and on the following pages. (Must be completely filled out.)

**CITY OF WILMINGTON  
DISADVANTAGED BUSINESS ENTERPRISE ("D.B.E.")  
SUBCONTRACTOR LISTING**

D.B.E. Firm Name IRS Numbers	Mailing Address & Contact Number	Type of Service	Dollar Amount of Contract
Rock Solid Contracting 56-2563762	1213 B Street Wilmington, DE 19801 302-655-8250	Hired Hauling	72,000.00
		Curbs and Sidewalks	12,100.00
		MOT	53,760.00
Total Dollar Amount to be Expended for Disadvantaged Business Enterprises	\$137,860.00		
Total Amount of Contract	\$1,285,880.00		
Percentage of Contract used for D.B.E.	10.7%		

John R. Doherty

President

**Name of Authorized Official of Bidder**

**Title**

Brandywine Construction Co., Inc.

**Company**

\*Good faith efforts shall be evidenced by listing each and every disadvantaged business enterprise (DBEs) contacted, showing the name and address of each, the names of contact persons, telephone numbers, sources used to identify DBEs, methods used to make contact, dates firms were contacted, responses, dates responses were received, type of subcontract, reasons for rejection, and estimated value of subcontract.



# To Be Submitted with Bid

*Failure to submit this completed form will be cause for rejection of your proposal*

DBE Firm Name/Address	Contact Person(s) Email or Phone Number	Dates Contacted Initially and in Follow Up; Methods Used	Type of Subcontractor, plus Estimated Value	Reason for Rejection (If Firm Not Used) (If Bid "To High" Also Indicate Value)
1. Everyone Can Achieve LLC	Earl Cooper	4/25/19 via Email	Flagging	Bid higher than performing
2010 Woodlawn Ave			\$ 66,230.40	with our own forces by 12,470.00
Wilmington, DE 19806				
2.				
			\$	
3.				
			\$	

Were advertisements placed in general circulation media, trade association publications, and DBE media interested in DBE participation? If so, state details of the advertisement. If not, state why not.

Work that is not performed "in-house" by BCCI (MOT, hired hauling, and misc concrete work) will be subcontracted to City DBE's

What efforts were made to use the services of organizations that provide assistance in recruitment and placement of DBEs?

We consulted the City of Wilmington's DBE Directory and solicited firms that perform work that BCCI typically subcontracts

The following are examples of actions that may not be used as justification by the contractor or bidder for failure to meet DBE participation goals:

1. Failure to contract with a DBE solely because the DBE was unable to provide performance and/or payment bonds.
2. Equipment idled by contract with DBE.
3. Rejection of a DBE because of its union or non-union status.

If more DBE firms have been contacted, please list with supplemental form(s) on additional pages.

**To Be Submitted with Bid if DBE is not listed in City DBE Directory**

CONTRACT: 20011PW

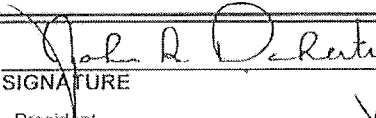
FORM DBE-3  
(Rev. 10/09)

*Failure to submit this completed form will be cause for rejection of your proposal*

**CITY OF WILMINGTON  
DISADVANTAGED BUSINESS REGISTRATION VERIFICATION FORM**

1.	NAME:		
2.	ADDRESS:		
3.	PHONE:	PRODUCT OR SERVICE LINE:	
4.	TYPE OF FIRM: <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Individual <input type="checkbox"/> Other _____		
5.	EMAIL:		
6.	DATE OF ORIGINATION OF FIRM:	EMAIL:	
7.	BUSINESS LICENSES HELD:	City:	State: Other:
8.	DISADVANTAGED OWNERSHIP OF FIRM:		
	NAME	OWNERSHIP % OF FIRM	DISADVANTAGED BUSINESS
a.			
b.			
c.			
d.			
e.			
f.			
9.	NON-DISADVANTAGED OWNERSHIP OF FIRM:		
	NAME	OWNERSHIP % OF FIRM	
a.			
b.			
c.			
d.			
e.			
f.			
8.	I hereby certify that the information above is true and complete to the best of my knowledge and belief, and that I have been duly authorized to make this certification on behalf of the firm.		

John R. Doherty  
NAME (printed)  
5/7/19  
DATE

  
SIGNATURE  
President  
TITLE

FOR OFFICE USE ONLY

DATE RECEIVED: \_\_\_\_\_  
DATE APPROVED: \_\_\_\_\_  
INFORMATION VERIFIED: \_\_\_\_\_

The General Contractor is required to submit this Compliance Report to the Disadvantaged Business Development Officer, City/County Building, 3<sup>rd</sup> Floor, 800 French Street, Wilmington, Delaware 19801, when the contract is entered into by the general contractor and the subcontractor, when 50% and when 100% of each DBE subcontractor's portion of a construction project has been completed.

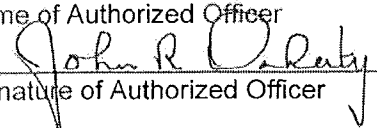
**DISADVANTAGED BUSINESS ENTERPRISE**  
**CONTRACT PARTICIPATION REPORT**

1. Contract No. 20011PW Amount of Contract \$ 1,285,880.00
2. Name of General Contractor: Brandywine Construction Co., Inc.
3. Address: 101 Pigeon Point Road New Castle, DE 19720
4. E-Mail Address: info@bccico.com
5. The above-named contractor intends to fulfill its commitment to expend \$ 137,860.00  
( 10.7 %), of its contract with Disadvantaged Business Enterprises ("DBEs"). The following year-to-date expenditure(s) has been made with a DBE Subcontractor(s):

Name/Address of DBE Subcontractor	Nature of Participation	Dollar Value/ Percent of Participation	Dollar Amount Expended to Date
1. Rock Solid Contracting	Hauling, MOT, Misc. Concrete	137,860.00	
1213 B Street Wilmington, DE 19801			
2.			
3.			

CONTRACT COMPLETION DATE: \_\_\_\_\_

Brandywine Construction Co., Inc.  
General Contractor  
Rock Solid Contracting  
DBE Subcontractor

John R. Doherty  
Name of Authorized Officer  
  
Signature of Authorized Officer

5/7/19  
Date  
Date

<p align="center"><b>Office Use Only</b> <b>(Prime)</b></p> <p>Payment Received: _____</p> <p>Amount: _____</p> <p>Date: _____</p> <p>Payment Received: _____</p> <p>Amount: _____</p> <p>Date: _____</p>
---

City of Wilmington  
Contract Compliance Officer's Name  
City of Wilmington  
Contract Compliance Officer's Signature

Date  
Date

CONTRACT: 20011PW

FORM DBE-5  
(Rev. 10/09)

*Failure to submit this completed form will be cause for rejection of your proposal*

**CITY OF WILMINGTON  
SUBCONTRACTOR LISTING  
(Do not include DBE Firms to be utilized)**

Subcontractor Name IRS Numbers	Mailing Address Contact Number or Email	Type of Service	Dollar Amount of Contract
Total Dollar Amount to Non-Disadvantaged Business Enterprises	None		
Total Amount of Contract	\$1,285,880.00		

Bidder acknowledges that he has identified all sub contractors that will be utilized as well as listing the amount of money that will be paid to each of the subcontractors as part of the contract (use additional pages if necessary).

John R. Doherty

President

**Name of Authorized Official of Bidder**

**Title**

Brandywine Construction Co., Inc.

5/7/19

**Company**

**Date**

STATE OF DELAWARE  
DEPARTMENT OF LABOR  
DIVISION OF INDUSTRIAL AFFAIRS  
OFFICE OF LABOR LAW ENFORCEMENT  
PHONE: (302) 761-8200

Mailing Address:  
4425 North Market Street  
3rd Floor  
Wilmington, DE 19802

Located at:  
4425 North Market Street  
3rd Floor  
Wilmington, DE 19802

PREVAILING WAGES FOR HIGHWAY CONSTRUCTION EFFECTIVE MARCH 15, 2019

CLASSIFICATION	NEW CASTLE	KENT	SUSSEX
BRICKLAYERS	55.89	55.89	55.89
CARPENTERS	55.95	55.63	44.22
CEMENT FINISHERS	35.48	35.70	28.39
ELECTRICAL LINE WORKERS	29.40	47.49	23.24
ELECTRICIANS	70.49	70.49	70.49
IRON WORKERS	65.24	26.10	27.72
LABORERS	45.30	41.69	40.93
MILLWRIGHTS	17.62	17.10	14.76
PAINTERS	71.29	71.29	71.29
PILEDRIERS	72.65	25.98	29.47
POWER EQUIPMENT OPERATORS	67.07	43.32	39.68
SHEET METAL WORKERS	24.89	22.21	20.12
TRUCK DRIVERS	37.52	30.88	37.62

CERTIFIED: 03/15/2019

BY: 

ADMINISTRATOR, OFFICE OF LABOR LAW ENFORCEMENT

NOTE: THESE RATES ARE PROMULGATED AND ENFORCED PURSUANT TO THE PREVAILING WAGE REGULATIONS ADOPTED BY THE DEPARTMENT OF LABOR ON APRIL 3, 1992.

CLASSIFICATIONS OF WORKERS ARE DETERMINED BY THE DEPARTMENT OF LABOR. FOR ASSISTANCE IN CLASSIFYING WORKERS OR FOR A COPY OF THE REGULATIONS OR CLASSIFICATIONS, PHONE (302) 761-8200.

NON-REGISTERED APPRENTICES MUST BE PAID THE MECHANIC'S RATE.

THESE RATES ARE BEING PROVIDED IN ACCORDANCE WITH DELAWARE'S FREEDOM OF INFORMATION ACT.

THEY ARE NOT INTENDED TO APPLY TO ANY SPECIFIC PROJECT.

**Contractor/Subcontractor  
Responsibility Certification**

**Contractors:** The City of Wilmington Division of Procurement and Records must receive this executed form not later than at the time of bid submission. It may be submitted prior to bid submission for review.

**Subcontractors:** Must submit this form to requesting contractor.

**CONTRACTOR/SUBCONTRACTOR RESPONSIBILITY CERTIFICATION  
FOR DEPARTMENT OF PUBLIC WORKS CONTRACTS  
VALUED AT MORE THAN \$100,000**

Name of Company: Brandywine Construction Co., Inc.

Address: 101 Pigeon Point Road


New Castle, DE 19720

Contract/Project Name: Sewer Maintenance

Contract Number: 20011PW

As a condition of performing "City work" (all building or construction work or projects of any kind or nature as provided in City Code Sec. 2-651) for the City of Wilmington, Delaware, contractors and subcontractors (hereinafter referred to as "Bidders") must meet certain responsible contractor requirements and qualifications specified in the Wilmington City Code, Chapter 2, Article VI, Division 6, Subdivision III (Sec. 2-561 et seq.). Pursuant thereto, the Company named above certifies the following:


**PLEASE INITIAL EACH ITEM TO INDICATE COMPLIANCE  
(Xs and check marks are *not* acceptable)**

 1. The Bidder and its employees have all valid, effective licenses, registrations, or certificates required by federal, state, county, or local law, including, but not limited to, licenses, registrations, or certificates required to:

- a. do business in the City of Wilmington and the State of Delaware; and
- b. perform the contract work, including, but not limited to, licenses, registrations or certificates for any type of construction or maintenance trade work or specialty work which the Bidder proposes to self-perform.


 2. The Bidder meets all:

- a. bonding requirements as required by the applicable law or contract specifications; and
- b. insurance requirements per applicable law or contract specifications, including general liability insurance, workers' compensation insurance, and unemployment insurance.

 3. The Bidder has a satisfactory record of integrity in accordance with Sec. 2-537(4) of the City Code, which further states as follows:

The following provisions, while not exclusive, shall be sufficient to justify a finding of nonresponsibility:

- a. failure to pay taxes and fees due and owing to the City;
- b. a conviction of the contractor or a principal officer thereof for commission of a criminal offense, as incident to obtaining or attempting to obtain a public contract or in the performance of such contract;
- c. a conviction, of the contractor or principal officer thereof, under state or federal statutes, for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously and directly affects responsibility as a city contractor:

 4. The Bidder has a satisfactory record of timely performance of City contracts in accordance with Sec. 2-537(3) of the City Code, which further states as follows:

Contractors who are seriously deficient in current contract performance, when the number of contracts and the extent of deficiency of each are considered, shall, in the absence of evidence to the contrary or circumstances properly beyond the control of the contractor, be presumed to be unable to meet this requirement. Past unsatisfactory performance due to failure to apply necessary

tenacity, or perseverance to do an acceptable job, shall be sufficient to justify a finding of nonresponsibility.

- ☒ 5. The Bidder has a satisfactory record of performance of contractual provisions in accordance with Sec. 2-537(5) of the City Code, which further states as follows:

Violation of contract provisions of a character which justify a finding of nonresponsibility include:

- a. deliberate failure without good cause to perform in accordance with the specifications provided in the contract;
- b. a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts;
- c. in particular, failure to comply with prevailing wage and related federal, state, and city requirements;

provided, however, that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for a finding of nonresponsibility.

- ☒ 6. The Bidder has a satisfactory record of good faith efforts to achieve disadvantaged business enterprise participation in accordance with Sec. 2-537(8) of the City Code.

- ☒ 7. The Bidder has not been debarred or suspended by any federal, state or local government agency or authority in the past three years.

- ☒ 8. The Bidder has not defaulted on any project in the past three years.

- ☒ 9. The Bidder has not had any type of business, contracting or trade license, registration, or other certification revoked or suspended in the past three years.


- ☒ 10. The Bidder and its owners have not been convicted of any crime relating to the contracting business in the past ten years.


- ☒ 11. The Bidder has not at any time been found in violation of any federal, state or local prevailing wage law.


- ☒ 12. The Bidder has not within the past three years been found in violation of any law applicable to its contracting business, including, but not limited to, licensing laws, tax laws, prompt payment laws, wage and hour laws, environmental laws or others, where the result of such violation was the payment




of a fine, back pay damages or any other type of penalty in the amount of \$1,000 or more.

 13. The Bidder will pay all craft employees that it employs on the project the current wage rates and fringe benefits as required under applicable federal, state or local wage laws.

 14. All craft labor that will be employed by the Bidder for the project have completed at least the OSHA 10 hour training course for safety established by the U. S. Department of Labor, Occupational Safety & Health Administration.


 15. The Bidder will employ craft employees in all classifications and individual trades required to successfully perform the work related to the project.

 16. The Bidder has participated in a Class A Apprenticeship Program for the past twelve months, at a minimum, for each separate trade or classification in which it employs craft employees and shall continue to participate in such program or programs for the duration of the project. The twelve month participation requirement may be waived during the first year of implementation of this Ordinance, provided that the firm is participating in a Class A Apprenticeship Program at the time it submits its bid and submits information showing that the construction craft workers it plans to use have adequate skills to successfully perform the project. Once the Ordinance has been in effect for twelve months, i.e., September 4, 2013, a waiver of this requirement will no longer be available.

a. for purposes of this section, a Class A Apprenticeship Program is an apprenticeship program that is currently registered with and approved by the U.S. Department of Labor or a state apprenticeship agency and has graduated apprentices to journeyperson status for at least three of the past five years;

b. to ensure compliance with this section, the Bidder shall provide, with this certification, a list of all trades or classifications of craft employees it will employ on the project and documentation verifying it participates in a Class A Apprenticeship Program for each trade or classification listed;

c. in order to enhance the training of its workforce and to comply with this subsection, the firm must enroll a new person in a Class A Apprenticeship Program for each bid submitted to the City.

 17. The Bidder shall make all reasonable best efforts to ensure that fifteen percent (15%) of the workforce hired for the project, especially with respect to new workers recruited and hired for the project, includes City of Wilmington residents. To ensure compliance with this section, the Bidder will also make residency information on its workforce available to the City upon request.

~~RED~~ 18. The Bidder has all other technical qualifications and resources, including equipment, personnel and financial resources, to perform the referenced contract, or will obtain same through the use of qualified, responsible contractors.

~~RED~~ 19. The Bidder acknowledges that within seven (7) calendar days following the date of receipt of Notice of Intent to Award Contract, it will provide a list of subcontractors it plans to utilize for services in the performance of the contract. The list must include a brief description of the subcontractor's scope of work. In addition, each subcontractor providing services equaling or exceeding \$100,000 must provide executed Subcontractor Responsibility Certifications containing information equivalent to that required for the Bidder in the Contractor Responsibility Certification. Note: Bidder must initial this item regardless of the value of the subcontract services.

~~RED~~ 20. If at any time during the past five (5) years the Bidder has controlled or has been controlled by another corporation, partnership or other business entity operating in the construction industry, it will disclose such facts by attaching a detailed statement to its Contractor Responsibility Certification explaining the nature of the relationship.

~~RED~~ 21. The Bidder acknowledges that it shall be required to provide appropriate documentation of the conditions specified in this Contractor/Subcontractor Responsibility Certification. The Bidder also understands that the City of Wilmington may request additional information or documents at any time as the City of Wilmington deems necessary to evaluate the responsibility of Bidder. Bidder agrees to provide such additional information or supporting documentation for this Certification.

~~RED~~ 22. If a Bidder fails to provide the Contractor Responsibility Certification required by this section, the Bidder shall be disqualified from bidding the contract. If a Bidder fails to provide other information or documentation required by the City of Wilmington, it may be disqualified from being awarded the contract.

~~RED~~ 23. The Bidder shall notify the City within seven days of any material changes to all matters attested to in this certification.

Under the penalty of perjury, the Bidder's authorized representative hereby certifies that all information included in the Contractor Responsibility Certification or otherwise submitted for purposes of determining the Bidder's status as a responsible contractor is true, complete and accurate and that he/she has knowledge and authority to verify the information in this certification or otherwise submitted on behalf of the Bidder by his or her signature below.

John R. Doherty  
Authorized Signature

5/7/19

Date

John R. Doherty  
Print Name

President  
Title

[Signature]  
Witness Signature

5/7/19

Date

PLEASE SUBMIT **SIGNED ORIGINAL** VERSION OF THIS FORM TO:

**CITY OF WILMINGTON  
DEPARTMENT OF FINANCE, DIVISION OF PROCUREMENT  
LOUIS REDDING CITY COUNTY BUILDING  
800 N. FRENCH STREET, 5<sup>TH</sup> FLOOR  
WILMINGTON, DE019801**

Questions regarding the this form can be sent to  
[procurement@wilmingtonde.gov](mailto:procurement@wilmingtonde.gov) or call 302.576.2423

City of Wilmington  
Delaware



DEPARTMENT OF PUBLIC WORKS

MEMORANDUM

**TO:** John D'Amelio  
Manager of Procurement & Records

**FROM:** Michelle K. Devillers *MKD*  
Civil Engineer II

**RE:** Contract No. 20011PW- Sewer Construction

**DATE:** May 20, 2019

The bids received for the above-referenced contract are as follows:

<u>Firm</u>	<u>Amount</u>
Brandywine Construction Co., Inc.	\$1,285,880.00

Based upon review of the bids, it is recommended that we award the contract to the apparent low-bidder Brandywine Construction Co., Inc. for \$1,285,880.00

APPROVED

*[Signature]*

5/20/19

Vince Carroccia  
Deputy Commissioner of Public Works

Cc: Philip Ceresini, Finance- Procurement & Records  
File

## CERTIFICATE OF AWARD OF CONTRACT

I hereby certify that Contract No. 20011PW is on this 20th of May 2019 awarded to Brandywine Construction Company, Inc. in the amount of \$1,285,880.00 as per Proposal dated 5/7/19 and that this award is made in compliance with Wilm. Code (Charter), Section 8-200, to wit:

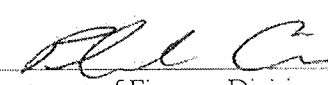
1. Plans and specifications for the work, supplies, or materials were filed with the Department of Finance, Division of Procurement and Records for public inspection on 4/9/19.
2. The advertisement calling for sealed bids on this contract was published in the News Journal on 4/9/19 & 4/16/19 stated that bids would be opened at 3:00 p.m. on 5/7/19
3. All sealed bids received were publicly opened in the office of the Department of Finance, Division of Procurement and Records in the presence of the City Auditor and Department not represented desiring to make the purchase at 3:00 p.m. on 5/7/19. Other persons present at the opening of the bids were: Phil Ceresini & Mike Maldonado
4. Bids were submitted by the following contractors in the following amounts:

Contractor	Address	Date of Bid	Amount
Brandywine Construction Co, Inc.	New Castle, DE	5/7/19	\$1,285,880.00

5. City License Number \_\_\_\_\_

6. Upon recommendation of Department of Public Works and after due consideration, I determined that the contractor to whom this award is made was the lowest responsible bidder. In support of this determination I have received the following written recommendations, which are on file at my office:

<u>Author</u>	<u>Employment Position</u>	<u>Date</u>
Vince Carroccia	Deputy Commissioner	5/20/19

  
\_\_\_\_\_  
Department of Finance, Division of Procurement

**BRANDYWINE CONSTRUCTION CO., INC.**

**CERTIFIED COPY OF RESOLUTIONS**

I, the undersigned, Secretary of Brandywine Construction Co., Inc., a Delaware Corporation, hereby certify that the following Resolutions excerpted from the Minutes of the Corporation were duly adopted by unanimous consent of the Board of Directors of the Corporation on May 2, 2019.

Resolved, that the President or Vice President of this Corporation be and she or he hereby is authorized to execute and deliver on behalf of this Corporation a contract and other contract documents by and between this Corporation and The City of Wilmington, Delaware, Department of Finance, Contract #20011PW "SEWER MAINTENANCE" for the Contract Price of \$1,285,880.00 and it was

FURTHER RESOLVED, that the Secretary and Assistant Secretary of this Corporation be and (he or she) hereby is authorized to attest to the said contract and other documents.

I further certify that the foregoing Resolutions have not been rescinded or modified and remain in full force and effect.

I further certify that the following are the names of all Officers qualified to sign for the Corporation.

President:	<u>John R. Doherty</u>
Vice President:	<u>Donna R. Doherty</u>
Secretary & Treasurer:	<u>Donna R. Doherty</u>
Assistant Secretary:	<u>Vickie L. Buckalew</u>

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Corporation this 17th Day of June, 2019 AD.

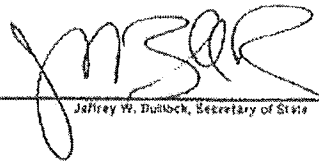
  
Donna R. Doherty, Secretary

# Delaware

The First State

Page 1

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF  
DELAWARE, DO HEREBY CERTIFY "BRANDYWINE CONSTRUCTION CO., INC." IS  
DULY INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN  
GOOD STANDING AND HAS A LEGAL CORPORATE EXISTENCE SO FAR AS THE  
RECORDS OF THIS OFFICE SHOW, AS OF THE TWENTY-NINTH DAY OF MAY,  
A.D. 2019.

  
Jeffrey W. Bullock, Secretary of State

510018 8300

SR# 20194735774

You may verify this certificate online at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

Authentication: 202915154

Date: 05-29-19



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

6/25/2019

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).

PRODUCER Arthur J. Gallagher Risk Management Services, Inc. 11311 McCormick Road, Ste 450 Hunt Valley MD 21031-8622	CONTACT NAME: Certificates Administrator PHONE (A/C, No, Ext): 443-798-7499 E-MAIL: BW2.BSD.Certs@ajg.com ADDRESS: BW2.BSD.Certs@ajg.com	FAX (A/C, No): 443-798-7290
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A: Zurich American Insurance Company		16535
INSURER B: Continental Casualty Ins Co		20443
INSURER C:		
INSURER D:		
INSURER E:		
INSURER F:		

COVERAGES

CERTIFICATE NUMBER: 670690091

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			GLO581795706	3/1/2019	3/1/2020	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			BAP581795606	3/1/2019	3/1/2020	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			5094300235	3/1/2019	3/1/2020	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/>	N/A	WC581795506	3/1/2019	3/1/2020	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
City of Wilmington is included as additional insured with respect to the general liability policy as required by written contract.

## CERTIFICATE HOLDER

## CANCELLATION

City of Wilmington Attn: Sid Sharma 800 N. French Street Wilmington DE 19801	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 
---	---

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ACORD 25 (2016/03)

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THIS CERTIFICATE SUPERSEDES PREVIOUSLY ISSUED CERTIFICATE



--- - C O N T R A C T-----

**THIS AGREEMENT** made the 17<sup>th</sup> day of **June** in the year **Two Thousand Nineteen** and between the City of Wilmington, a municipal corporation of the State of Delaware, acting through the agency of the Department of Finance, Division of Procurement and Records, party of the first part (hereinafter designated the Owner), and **Brandywine Construction Company, Inc. (BCCI)**, party of the second part (hereinafter designated the Contractors)

**WITNESSETH**, that the Contractor, in consideration of agreements herein made by the Owner, agrees with the Owner as follows:

Article 1. The Contractor shall and will furnish and deliver per specifications, on contract **20011PW "SEWER MAINTENANCE"** for the **Department of Public Works** in accordance with Advertisement for Bids by the Department of Finance, Division of Procurement and Records date **4/9/19 & 4/16/19** and specifications identified as Contract No. **20011PW** and by the signatures of the parties hereto, are, together with the said Advertisement for Bids, Instructions to Bidders, Forms of Proposal, and/or other documents pertinent thereto, hereby acknowledge and incorporated into these presents and are to be taken as a part of this Contract.

Article 2. It is understood and agreed by and between the parties hereto that the amount of this Contract is in the amount of **One Million, Two Hundred Eighty-Five Thousand, Eight Hundred Eighty-----Dollars and 00/100 (\$1,285,880.00)** as per Proposal dated **5/7 /19** to the Department of Finance, Division of Procurement and Records .

Article 3. In the performance of this Contract, the parties agree that they shall not discriminate or harass, or permit discrimination or harassment, against any person because of age, sex, marital status, race, religion, color, national origin or sexual orientation.

Article 4. This Agreement shall bind the heirs, executors, administrators, successors and assigns to the respective parties hereto.

In witness whereof the party of the first part has, by recommendation of the **Commissioner of Public Works**, caused the hand of **Michael S. Purzycki**, Mayor, and the corporate seal of the City of Wilmington, attested by the City Clerk, to be hereunto affixed; and the party of the second part has caused the hand of its' President, (or his authorized representative) and its' corporate seal, attested by the Secretary or assistant Secretary, to be hereunto affixed.

Dated the day and year first above written in the City of Wilmington, County of New Castle, State of Delaware.

Signed, Sealed and delivered  
in the presence of:

**THE CITY OF WILMINGTON**

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Michael S. Purzycki, Mayor

**ATTEST:**

\_\_\_\_\_  
City Clerk

**Brandywine Construction Company, Inc**

Vickie L. Buckalew  
Witness

By: John R. O'Donoghue  
President (Seal)

**ATTEST:**

Thomas P. Deely  
Secretary

**AN ORDINANCE TO AUTHORIZE AND APPROVE AN EXTENSION OF CONTRACT 20012WD BETWEEN THE CITY OF WILMINGTON AND BRANDYWINE CONSTRUCTION COMPANY, INC. FOR WATER DISTRIBUTION SYSTEM MAINTENANCE**

#4757

Sponsor:

Council  
Member  
Harlee

Co-Sponsor:

Council  
President  
Shabazz

**WHEREAS**, pursuant to Section 2-308 and Section 8-200 of the City Charter, the City of Wilmington is authorized to enter into contracts for the supply of personal property or the rendering of services for a period of more than one year if approved by City Council by ordinance; and

**WHEREAS**, the City publicly advertised the specifications for Contract 20012WD - Water Distribution System Maintenance (the "Contract") - in accordance with the requirements of Section 8-200 of the City Charter, and subsequently awarded the Contract, a copy of which, in substantial form, is attached hereto and incorporated by reference herein as Exhibit "A", to Brandywine Construction Company, Inc. (the "Contractor"), the lowest responsible bidder; and

**WHEREAS**, the Contract's term is from July 1, 2019 to June 30, 2020, at an estimated price of Two Thousand, Nine Hundred Seventy-Seven Dollars (\$2,977.00) per day not to exceed Three Million Dollars (\$3,000,000.00), with the possibility of four (4) one-year extensions thereafter (from July 1, 2020 to June 30, 2021, July 1, 2021 to June 30, 2022, July 1, 2022 to June 30, 2023, and July 1, 2023 to June 30, 2024) at up to a two percent (2%) increase in price for each extension; and

**WHEREAS**, the primary purpose of the Contract is to provide water distribution system maintenance services to the City; and

**WHEREAS**, said extension periods were included in the Contract in order to provide for continuity of service; and

**WHEREAS**, it is the recommendation of the Department of Public Works that the City exercise the option to extend the Contract for four (4) additional periods of one (1) year.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON HEREBY ORDAINS:**

**SECTION 1.** The four one-year extension periods to Contract 20012WD - Water Distribution System Maintenance - between the City of Wilmington and Brandywine Construction Company, Inc., a copy of which Contract, in substantial form, is attached hereto as Exhibit "A," for the periods of July 1, 2020 to June 30, 2021, July 1, 2021 to June 30, 2022, July 1, 2022 to June 30, 2023, and July 1, 2023 to June 30, 2024, at an estimated price of Two Thousand, Nine Hundred Seventy-Seven Dollars (\$2,977.00) per day not to exceed Three Million Dollars (\$3,000,000.00) plus a maximum two percent (2%) increase for each extension period, are hereby approved, and the Mayor or his designee is hereby authorized to exercise the City's options, as well as all additional undertakings related thereto, as may be necessary.

**SECTION 2.** This Ordinance shall become effective upon its passage by City Council and approval by the Mayor.

First Reading..... January 9, 2020  
Second Reading..... January 9, 2020  
Third Reading.....

Passed by City Council,

---

President of City Council

ATTEST: \_\_\_\_\_  
City Clerk

Approved this \_\_\_\_ day of \_\_\_\_\_, 2020.

---

Mayor

**SYNOPSIS:** This Ordinance authorizes the City to exercise four (4) one-year extension options to extend Contract 20012WD - Water Distribution System Maintenance - between the City of Wilmington and Brandywine Construction Company, Inc. for the periods of July 1, 2020 to June 30, 2021, July 1, 2021 to June 30, 2022, July 1, 2022 to June 30, 2023, and July 1, 2023 to June 30, 2024, at an estimated price of Two Thousand, Nine Hundred Seventy-Seven Dollars (\$2,977.00) per day plus an increase of up to two percent (2%) for each extension period.

**FISCAL IMPACT STATEMENT:** The fiscal impact of this Ordinance is four (4) one-year extension options, at an estimated price of Two Thousand, Nine Hundred Seventy-Seven Dollars (\$2,977.00) per day not to exceed Three Million Dollars (\$3,000,000.00), plus an increase of up to two percent (2%) for each extension period.

W0108980

# **EXHIBIT A**

The City of Wilmington will receive sealed bids  
at the Division of Procurement & Records, 5th Fl., Louis L. Redding Bldg.,  
800 French St., Wilmington, DE 19801 for:

**20011PW – SEWER MAINTENANCE**

**And**

**20012WD – WATER DISTRIBUTION SYSTEM MAINTENANCE**

**Pre-Bid Meeting:** Thursday, April 18, 2019, at 11:00 a.m., Louis L. Redding  
City County Building, 5th Floor Conference Room, 800 French Street, Wil-  
mington, DE 19801.

**Bid opening:** Tuesday, May 7, 2019, at 3:00 p.m., in the Finance Depart-  
ment Conference Room, 5th Floor, Louis L. Redding City/County Building,  
800 French Street, Wilmington, DE 19801.

Plans and Specifications may be obtained at the above address for the Divi-  
sion of Procurement & Records.

Philip Ceresini  
Purchasing Agent II  
Division of Procurement and Records  
Department of Finance

[pceresini@wilmingtonde.gov](mailto:pceresini@wilmingtonde.gov)  
[www.wilmingtonde.gov](http://www.wilmingtonde.gov)

4/9, 4/16-NJ

0003488053-01



# The News Journal Media Group

A GANNETT COMPANY

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Wilmington, DE 19850

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(302) 324-2676  
Legal Fax:  
302 324-2249

SD CITY WILM PURCHASING DIV  
800 N FRENCH ST FL 5

WILMINGTON, DE 19801

DE,

## AFFIDAVIT OF PUBLICATION

**State of Delaware**  
**New Castle County**

Personally appeared **The News Journal**

Of the **The News Journal Media Group**, a newspaper printed, published and circulated in the State of Delaware, who being duly sworn, depose and saith that the advertisement of which the annexed is a true copy, has been published in the said newspaper 2 times, once in each issue as follows:

04/09/19, 04/16/19 A.D 2019

Ad Number: 0003488053

  
Sworn and subscribed before me, this 16 day of April, 2019

Legal notification printed at larger size for affidavit.







Classified Ad Receipt  
(For Info Only - NOT A BILL)

Customer: SD CITY WILM PURCHASING DIV

Ad No.: 0003488053

Address: 800 N FRENCH ST FL 5  
WILMINGTON DE 19801  
USA

Pymt Method Invoice

Net Amt: \$325.96

Run Times: 2

No. of Affidavits: 1

Run Dates: 04/09/19, 04/16/19

Text of Ad:

The City of Wilmington will receive sealed bids  
at the Division of Procurement & Records, 5th Fl., Louis L. Redding Bldg.,  
800 French St., Wilmington, DE 19801 for:

**20011PW – SEWER MAINTENANCE**

And

**20012WD – WATER DISTRIBUTION SYSTEM MAINTENANCE**

**Pre-Bid Meeting:** Thursday, April 18, 2019, at 11:00 a.m., Louis L. Redding  
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4/9, 4/16-NJ

0003488053-01

ADDENDUM #1

Contract 20011 PW - SEWER MAINTENANCE  
&  
Contract 20012WD – WATER DISTRIBUTION  
SYSTEM MAINTENANCE



- 
- A Bid Bond and Performance Bond are NOT required on either of the contracts listed above. Please disregard any reference to Bid and/or Performance Bond that appear in the documents.

ALL OTHER PROVISIONS OF THIS SOLICITATION REMAIN THE SAME.

Issued 23 April 2019 by the  
Procurement and Records Division, Department of Finance  
Louis L. Redding City County Building, 800 French Street  
Wilmington, DE 19801

## INSTRUCTIONS TO BIDDERS

1. Bids on **City Contract 20012WD – WATER DISTRIBUTION SYSTEM MAINTENANCE** will be publicly opened and read aloud in the 5<sup>th</sup> Floor Finance Department Conference Room, Louis L. Redding City/County Building, 800 French Street, Wilmington, Delaware, on **TUESDAY, MAY 7, 2019, AT 3:00 p.m.**
2. Proposals must be in triplicate, sealed in an envelope, and the envelope endorsed "**Bid for City Contract 20012WD – WATER DISTRIBUTION SYSTEM MAINTENANCE**" and addressed to the Department of Finance, Division of Procurement and Records, 5<sup>th</sup> Floor, Louis L. Redding City/County Building, 800 French Street, Wilmington, Delaware.
3. Any bid may be withdrawn prior to the schedule time for opening of bids or authorized postponement thereof. No bid may be withdrawn within thirty (30) calendar days after the actual opening thereof.
4. The successful bidder will be required to have or obtain an appropriate business license from the Department of Finance, Revenue Division, City of Wilmington, in order to be awarded the contract. Before obtaining a City of Wilmington Business License, all applicants must show proof of a current State of Delaware Business License.
5. No bid will be considered unless accompanied by a Certified Check (personal check, cashier's check, or treasurer's check are not acceptable) or a good and sufficient Bid Bond to the City of Wilmington in the amount of not less than 10 percent of the amount of the base bid, plus all additive alternatives, with Corporate Surety authorized to do business in the State of Delaware.
6. The Bid Bond must be accompanied by a certification attached hereto, issued by the Surety Company, qualified to do business in the State of Delaware, and satisfactory to the Owner, which certification contains the commitment of the Surety Company to execute a 100 percent Performance and/or Labor and Materials Bonds to cover the bidder's performance and its' payments of labor and materials if the bidder is successful and the contract is awarded to him. The successful bidder must furnish the above bond within ten days after the award of contract.
7. If a corporation, the successful bidder shall furnish a certificate from the State where it is incorporated, stating that it is a subsisting corporation. The corporation shall also furnish one (1) original and two (2) copies of the excerpts of the corporate minutes which grant authority to those who sign and attest the contract. The Corporate Seal shall be affixed where signatures are attested.
8. The successful bidder will be required to withhold City of Wilmington Wage Tax from their employees and withheld taxes paid to the City of Wilmington pursuant to the provisions of the Wilmington Wage Tax Law. This law applies to people living and/or working in the City of Wilmington.
9. Bidders are required to refer to the delinquent tax clause appearing on page GC-21 of the General Conditions.
10. The successful bidder certifies that they are not listed on the Federal Government, Excluded Parties List System ([www.sam.gov](http://www.sam.gov)). This will be verified by the City of Wilmington and if listed may be grounds for rejection of the bid or proposal.
11. Any person doing business or seeking to do business with the City shall abide by the following Global Sullivan Principles:
  - A. Support universal human rights and particularly, those of employees, the communities within which you operate, and parties with whom you do business.

- B. Promote equal opportunity for employees at all levels of the company with respect to issues such as color, race, gender, age, ethnicity, or religious beliefs, and operate without unacceptable worker treatment such as the exploitation of children, physical punishment, female abuse, involuntary servitude, or other forms of abuse.
- C. Respect employee's voluntary freedom of association.
- D. Compensate employees to enable them to meet at least their basic needs and provide the opportunity to improve their skill and capability in order to raise their social and economic opportunities.
- E. Provide a safe and healthy workplace; protect human health and the environment; and promote sustainable development.
- F. Promote fair competition including respect for intellectual and other property rights, and not offer, pay, or accept bribes.
- G. Work with governments and communities in which you do business to improve the quality of life in those communities -- their educational, cultural, economic, and social well-being -- and seek to provide training and opportunities for workers from disadvantaged backgrounds.
- H. Promote the application of these principles by those with whom you do business.

12. **Award and Execution of Contract**

- A. **Consideration of Proposals.** After the proposals are opened and read, they will be compared on the basis of the summation of the products of the approximate quantities shown in the bid schedule by the unit bid prices, unless the proposals states a different basis for comparing bids. In the event of a discrepancy between unit bid prices and extensions, the unit bid price shall govern.

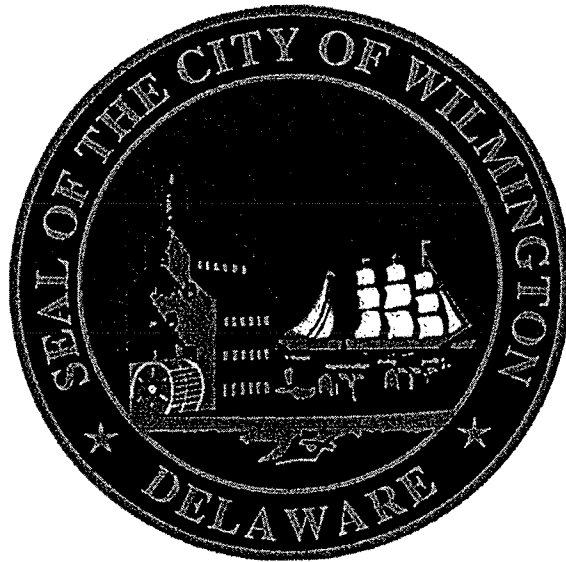
Before awarding the contract, a bidder may be required to show that he/she has the ability, experience, necessary equipment, experienced personnel, and financial resources to successfully carry out the work required by the contract.

The right is reserved to reject any and/or all proposals, to waive technicalities, to advertise for new proposals, or to proceed to do the work otherwise, if in the judgement of the department the best interest of the City will be promoted thereby.

- B. **Award of Contract.** The award of the contract, if it be awarded, must be within thirty (30) calendar days after the opening of proposals to the lowest responsible and qualified bidder whose proposal complies with all the requirements prescribed. The successful bidder will be notified by letter mailed to the address shown on his proposals that his bid has been accepted and has been awarded the contract.
- C. **Cancellation of Award.** The City reserves the right to cancel the award of any contract at any time before the execution of said contract by all parties without any liability against the City.
- D. **Right to Audit.** The City Auditor or his designee shall have the right to audit the contract and any books, documents, or records relating thereto.

**Pre-Bid Meeting:** Thursday, April 18, 2019, at 11:00 a.m., Louis L. Redding City County Building, 5<sup>th</sup> Floor Conference Room, 800 French Street, Wilmington, DE 19801.

# **CITY OF WILMINGTON**



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# **Construction Contracts**

## **Bidding Procedures**

### **DEFINITIONS OF TERMS**

Whenever in these specifications and other contract documents the following terms or pronouns in place of them are used, their intent and meaning shall be interpreted as follows:

<b>"City"</b>	The City of Wilmington
<b>"Owner"</b>	The City of Wilmington
<b>"Director"</b>	The Director or Commissioner of the Department of the "City" for which the work is being done or his duly authorized representative.
<b>"Manager"</b>	The Manager, Department of Finance, Division of Procurement and Records.
<b>"Contractor"</b>	Party of the second part of the contract, acting directly or through his agents or employees.
<b>"Work"</b>	Any or all things agreed to be furnished or done by or on the part of the Contractor, and which are required in the construction and completion of the project herein contemplated, including also labor, materials and equipment.
<b>"Engineer"</b>	The City Engineer or his duly authorized representative.

All things contained or referred to herein, the Advertisement, the Instructions to Bidders, the General Conditions, the Special Provisions, the Specifications, the Proposal, the Contract, the Bond, the Plans, Addenda, as well as any other papers or bulletins referred to therein are hereby made a part of these specifications and contract, and are to be considered as one instrument constituting the "Contract Documents." The intent is to make them explanatory one or to the other but in the case of any inconsistency, the provisions of the Contract shall govern.

Whenever in these contract documents, the words "directed," "required," "prescribed," "permitted," "approved," "acceptable," "in the judgment of," and other words and phrases of like import, refer to the work or its performance, they shall be taken to mean and intend "directed," "required," "prescribed," "permitted," "approved," "acceptable," "in the judgment of," and the like by or to the Director.

The headings and subheadings printed in these specifications are intended for convenience or reference only and shall not be considered as having any particular bearing on the interpretation thereof.

### **ESTIMATED QUANTITIES**

Any estimates of quantities herein furnished by the Director are approximate only, and have been used by the Director as a basis of estimating the cost of the work, and will also be used for the purpose of tabulating and comparing the bids and awarding the contract. The Engineer has endeavored to estimate these quantities correctly, according to his knowledge and the information shown on the plans;



but it is not guaranteed that these estimated quantities are accurate, and if the Contractor, in making up and/or submitting his bid or bids, relies upon the accuracy of such estimated quantities, he does so at his own risk.

### **PROPOSAL FORM**

The Bidder will be furnished -- by the Manager -- with proposal forms which will show the approximate estimate of the various quantities of work to be performed and materials to be furnished under the unit and lump sum price items.

The Bidder shall submit his proposal on the forms furnished by the Manager. The blank spaces in the proposal shall be filled in correctly where indicated, for each and every item, and the Bidder shall state the prices (written in ink, in words and numerals) for which he proposes to do each item of the work contemplated. In case of discrepancy between the written figures and the numerals, the written figures shall govern.

The Bidder shall sign his proposal correctly. If the proposal is made by an **individual**, his name and post office address shall be shown. If made by a **firm or partnership**, the name and post office address of the firm or partnership, and of each member thereof, shall be shown. If a **corporation**, the successful bidder shall furnish a certificate from the Secretary of State or commonwealth where the firm is incorporated stating the company is a presently subsisting corporation of that state or commonwealth and the date of its incorporation.

Further, the successful bidder shall furnish an original and two copies of excerpts from the minutes of the corporation authorizing its President or Vice President to execute the necessary Contract on behalf of the Corporation, and an original and two copies of the resolution authorizing the Secretary or the Assistant Secretary to attest Contract Documents and the names of all officers qualified to sign for your company.

### **IRREGULAR PROPOSALS**

Proposals may be rejected if they show any omissions, alterations of form, additions not called for, conditional or alternative bids, or irregularities of any kind.

### **UNRESPONSIVE OR UNBALANCED BIDS**

To better insure fair competition, and to permit a determination of the lowest bidder, unresponsive bids or bids obviously unbalanced, may be rejected by the Manager.

### **FAMILIARITY WITH PROPOSED WORK**

The Bidder is required to examine carefully the site of the work, the proposal, the plans, specifications and other contract documents for the work contemplated and it will be assumed that he had familiarized and satisfied himself as to the conditions and obstacles to be encountered, as to the character, quality and quantities of work to be performed and materials to be furnished, and as to the requirements of these specifications, plans and other contract documents and he must be prepared to execute a finished job in every particular, without any extra charge whatever, except as may be specifically provided for elsewhere in these contract documents.

### **FAMILIARITY WITH LAWS, ETC.**

The Bidder is assumed to have made himself familiar with all Federal, State, Local, and municipal laws, ordinances, rules and regulations which in any manner affect those engaged or employed in the work, or the materials or equipment used in or upon the work, or in any way affect the work, and no plea of

misunderstanding will be considered on account of the ignorance thereof. If the Bidder or Contractor shall discover any provision in the plans, specification, or contract which is contrary to or inconsistent with any such law, ordinance, rule or regulation, he shall forthwith report it to the Engineer in writing.

#### **INTERPRETATIONS OF ADDENDUM**

If any person contemplating submitting a bid for this contract is in doubt as to the true meaning of any part of the plans, specifications, or other proposed contract documents, he may submit to the Director a written request for interpretation thereof. The person submitting the request will be responsible for the prompt delivery before one week prior to the date affixed for the opening of bids. Any interpretation of the proposed contract documents will be made only by Addendum duly issued, and a copy of such Addendum will be mailed directly to each person receiving a set of such documents. The City will not be responsible for any other explanation or interpretations of the proposed documents.

#### **DELIVERY AND OPENING OF PROPOSALS**

Proposals shall be submitted in triplicate with all blanks filled in. They shall be enclosed in sealed envelopes, endorsed, and delivered as stated in the Advertisement. If forwarded by mail, the above-mentioned envelope shall be enclosed in another envelope addressed to the Manager, Division of Procurement and Records, City/County Building, Wilmington, Delaware, preferably by registered mail. No responsibility shall be attached to any persons for the premature opening of any proposal not properly endorsed.

Proposals will be publicly opened and read aloud at the time and place stated in the Advertisement. Bidders or their authorized agents are invited to be present.

#### **WITHDRAWAL OF PROPOSALS**

Any bid may be withdrawn prior to the scheduled time for the opening of bids or authorized postponement thereof. No bid may be withdrawn within thirty (30) days after the actual opening thereof.

#### **QUALIFICATIONS FOR BIDDERS**

No contract will be awarded to any bidder who, in the judgment of the Manager, is not a responsible bidder, or is not prepared with all the necessary experience, capital, organization and equipment to conduct and complete work for which the bidder proposes to contract, in strict accordance with all terms and provisions of the contract documents.

In each instance when the qualifications of any bidder are questioned in any way, such bidder shall furnish information concerning his experience, capital, organization and equipment as may be required by the Owner within five (5) days after written notice from the Board to do so, and the information so furnished by the bidder, together with any other information received or possessed by the Owner, will be taken into consideration by the Manager in awarding the contract.

#### **RIGHT TO REJECT BIDS**

The Manager expressly reserves the right to reject any or all bids, or to accept any bid, and/or to waive technicalities as he may deem to be in the best interest of the City. The successful bidder will be required to have or obtain an appropriate Business License from the Department of Finance, Earned Income Tax Division, of the City of Wilmington in order to be awarded the contract.

### **MATERIAL SAMPLES**

Before any contract is awarded, the Bidder may be required to furnish a complete statement of the origin, composition and manufacture of any and all materials to be used in the work, together with samples, which samples may be subjected to the tests provided for in these specifications to determine their quality and fitness for the work.

### **AWARD AS AN ENTIRETY**

While bids are asked for by items, the contract will not be awarded by items, but will be awarded as an entirety, on the basis of the "Bid Total," which total must be the aggregate sum of the bids on all items figured at the unit and lump sum prices bid. Bidders shall bid on all items.

### **CONTRACT BOND**

The successful bidder must furnish, within ten (10) days after the award, a Performance Bond and/or Labor and Materials for 100% of the total cost of the Contract Price, in triplicate, with corporate surety authorized to do business in the State of Delaware, the form and surety to be approved by the City Solicitor, with a Warrant of Attorney to confess judgment thereon attached thereto.

Whenever surety or sureties on the bond so furnished in accordance with the preceding paragraph shall be deemed by the Owner to be insufficient or unsatisfactory, he may, in his discretion, within ten (10) days after notice to that effect, mail to the address of the Contractor, require the Contractor to furnish and deliver a new bond in the same penalty and on the same conditions, with surety satisfactory to the Owner, and this duty shall continue on the part of the Contractor whenever and so often as the Owner shall require a new bond with a satisfactory surety or sureties. Upon failure of the Contractor to furnish the aforesaid new bond within ten (10) days after said notice is mailed to his address, the Owner may withhold all payments due to the Contractor, stop all further work under said Contract, and re-let the unfinished work at the expense of the Contractor, in any manner in which it may deem best to protect the interests of the City.

### **EXECUTION OF CONTRACT**

The successful bidder will be required promptly to execute a formal contract upon blank forms with proper insertions furnished by the Owner. Successful bidder will insert on the first page of the contract the date of the day the contract is executed by his company. All copies of the Contract and Bond must be properly executed by qualified officers of the company and the Corporate Seal affixed thereto.

### **FAILURE TO EXECUTE CONTRACT AND BOND**

Failure to enter bond in a sum equal to the full amount of the award or to execute the contract within ten (10) days after written notice of the award, shall be just cause for the annulment of the award, and it is understood by the Bidder, in the event of the annulment of the award, that the amount of the certified check with the proposal may be forfeited to the use of the City, not as a penalty, but as liquidated damages.

### **COMMENCEMENT OF WORK**

Work at the site shall be commenced within ten (10) days after the date of the contract and bond and shall be completed within the time stated in the proposal.

## **AVAILABILITY OF FUNDING**

The Contract shall be subject to the availability of funding approved by the Wilmington City Council. Contractor shall not exceed the total value of the City of Wilmington's purchase order for this Contract.

## **AWARD AND EXECUTION OF CONTRACT**

1. **Consideration of Proposals.** After the proposals are opened and read, they will be compared on the basis of the summation of the products of the approximate quantities shown in the bid schedule by the unit bid prices, unless the proposals states a different basis for comparing bids. In the event of a discrepancy between unit bid prices and extensions, the unit bid price shall govern.

Before awarding the contract, a bidder may be required to show that he/she has the ability, experience, necessary equipment, experienced personnel, and financial resources to successfully carry out the work required by the contract.

The right is reserved to reject any and/or all proposals, to waive technicalities, to advertise for new proposals, or to proceed to do the work otherwise, if in the judgment of the department, the best interest of the City will be promoted thereby.

2. **Award of Contract.** The award of contract, if it be awarded, must be within thirty (30) calendar days after the opening of proposals to the lowest responsible and qualified bidder whose proposal complies with all the requirements prescribed. The successful bidder will be notified by letter mailed to the address shown on his proposal that his bid has been accepted and has been awarded the contract.
3. **Cancellation of Award.** The City reserves the right to cancel the award of any contract at any time before the execution of said contract by all parties without any liability against the City.

# **Construction Contracts**

## **General Conditions**

### **COMPENSATION AND LIABILITY INSURANCE**

Except as otherwise provided by law, the Contractor shall, at all times, maintain and keep in force such insurance as will protect him from claims under workmen's compensation acts, also such insurance will protect him and the City from any other claims for damages for personal injuries, including death, which may arise from operations under this contract, whether such operations be by the Contractor or by any subcontractor or anyone directly or indirectly employed by any of them, in any amount specified by the Chief Engineer of the Department of Public Works. The Contractor shall also, at all times, maintain and keep in force such insurance, in an amount specified by the Chief Engineer of the Department of Public Works, as will protect him and the City, its agents and employees from all suits, actions, claims, demands, damages, losses, expenses, and/or costs of every kind and description to which the City may be subjected or put by reason of injury (including death) to persons or property resulting from the manner or method employed by the Contractor, his agents and employees, or subcontractors, or from any neglect or default of the Contractor, his agents, employees, or subcontractors, in the performance of this contract, or any part thereof, or from, by, or on account of any act or omission of the Contractor, his agents and employees, or subcontractors, and whether such suits, claims, actions, demands, damages, losses, expenses, and/or costs be against, suffered, or sustained by other corporations and persons to whom the City, its agents and employees, may become liable therefor.

### **LIABILITY OF CONTRACTOR**

Whenever the Contractor is required by the existing State, Federal, local or municipal law, ordinance, rules or regulations, or by any State, Federal, local, or municipal laws, ordinances, rules or regulations that may be enacted hereafter pertaining to the work to be done under this contract, to secure any permits or licenses to carry on any operation or operations in connection with the performance of the contract and/or to act under the direction or supervision of a City official and/or employee in connection with any such operation or operations, the Contractor shall be solely liable for all suits, actions, costs and damages of every kind and description resulting or which may result, directly or indirectly, from any such operation or operations and shall indemnify and save harmless the City from any and all suits, actions, costs, and damages of every kind and description arising or which may arise, directly or indirectly from the said operation or operations.

### **INDEMNIFICATION OF THE CITY**

The contractor shall pay, indemnify, and save harmless the City, its agents and employees from all suits, actions, claims, demands, damages, losses, expenses, and/or costs of every kind and description to which the City may be subjected or put by reason of injury (including death) to persons or property resulting from the manner or method employed by the Contractor, his agents and employees, or subcontractors, or from neglect or default of the Contractor, his agents and employees or subcontractors in the performance of this contract or any part thereof or from, by, or on account of any act or omission of the Contractor, his agents and employees, or subcontractors, and whether such suits, actions, claims, demands, losses, expenses, and/or costs against, suffered, or sustained by the City, his agents and employees, may become liable therefor, and the whole, or so much of the monies due, or become due the Contractor under this contract or any other contract as may be considered necessary by the Engineer may be retained by the City until such suits or claims for damages shall have been settled or otherwise disposed of the satisfactory evidence to that effect furnished to the Engineer.

## **PATENTS**

Whenever any article, material, mean, appliance, process, composition, combination, or thing called for by these specifications is covered by Letters Patent, the successful bidder must secure, before using or employing such article, material, mean, appliance, process, composition, combination, or thing, the assent, in writing, of the Owner or Licensee of such Letter Patent and file the same with the Engineer.

The said assent is to cover not only the use, employment, and incorporation of said articles, materials, means, appliances, processes, compositions, combinations, or things in construction and completion of the work, but also the permanent use of said articles, materials, means, appliances, processes, compositions, combinations, or things, thereafter, by or on behalf of the City in the operation and maintenance of the project for the purpose for which it is intended or adapted.

The Contractor shall be responsible for any claims made against the City or any of its agents and employees for any actual or alleged infringement of patents by the use of patented articles, materials, means, appliances, processes, compositions, combinations, or things, in the construction, completion, and the use of the work, and shall save harmless and indemnify the City and its agents and the employees' fees which the City may be obliged to pay by reason of any actual or alleged infringement of Patents used in the construction, completion, maintenance, operation of the work and projects herein specified.

## **SCOPE OF WORK**

The work to be done under these specifications is to cover the completed work shown on the plans or called for in the specifications and other contract documents. The Contractor shall furnish all implements, machinery, tools, equipment, materials, and labor necessary to the performance of the work and shall furnish and do everything necessary to make the work perfect, complete, neat, and finished, and the Contractor shall leave all the work to be done under this contract in this condition at the time the work is finally inspected.

## **PERMITS, LICENSES, CHARGES, AND NOTICES**

The Contractor shall procure all permits and licenses, pay all royalties, charges, and fees, and give all notices necessary and incident to the due and lawful prosecution of the work.

## **ENGINEER MAY INCREASE OR DECREASE QUANTITIES**

The Engineer reserves the right to increase or diminish the amount of quantity of any unit price item included in the Bid or Proposal, wherever he deems it advisable or necessary so to do, and such increase or diminution shall in no way vitiate the contract.

The Contractor shall be paid for the actual amount of quantity of authorized work done or materials furnished under the unit price item of the "Bid or Proposal" at the price bid stipulated for such item. In case the amount of quantity of any item is increased as above provided, the Contractor shall not be entitled to any damages, or increased compensation over and above the price bid for such item, and in case the amount of quantity of any item is diminished as above, provided, the Contractor shall not have any claim for damages on account of loss of anticipated profits or otherwise, because of such diminution.

## **EXTRA WORK**

The Contractor shall perform extra work, for which there is no quantity and price, included in the contract, whenever, to complete fully the work contemplated, it is deemed necessary or desirable, by written authority of the Engineer, and such extra work shall be done in accordance with the

specifications therefore, or in the best workmanlike manner as directed. This extra work will be paid for at a unit price or lump sum to be agreed upon previously, in writing, by the Contractor and the Engineer, or where such a price or sum cannot be agreed upon by both parties, or where this method of payment is impracticable, the Engineer may order the Contractor to do such work on a "force account" basis.

#### **FORCE ACCOUNT WORK**

All extra work done on a "force account" basis will be paid for in the following manner:

1. For all labor and foremen in direct charge of the specific operation, the Contractor shall receive the rates of wage applicable to this contract, for each and every hour that said labor and foreman are actually engaged in such work.
2. For all material used, the Contractor shall receive the actual cost of such materials, as shown by original receipted bills.
3. An additional amount of twenty-five percent (25%) of the total cost of labor and materials of 1 and 2 above shall be added to allow for profit and overhead of subcontractors and a Contractor.
4. For any machine-power tools or equipment and for any hauling equipment, including fuel and lubricants, which it may be deemed necessary or desirable to use, the Engineer shall allow the Contractor a reasonable rental price, to be agreed upon in writing before such work is begun, for each and every hour that said tools or equipment are in use or on such work, and to its sum no percentage shall be added.

The compensation as herein provided shall be received by the Contractor as payment in full for extra work done on a "force account" basis, and shall include superintendents, use of tools and equipment to which no rental is allowed, and profit. The Contractor's representative and the Inspector shall compare records of extra work on a "force account" basis at the end of each day. Copies of these records shall be made in duplicate, upon the Engineer's "force account" forms provided for this purpose by the Inspector and signed by both the Inspector and the Contractor's representative, one copy being forwarded respectively to the Engineer and to the Contractor. All claims for extra work done on a "force account" basis shall be submitted to the Engineer by the Contractor upon certified triplicate statements, which shall also include the value of all material used in such work, and following that in which the work was actually performed and shall include all labor charges, etc., and material charges insofar as they can be verified.

Should the Contractor refuse or fail to prosecute the work as directed or submit his claim as required, the Engineer may withhold payment of all current estimates until the Contractor's refusal or failure is eliminated, or after giving the Contractor due notice, the Engineer may make payment for said work on the basis of reasonable estimate of the value of the work performed.

On extra work as defined in this paragraph, the Contractor will be reimbursed for his expenditures for Workmen's Compensation Insurance, Social Security taxes, and Unemployment Compensation covering the men actually engaged upon such work. No percentage will be added to such payments, but the Contractor shall be entitled to receive only the actual amount of money expended for such Workmen's Compensation Insurance, Public Liability Insurance, Social Security taxes, and Unemployment Compensation. Such payments shall be based upon the prevailing standard insurance

rates support by receipted vouchers from the insurance vendors and upon the actual amount of taxes paid for Social Security and Unemployment Compensation as evidenced by proper documents furnished by the Contractor.

### **EXTENSION OF TIME**

Should the Contractor allege to be delayed in the completion of the work by the act, neglect, or default of the Owner, Engineer or any other contractor employed by the Owner under the work, or by damage, caused by fire, flood, or other casualty for which the Contractor is not responsible, he may petition that the time fixed for completion of the work will be extended for a period equivalent to the time lost by any or all that causes aforesaid, which extended period shall be determined and fixed by the Engineer, but no such allowance will be made unless a claim therefore is presented in writing to the Engineer within five (5) days of the occurrence of such delay, and then only when granted in writing with the signature of the Engineer.

### **UNAUTHORIZED WORK**

Work done beyond the lines and grades shown on the plans or as given, except as herein provided, or any extra work done without written authority, will be considered as unauthorized and at the expense of the Contractor and will not be measured by the Engineer or paid for by the City. Work so done may be ordered removed and replaced by the Engineer at the Contractor's expense.

### **PROSECUTION OF WORK**

The Contractor shall begin work to be performed under the contract within ten (10) days after the date of the contract. The place where the work is to be started will be designated on the ground by the Engineer. The work shall be prosecuted from as many different points, in such part or parts and at such time as may be directed, and shall be conducted in such a manner and with sufficient materials, equipment, and labor as is considered necessary to insure its completion within the time set forth in the contract.

Should the prosecution of the work for any reason be discontinued by the Contractor with the consent of the Engineer, he shall notify the Engineer at least twenty-four (24) hours before again resuming operations.

### **EMPLOYEES AND EQUIPMENT**

Any employees of, or person connected with the Contractor, who shall use profane or abusive language to the Inspector, or other employees of the City, or otherwise interfere with him in the performance of his duties, or shall disobey or evade his instructions, or who is careless or incompetent, or is objectionable to the City authorities, shall be discharged on the request of the Engineer, and shall not again be employed without his consent.

The Contractor shall furnish such equipment as is considered necessary by the Engineer for the prosecution of the work in an acceptable manner and at a satisfactory rate of progress. Equipment used on any portion of the work shall be such that no injury to adjacent work or property will result from its use.



## **COOPERATION OF CONTRACTOR AND REPRESENTATIVE**

The Contractor shall give the work his constant attention to facilitate the progress thereof and shall cooperate with the Engineer in every way possible. The Contractor shall have at all times competent and reliable English-speaking representatives on work, authorized to receive orders and act for him.

## **LAWS TO BE OBSERVED**

The Contractor at all times shall observe and comply with all Federal, State, local and municipal laws, ordinances, rules, and regulations in any manner effecting the work, and all such orders or decrees as exist at present and those which may be enacted later, of bodies or tribunals having any jurisdiction or authority over the work, and shall indemnify and save harmless the City and all its officers, agents, and servants against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, rule, order, or decree, whether such violations be by the Contractor, or any subcontractor, or any of their agents, and/or employees.

## **SANITARY PROVISIONS**

The Contractor shall provide and maintain a neat sanitary condition, such sanitary conveniences and accommodations for the use of his employees as may be necessary to comply with the requirements and regulations of the Department of Health or of other bodies or tribunals having jurisdiction thereof. He shall commit no public nuisance.

## **WATER SUPPLY**

Where water directly from the City-owned water mains is available, it will be supplied to the Contractor upon request and approval, at regular meter and/or rental rates, at the nearest available hydrant or outlet, and no other water shall be used for any purposes connected with the contract, except by permission of the Engineer.

The Contractor will be required to provide approved, standard tight hose, and fittings with which to make connection to hydrants and outlets. No improper, wasteful, or undue use of water will be permitted.

The Contractor shall procure from the Water Department a regular wrench for use on hydrants and no other wrench shall be used. He shall conform to all the rules and regulations of the Water Department in connection with the use of water hydrants, pipes, etc.

Where water directly from the City-owned water mains is not available, the Contractor shall, at his own cost and expense, provide such quantities of clean water as may be required for any and all purposes under the contract. He shall supply sufficient drinking water to allow his employees, but only from such sources as are approved by the Engineer and no other water shall be used for drinking purposes.

## **PUBLIC CONVENIENCE AND SAFETY**

The Contractor at all times shall conduct the work in such a manner as to insure the least obstruction to traffic practicable. The convenience of the general public and of the residents and occupants or property along and adjacent to the work shall be provided for in an adequate and satisfactory manner. Materials stored upon highway shall be placed so as to cause as little obstruction to the traveling public as is considered necessary. Fire hydrants on or adjacent to the work shall be kept accessible to fire apparatus at all times, and no material or obstruction shall be placed within fifteen (15) feet of any such hydrant. Footways and portions of highways and streams adjoining the work under construction shall not be obstructed more than is absolutely necessary. All gutters and sewer inlets shall be kept

unobstructed at all times. In no case, shall any traveled thoroughfare be closed without permission of the Engineer.

### **MAINTENANCE OF TRAFFIC**

The Contractor shall submit a maintenance of traffic plan for approval by the Engineer seven (7) days prior to start of work. The maintenance of traffic plan shall contain only approved traffic control devices and methods of operation in accordance with the State of Delaware "Manual on Traffic Control for Street/Highway Construction and Maintenance Operations." The Contractor shall not perform any work until the maintenance of traffic plan has been approved in writing by the Engineer.

The Contractor shall not enter upon private property for any purpose without obtaining permission, and shall be responsible for the preservation of all public and private property, trees, monuments, etc., along and adjacent to the work and shall use every precaution necessary to prevent damage or injury to property or persons. He shall use suitable precautions to prevent damage to pipes, conduits, and other underground structures and shall protect carefully from disturbances or damage of all and monuments and property marks until an authorized agent has witnessed or otherwise referenced their location, and shall not remove them until directed. The Contractor shall not willfully nor maliciously injure or destroy trees or shrubs and shall not remove or cut them without proper authority. He shall be strictly responsible for any and all damage or injury of every kind and description, which directly or indirectly may be done to any property or sustained by any persons during the prosecution of the work resulting from any wrongdoing, misconduct, want of skill, or any negligence of himself or his agents and/or employees, or at any time due to defective work or materials. Where or when any direct or indirect damage or injury is done to public or private property by or on account of any act, omission, neglect, or misconduct in the execution of the work or in consequence of the non-execution thereof on part of the Contractor, he shall restore, at his own expense, such property to a condition similar or equal to that existing before such damage or injury was done by repairing, rebuilding, or otherwise restoring as may be directed, or he shall make good such damage or injury in an acceptable manner. In case of the failure on the part of the Contractor to restore such property, or make good such damage or injury, the Engineer may, upon three (3) days notice, proceed to repair, rebuild, or otherwise restore such property as may be deemed necessary, and the cost thereof may be deducted from any monies due or which may become due to the Contractor under this contract.

### **DAMAGE TO UTILITIES**

Should the Contractor or his workmen in the execution of this contract cause damage to any underground construction, such as water, telephone, electric, and police conduit, such damage shall be repaired or replaced by the Contractor at his own expense and under the direction of the Engineer; or such repairs to the damaged utility or utilities may be made by employees of the respective utility company or companies whose underground structure was damaged by the Contractor or his workmen and such costs for these repairs shall be paid by the Contractor.

### **CONTRACTOR'S RESPONSIBILITY FOR WORK**

Until the final acceptance of all work, as indicated in writing by the Engineer, it shall be under the charge of and care of the Contractor and he shall take every precaution against the destruction, injury or damage to the work or to any part thereof by the action of the elements or from any other cause whatsoever. The Contractor shall rebuild, repair, restore, and make good, at his own expense, all destruction of, injuries or damages to the work, or any portion thereof, occasioned by any of the above causes before its final completion and acceptance as indicated in writing by the Engineer.

### **SUPERVISION BY ENGINEER**

The work is to be carried out under the supervision of the Engineer to his entire satisfaction. The work and materials shall be strictly of the best quality of the kinds specified herein, and should any work or materials other than those specified as shown be introduced into the construction of the work, the Engineer, or his authorized agent, shall have full power to reject them, and they shall be removed from the premises in three (3) days by the Contractor after being notified to do so.

### **AUTHORITY OF ENGINEER**

The Engineer shall in all cases determine the amount of quantity, quality, acceptability of the work and materials which are to be paid for under this contract and shall decide all questions in relation to said work and the performance thereof; and shall, in all cases, decide questions which may arise relative to the fulfillment of the contract to the obligations of the Contractor thereunder.

### **AUTHORITY AND DUTIES OF INSPECTORS**

Inspectors employed by the Owner shall be authorized to inspect all work done and materials furnished. Such inspection may extend to all or part of the work to the preparation or manufacture of the materials to be used. An inspector will be stationed on the work to report to the Engineer as to the progress of the work and the manner in which it is being performed; also to report whenever it appears that the materials furnished and the work performed by the Contractor fail to fulfill the requirements of the specifications and contract, and to call to the attention of the Contractor any such failure or other default, but no inspection, nor any failure to inspect, at any time or place, however, shall relieve the Contractor from any obligation to perform all of the work strictly in accordance with the requirements of the specifications. In case of any dispute arising between the Contractor and the Inspector as to materials furnished or the manner of performing the work, the Inspector shall perform such other duties as are assigned to him. He shall not be authorized to revoke, alter, enlarge, relax, or release any requirements of these specifications, not to approve or accept any portion of the work, nor interfere with the management of the work by the Contractor. Any instructions which the Inspector may give the Contractor shall in no way be construed as binding by the Engineer or the City in any way, nor releasing the Contractor from the fulfillment of the terms of the contract.

### **INSPECTION OF MATERIALS AND WORK**

The Contractor shall furnish the Engineer with every reasonable facility for ascertaining whether or not the work as performed is in accordance with the requirements and intent of the specifications and contract. If the Engineer requests it, the Contractor, at any time before acceptance of the work, shall remove and/or uncover such portions of the finished work as may be directed. After examination, the Contractor shall restore said portions of the work to the standards required by the specifications. Should the work thus exposed or examined prove acceptable, the uncovering, removing, replacing the covering, and/or making good the parts removed shall be paid for as "Extra Work," but should the work exposed or examined prove unacceptable, either in whole or in part, the uncovering, removing, replacing of the covering and/or making good of the parts removed, shall be at the Contractor's expense.

### **DEFECTIVE MATERIALS AND WORK**

All materials not conforming to the requirements of these specifications shall be considered defective, and all such materials, whether in place or not, shall be rejected and shall be removed immediately from the work unless otherwise permitted. No material which has been rejected, the defects of which have been corrected or removed, shall be used until approval has been given. All work which has been rejected or condemned shall be remedied, or if necessary, removed and replaced in an acceptable manner by the Contractor at his own expense.

### **FAILURE TO REMOVE AND RENEW DEFECTIVE MATERIALS AND WORK**

Should the Contractor fail or refuse to remove and renew any defective materials used or work performed previously, or to make any necessary repairs in an acceptable manner, and in accordance with the requirements of these specifications, within the time indicated in writing, the Engineer shall have the authority to cause the unacceptable or defective materials or work to be removed and renewed for such repair to be made at the Contractor's expense. Any expense incurred by the City in making these removals, renewals, or repairs, which the Contractor has failed or refused to make, shall be paid out of the monies due or which are to become due to the Contractor, or may be charged against the "Contract Bond" deposited; and continued failure or refusal on the part of the Contractor to make any or all necessary repairs, removals and renewals, promptly, fully, and in an acceptable manner shall be sufficient cause for the City to declare the contract forfeited, in which case, the City at its option may be required to perform the work, or may contract with any other individual, firm, or corporation to perform the work. All costs and expenses incurred thereby shall be charged against the defaulting contractor, and the amount thereof deducted from any monies due or to become due him and/or shall be charged against the "Contract Bond" deposited. The performance of any work by the City and/or others as specified shall not relieve the contractor in any way from his responsibilities under this contract.

### **CLEANING UP**

The Contractor shall at his own expense, keep the sites of his operations clean during the construction and remove all rubbish as it accumulates.

Upon failure of the Contractor to keep sites of his operation clean to the satisfaction of the Engineer, the City may upon twenty-four (24) hours notice to the Contractor, remove any rubbish, materials, earth, etc., which the Engineer may deem necessary, charging the cost thereof to the Contractor and may deduct the amount from any monies that may be due him. On or before the completion of the work, the Contractor shall, without charge therefore, tear down and remove all his buildings and temporary structures built by him, shall remove all rubbish of all kinds from any grounds which he has occupied, and shall leave the site of the work in a clean and neat condition.

### **TEMPORARY SUSPENSION OF WORK**

The Engineer shall have the authority to suspend the work, wholly or in part, for such a period or periods as he may deem necessary, due to unsuitable weather, or such other conditions as are considered unfavorable for the suitable prosecution of the work, or for such time as is necessarily due to the failure on the part of the Contractor to carry out orders given or perform any or all provisions of the contract. If it should become necessary to stop work for an indefinite period, the Contractor shall store all materials in such a manner that they will not obstruct or impede the traveling public unnecessarily, nor become damaged in any way, and he shall take every precaution to prevent destruction, damage, or deterioration of the work performed to provide suitable roof drainage, and erect temporary cover where necessary. The Contractor shall not suspend the work without authority. Neither the failure of the Engineer to notify the Contractor to suspend work on account of bad weather, or other unfavorable conditions, nor permission by the Engineer to continue work during bad weather or other unfavorable conditions, shall be a cause for the acceptance of any work which does not comply in every respect with the contract and specifications.

### **ANNULMENT OF CONTRACT**

If the Contractor fails to begin the work under the contract within the time specified, or fails to perform the work with sufficient materials to insure proper completion of said work, except in cases for which an extension of time is provided, or shall perform the work unsuitably or neglect or refuse to promptly remove materials or again promptly perform such work as shall be rejected as defective or of unsuitable

or shall discontinue the prosecution of the work, or if the Contractor becomes insolvent or to be declared bankrupt, or commit any act of bankruptcy or insolvency, or allow any final judgment to stand against him unsatisfied for a period of forty-eight (48) hours or shall make an assignment for the benefit of creditors or shall fail to make prompt payment for all subcontractors and/or material, for material and/or labor supplied, or shall persistently disregard any State, Federal, local or municipal laws, ordinances, rules, or regulations pertaining to the work or shall disregard the instructions of the Engineer, or from any other cause whatsoever shall not carry on the work in an acceptable manner, the Engineer may give notice in writing, mailed to the Contractor and/or Surety of such delay, neglect, default, specifying same, and if the Contractor within the period of three (3) days after such written notice is mailed, shall not proceed in accordance with same, then the City shall upon written certificate from the Engineer of the fact such delay, neglect, or default, and the Contractor's failure to comply with such notice, have full power and authority without prejudice to any of its other rights or remedies and without violating the contract, to terminate the employment of said Contractor and to take prosecution of the work out of the hands of said Contractor and to take possession of the premises and to appropriate the use of any or all materials, appliances, and equipment on the premises, and may enter into an agreement for the completion of said contract according to the terms and provisions thereof, or use such other methods as in its opinion, shall be deemed expedient and necessary for the completion of said contract in accordance with the plans and specifications, and within such time as in the judgment of the City, the public interests may require. In the event of any of the aforementioned circumstances arising at any time or times, the City shall have the right to withhold, without the payment of interest, any sum or sums of money due or to become due the Contractor until the interests of the City have been fully protected to the satisfaction of the Engineer. All costs and expenses incurred by the City together with the cost of completing the work under the contract, including the cost of additional managerial and administrative services, if any, shall be deducted from the monies due or which may become due said Contractor. In the case of expense so incurred by the City shall be less than the sum which would have been payable under the contract if it had been completed by said Contractor, then the said Contractor shall be entitled to receive the difference; and in case such expense shall exceed the sum which would have been payable under the contract, Contractor and/or Surety shall be liable therefor, and shall pay the amount of the differences to the City within ten (10) days after written notices mailed to the Contractor and/or Surety. The expense, loss, or damage, including the cost of additional managerial and administrative services, if any, incurred by the City through the Contractor's default shall be certified by the Engineer, and such certification shall be conclusive and recognized and accepted as the correct amount of the loss sustained by the City and all parties concerned.

#### **MEASUREMENT OF QUANTITIES**

All work completed under the contract shall be measured by the Engineer according to the United States Standards of Measures.

#### **MATERIALS AND WORK NOT PAID FOR BY THE CONTRACTOR**

When written notice is given to the Engineer before or within ten (10) days after the completion and conditional acceptance of the entire work under the contract by persons having done work or furnished materials for such contract that there is money due and unpaid for said work and materials, the Contractor shall furnish the Engineer with satisfactory evidence that said money has been fully paid for satisfactorily secured by him. In case such evidence is not furnished as aforesaid, such amounts as may be necessary to meet the claims of the persons or aforesaid may be retained from any monies due the Contractor under the contract until the liabilities aforesaid shall be fully discharged or such notices withdrawn. The City or the Engineer may also, with the written consent of the Contractor, use any money retained, due or become due under the contract, for the purpose of paying for both labor and materials for the work, for which claims have been filed in the office of the Engineer.

## **NO ESTOPPEL OR WAIVER OF LEGAL RIGHTS**

The City, or the Engineer, shall not be precluded or estopped by any measurement, estimate, or certificate made or given by them, or by any agent or employee of the City, under any provision or provisions of the contract, at any time, either before or after the completion and acceptance of the work and payment therefor, pursuant to any measurement, estimate or certificate from showing the true and correct amount and character of the work performed and materials furnished by the Contractor or from showing at any time that any such measurement, estimate, or certificate is untrue or incorrectly made in any particular, or that the work or materials or any part thereof, do not conform in fact to specifications and contract, and the Engineer shall have the right to reject the whole or any part of the aforesaid work or materials, should the said measurement, estimate, or certificate or payment be found or be known to be inconsistent with the terms of the contract, or otherwise improperly given, the City shall not be precluded and estopped, notwithstanding any such measurement, estimate, certificate, and payment in accordance therewith from demanding and recovering from the Contractor and his Surety such damages as it may sustain by reason of his failure to comply with terms of the specifications and contract. Either the acceptance by the City, the Engineer, or any agent or employee of the City, nor any certificate by the City for payment of money, nor any payment for, nor acceptance or use of, the whole or any part of the work, by the City or the Engineer, nor any extension of time, nor any possession taken by the City or its employees, shall operate as a waiver of any portion of the contract, or of any power herein reserved by the City, or any right to damages herein provided, nor shall any waiver of any breach of the contract be held to be a waiver of any other or subsequent breach.

## **SUBCONTRACTORS**

The Contractor shall give his personal attention to the faithful performance of the work, shall keep the same under his control, and shall not assign the contract by power of attorney or otherwise, nor sublet the work or any part thereof, without the previous written consent of the Engineer; he shall state to the Engineer in writing the name of each subcontractor he intends employing, the portion of work which he is to do or the materials which he is to furnish, his place of business and such other information as the Engineer may require, in order to know whether or not said subcontractors are reputable and reliable and able to perform the work or to furnish the materials as called for in the specifications. No subcontractor shall be engaged upon any branch of the work who is not thoroughly practical and responsible and at the time of making this contract, conducting business in the particular branch or trade for which he is employed.

The Contractor shall not, either legally or equitably, assign any of the monies payable under the contract, or his claims thereto, unless by and with the consent of the Engineer.

The Contractor shall not be released from any of his liabilities or obligations under this contract should any subcontractor or subcontractors fail to perform in the satisfactory manner the work undertaken by him or them.

The Contractor agrees that he is fully responsible to the City for the acts or omissions of his subcontractor, and of persons either directly or indirectly employed by them, as he is for the acts or omissions of persons directly or indirectly employed by him.

Subcontracts, if any, shall be let promptly after the signing of the contract.

Nothing contained in the contract shall create any contractual relation between any subcontractor and the City.

The Contractor shall furnish the City with a written list of all subcontractors, if any, to be used in connection with this contract. The City reserves the right to reject the use of any subcontractors for any reason whatsoever.

#### **CLAIMS TO BE MADE PROMPTLY**

Should the Contractor be of the opinion, at any time or at times, that he is entitled to any additional compensation whatsoever (over and above the compensation stipulated in these contract documents or for quantities and/or amounts over and above the quantities and/or amounts allowed or approved by the Engineer), the damages, losses, costs, and/or expenses alleged to have been sustained, suffered, or incurred by him in connection with the project herein contemplated, he shall, in each instance, within five (5) days after such alleged damages, losses, costs, and/or expenses shall have been sustained, suffered, or incurred, make a written claim therefor to the Engineer. On or before the fifteenth (15th) day of the calendar month succeeding that in which such damages, losses, costs, and/or expenses shall have been sustained, suffered, or incurred, the Contractor shall file with the Engineer a written, itemized statement of the detailed amounts of each such claim or damage, loss, cost, and/or expense and unless such claim for such additional compensation shall be held and taken to be absolutely invalidated, and he shall not be entitled to any compensation on the account of each such alleged damage, loss, cost, and/or expense.

The provisions of this section shall be held and taken to constitute a condition precedent to the right of the Contractor to recover; they shall also apply to all claims by the Contractor in any way relating to the complete project; and even though the claims and/or work involved may be regarded as "outside the contract."

It is understood and agreed, however, that nothing in this section contained shall be held or taken to enlarge in any way the rights of the Contractor or the obligations of the City under these contract documents.

#### **EXTRA WORK A PART OF THE CONTRACT**

No order for extra work nor the doing of any extra work, at any time or place, shall in any manner or to any extent relieve the Contractor or the Surety of his bond from any of their obligations under the contract documents; all extra work orders being given and all extra work being done, under, and in accordance with the contract are to be considered a part of the same and subject to each and every one of the terms and requirements of the contract documents, and fully covered by the bond and furnished by the Contractor.

#### **SCOPE OF PAYMENT**

The Contractor shall receive and accept the compensation, as provided in the Bid or Proposal, in full payment for furnishing all materials, labor, tools, and equipment and for performing all work contemplated and embraced under the contract. Also for all loss of damages arising out of the nature of the work, or from the action of the element or from any unforeseen difficulties or obstructions, which may arise or be encountered during the prosecution of the work, until its final acceptance by the City, and for risks of every description connected with the prosecution of the work, until its final acceptance by the City, and for all risks of every description connected with the prosecution of the work, also for all expenses incurred by, or in consequence of the suspension or discontinuance of the prosecution of the work as herein specified, and for any actual or alleged infringement of patent, trade name, or copyright and for completing the work and the whole thereof, in an acceptable manner according to the plans and specifications. The payment of any current or final estimate, or of any retained percentage, shall in no way or in a degree, prejudice, or affect the obligations of the Contractor, at his own cost and expense, to renew or replace any defects and imperfections in the construction of the work or in the strength of the quality of materials used in or about the construction of the work under contract and its

appurtenances, as well as all damages due or attributable to such defects, which defects, imperfections, or damages shall be discovered on or before the final inspection and acceptance of the work, and of which defects, imperfections, or damages, the Engineer shall be the judge, and the said Contractor shall be liable to the City for failure so to do.

### **PARTIAL PAYMENTS**

The Engineer will make current estimates in writing, once each month, of the materials in place complete, and the amount of work performed in accordance with the contract, during the preceding month or period, and the value thereof figured at the unit prices of the contract, and in case of lump sum items, figured on the basis of the schedule of values to be agreed upon, as therein after provided for.

For the total of the amounts so ascertained will be deducted an amount equivalent to ten percent (10%) of the whole to be retained by the City until after the completion of the entire contract, in an acceptable manner, and the balance or sum equivalent to ninety percent (90%) of the whole, shall be paid to the Contractor by the City.

Schedule of values of the various parts of work to be done under lump sum items shall be agreed upon by the Contractor and the Engineer, and such schedules shall be the basis for determining the amount allowed the Contractor on account of such lump sum items, partial estimates, or payment under the contract.

### **PAYMENTS MAY BE WITHHELD**

Payments may at any time be withheld if the work is not proceeding in accordance with the contract, or if, in the judgment of the Engineer, the Contractor is not complying with requirements of the contract documents.

### **CONDITIONAL ACCEPTANCE**

Whenever, in the opinion of the Engineer, the Contractor shall have completed the work in an acceptable manner in accordance with the terms of the contract, the Engineer shall make an inspection of the entire work, and upon inspection and acceptance, completion of all repairs and renewals which may appear at the time to be necessary, in the judgment of the Engineer, he shall certify to the owner in writing as to said completion, and as to the value thereof. The aforesaid certificate shall be held and taken to evidence the conditional acceptance of the entire work by the Owner as of the date thereof, and an additional five percent (5%) of the whole value of the work over and above any and all other reservations and/or deductions which the City is, by the terms of the contract documents or otherwise, entitled or required to make and obtain and shall hold said five percent (5%) for a period of three (3) months from and after the date of such certificate and conditional acceptance, and the City shall be authorized to apply the whole or any part of said five percent (5%) so retained to any and all costs of repairs and renewals of the work and appurtenances which may become necessary, in the judgment of the Engineer, during such period of three (3) months on account of any failure or defects in said work and appurtenances due to improper work done or materials furnished by the Contractor, if the Contractor shall fail to make such repairs or renewals within three (3) days after receiving notice from the City to do so.

### **FINAL ACCEPTANCE OF PAYMENT**

Upon the expiration of the aforesaid three (3) months from and after the date of certificate of conditional acceptance of the work, the Engineer shall make final inspection of the entire work, and upon confirmation of all repairs and renewals which may appear at that time to be necessary in the judgment of the Engineer, he shall certify to the Owner in writing as to the final acceptance of the entire project.



The Owner, upon receipt and approval of said certificate, shall pay, or cause to be paid under the contract, except such sums which have already been paid and except such sum or sums as may have been expended by the Owner under the provisions of the contract documents and less any other deductions the Owners may be otherwise entitled to make.

The last mentioned certificate issued by the Engineer shall be deemed and accepted by all of the parties hereto as evidencing the final completion and acceptance of the entire project, and the payment made by the Owner to the Contractor pursuant to the issuance of said certificate of final completion and acceptance shall be deemed to be accepted by all of the parties hereto as the final payment to be made by the Owner to the Contractor, all prior certificates or estimates upon which payments may have been made being partial estimates and subject to correction in said final payment.

#### **LAST PAYMENT TO TERMINATE LIABILITY OF THE OWNER**

The acceptance by the Contractor of the final payment shall operate as and be a release of the Owner and every agent thereof from all claims and liabilities to the Contractor for anything done or furnished or relating to the work, or for any act or neglect of the Owner or any persons relating to or affecting this work.

#### **NO LIMITATION OF LIABILITY**

It is understood and agreed that any and all duties, liabilities, and/or obligations imposed upon or assumed by the Contractor and the Surety, or either of them by or under the contract documents, shall be taken and construed to be cumulative, and that the mention of any specific duty, liability, or obligation imposed upon or assumed by the Contractor and/or Surety under the contract documents shall not be taken or construed as a limitation or restriction upon any or all of the other duties, liabilities and/or obligations imposed upon or assumed by the Contractor and/or Surety by or under the contract documents.

#### **REMEDIES CUMULATIVE**

All remedies provided in the contract documents shall be taken and construed to be cumulative; that is, in addition to any and all other remedies provided therein and to any remedies in law or equity which the City would have in any case.

#### **LEGAL ADDRESS**

The address given in the bid or proposal is hereby designated as the legal address of the Contractor. Such address may be changed at any time by notice in writing delivered to the Engineer. The delivering of such legal address or the depositing in any post office, in a postpaid, registered wrapper direct to the above-mentioned address of any notice, letter, other communication to the Contractor, shall be deemed to be a legal and sufficient service thereof upon the Contractor.

#### **CONTRACTOR'S EXPENSE**

All things required by the contract documents to be done, furnished, and/or installed shall be done, furnished and/or installed by the Contractor at his entire cost and expense, unless otherwise provided therein.

#### **NIGHT, WEEKEND, AND CITY HOLIDAY WORK**

No night work between the hours of 5:00 p.m. and 8:00 a.m., no work on Saturday, Sunday, and no work on any City Holiday shall be permitted except with written permission of the Engineer. If the Contractor decides to work on those above days, he shall reimburse the City for the salaries and wages

of the City Construction Inspectors. Compensation shall include direct payroll cost and fringe benefits. The Contractor shall notify the Engineer in writing at least two (2) days in advance of such days he desires to work.

### **STRIKES, ETC.**

The Contractor shall adjust all strikes, or other labor troubles, and no allowance will be made for such delays in the time limit herein named.

### **ACCESS TO WORK**

The Engineer may at any time enter upon the work and the premises used by the Contractor, and the Contractor shall provide proper and safe facilities by means of ladders or otherwise to secure convenient access to all parts of the work, and all other facilities necessary for inspection, as may be required by the Engineer.

### **GUARANTEE**

The Contractor hereby guarantees all work performed under this contract for a period of one (1) year from the date of the "Final Acceptance and Payment" thereof by the City as follows:

Against all faulty or imperfect materials and against all imperfect, careless, and/or unskilled workmanship.

That the work performed under this contract, including all mechanical and electrical equipment and appurtenances, and each and every part thereof, shall operate (with proper care and maintenance) in a satisfactory and efficient manner and in accordance with the requirements of these contract documents.

The Contractor agrees to replace with proper workmanship and materials, and to re-execute, correct, or repair, without cost to the City, any work which may be found to be improper or imperfect and/or which does not operate in a satisfactory manner or fails to perform as specified.

The guarantee obligations assumed by the Contractor under these contract documents shall not be held or taken to be in any way impaired because of the specifications, indication or approval by or on behalf of the City of any articles, materials, means, combinations, or things used or to be used in the construction, performance, and completion of the work or any part thereof.

No use or acceptance by the City of the work or any part thereof, nor any failure to use the same, nor any repairs, adjustments, replacements, or corrections made by the City due to the Contractor's failure to comply with any of his obligations under these contract documents, shall impair in any way with the guarantee obligations assumed by the Contractor under these contract documents.

### **HOURS OF LABOR**

Eight (8) hours shall constitute a day's work for all laborers, workmen, or mechanics directly employed by the Contractor and all subcontractors on the project, except in time of war or at other times of emergency when it may be necessary to work more than eight (8) hours in any one calendar day to protect or save human life or property, and the Contractor or any of his subcontractors shall not require or permit any laborer, workmen, or mechanics to work more than eight (8) hours in any one calendar day while engaged on the project, except at times hereinbefore specifically mentioned.

## WAGES PAYABLE UNDER MUNICIPAL CONTRACTS, ETC.

SECTION 2-1, Wilmington Code, Chapter 20, Article IV.

### SECTION 20-44

#### Definitions.

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

- "City Work"** All building or construction work or projects of any kind or nature, including repair, alteration, and remodeling done on behalf of the City under any contract awarded by the City for building or constructing any building or structure, or the repair, alteration, and remodeling thereof or any other project subject to the determination by the Procurement and Records Division Manager and the State Department of Labor and Industrial Relations in accordance with the provisions of Sections 101 to 129 of Title 19 of the Delaware Code, involving the hourly wages for the respective occupational classifications within a given craft, trade, or industry for the City area.
- "Contractor"** Any employer who has been awarded any contract for the City work as defined herein.
- "Contracts"** Contracts for the performance of City work entered into by the City with contractors and all contracts entered into between such contractors and subcontractors involving or regarding such work.
- "Employee"** A workman or mechanic of the employer.
- "Employer"** Any person who is a party to a contract or subcontract for the performance of any City work as defined herein.
- "Occupational Classifications"** The specific categories of jobs within a given craft, trade, or an industry for which a separate hourly wage rate for the City area as is determined by the Procurement and Records Division Manager and the State Department of Labor and Industrial Relations in accordance with the provisions of Section 101-129 of Title 19 of the Delaware Code.
- "Prevailing Wages"** An aggregate of:
- 1) The hourly wages for the respective occupational classifications within a given craft, trade, or industry for the City area determined by the Procurement and Records Division Manager and the State Department of Labor and Industry Relations in accordance with the provisions of Sections 101-129 of Title 19 of the Delaware Code; provided, however, that during the period of any substantial work stoppage involving rates of wages in a given craft, trade, or industry, such wages for such craft, trade, or industry shall be those as last so determined by the Procurement and Records Division Manager prior to such work stoppage, and

- 2) The additional benefits, for which a monetary equivalent may be determined, and which are given employees pursuant to a bona fide collective bargaining agreement for their respective craft, trade, or industry in the City area, or the monetary equivalent of such benefits.

#### SECTION 20-45

##### Required Contract Provision

The specifications for all City work contracts shall contain a reference that the minimum wages paid for each occupation classification of employees shall be the prevailing wages as determined by the Procurement and Records Division Manager and the State Department of Labor and Industrial Relations. Each contract, as defined in this article, involving any City work shall contain a provision that all employees performing City work shall be paid at least the applicable prevailing wages. Every contract involving any City work shall contain a provision that the Contractor shall require all subcontractors to comply with and be bound by all of the provisions of this article.

As a condition precedent to awarding of any construction contract by the City, all bidders shall be compelled to agree and abide by any Federal, State, County, or municipal statutes, ordinances, or regulations thereof, pertaining to plans for the hiring of persons belonging to minority groups or to any reasonable plans or agreements formulated among the contractors, construction trade unions, and the various neighborhood civic groups concerned with the elimination of discriminatory hiring practices in the construction industry.

The awarding of any City construction contracts shall be made to the lowest responsible bidder who agrees to abide by all Federal, State, County or municipal statutes or ordinances, or rules or regulations which may prohibit the discriminatory hiring practices by a person's race, color, religion, national origin, or political opinion, and who further agrees to promptly comply with any reasonable plan to be formulated by the hiring of persons of minority groups that results from either Federal, State, County or City statutes, ordinances, rules and regulations, or agreements among the construction trade unions, the contractors, and the various neighborhood groups concerned with the elimination of discriminatory hiring practices.

The Finance Department's Division of Procurement and Records shall notify in writing, or include in all specifications, the pertinent provisions of this section, to apprise all bidders on City construction contracts of this requirement (Ordinance No. 70-055, Section 3).

#### SECTION 20-46

##### Affidavit of Compliance with Article Prerequisite to Payment by City; Monthly Payroll Report.

All contractors and subcontractors performing City work shall file with the Procurement and Records Division Manager, an affidavit upon each payment being made by the City to such contractors and subcontractors pursuant to a contract that the provisions of this article have been complied with prior to the City making any payment. The affidavit shall also provide that the contractor or subcontractor has posted in a conspicuous place on the job site a list of the prevailing wages for the respective occupational classifications; and he shall submit with the affidavit a monthly report stating the number of workers in each classification, and the total gross payroll paid by him to each classification (Ordinance No. 73-077, Section 1).

## SECTION 20-47

### Violation of Article.

The violation of this article shall be considered a substantial breach of contractor's obligation under the contract; provided, however, that this article shall not be deemed to have been violated where it is contended that a particular craft, trade or industry is not the appropriate one and the wages applicable to the craft, trade or industry working under the contract have been paid the prevailing wages as determined for the craft, trade or industry contract. No contract for City work shall be awarded to any contractor or subcontractor who has violated any provision of this section until five (5) years have elapsed from the date of determination of such violation, and shall be fined no more than five thousand dollars (\$5,000.00) for each violation (Ordinance No. 73-077, Section 2).

### PLANS, ETC., TO BE FOLLOWED

The approved plans attached to and made a part thereof will show the details and dimensions of the work contemplated, which shall be performed in strict accordance therewith and in accordance with the specifications. There shall be no deviation from the plans, specifications, etc., on account of the exigencies of construction, unless approved by the Engineer and authorized in writing.

### INTERPRETATION OF PLANS, ETC.

On all plans, drawings, etc., the following dimensions shall govern in the case of discrepancy between the scales and figures. The Contractor shall take no advantage of any error or omission in the plans or of any discrepancy between the plans and specifications, and the Engineer shall make such corrections and interpretations as may be deemed necessary for the fulfillment of the intent of the specifications and of the plans as construed by him. In all cases of doubt as to the true meaning of the specifications, plans and/or drawings, the decision of the Engineer will be final and conclusive.

### ALTERATION OF PLANS OR OF CHARACTER OF WORK

The Engineer reserves the right to make such alterations in the plans or in the character of the work as may be considered necessary or desirable from time to time to complete fully and perfectly the construction of the work, provided such alterations do not change materially the original plans and specifications of such alterations shall not be considered as a waiver of any condition of the contract nor to invalidate any of the provisions thereof. Should such alterations in the plans or in character of the work be productive of increased cost or result in decreased cost to the Contractor, a fair and equitable sum therefor to be agreed upon in writing by the Contractor and the Engineer, before such work is begun, shall be added to or deducted from the contract price, as the case may be. No allowance will be made for anticipated profits on the work omitted.

### PLANS AND SPECIFICATIONS FURNISHED TO CONTRACTOR

The Contractor will be supplied by the Engineer with a reasonable number of copies of the plans and specifications and he shall have available on the work at all times during the prosecution of the work, one (1) copy of said plans and specifications.

### TEST OF SAMPLES OF MATERIALS

All tests of materials will be made by the City in accordance with official approved methods as described or designated. The Contractor shall cooperate with and assist the Engineer in taking samples and packing them for shipment to a laboratory.

## **STORAGE OF MATERIALS**

Materials shall be stored so as to insure the preservation of their quality and fitness for the work. When considered necessary, they shall be placed on wooden platforms, or other hard, clean surfaces, and not on the ground, and shall be placed under cover when directed. Stored materials shall be located so as to facilitate prompt inspection. Lawns, grass plots, or other private property shall not be used for storage purposes without written permission of the owner or lessee.

## **QUALITY OF MATERIALS AND WORKMANSHIP**

All materials furnished and all work done in carrying out the contract shall be of the best quality and especially adapted to the services required. Wherever the characteristics of any materials are not particularly specified, such materials shall be used as is customary in first class work of the nature for which the material is employed. The source of supply and quality of each of the materials shall be approved by the Engineer before the delivery is started. Representative preliminary samples of the character and quality herein described shall be submitted by the Contractor when indicated or directed, for examination or test, and written approval of the quality of such samples shall be received by the Contractor prior to obtaining materials from the respective sources of supply. Only such materials as conform to the requirements of these specifications shall be used in the work. All materials proposed to be used may be inspected at any time during the progress of their preparation and use. All materials shall be approved before being incorporated in the work, and shall be new and unused.

Representative samples of all materials requiring laboratory tests shall be taken, and such materials shall be used only after written approval has been received by the representative of the Engineer in charge of the work, and only so long as the quality of said materials remains equal to requirements.

## **DIMENSIONS AND LEVELS**

The Contractor shall be solely responsible for construction of work at proper lines and elevations and no plans as to instructions or orders received from any source other than the information contained in the drawings or specifications, or in written orders of the Engineer, shall justify departure from the lines and elevations as shown on the plans.

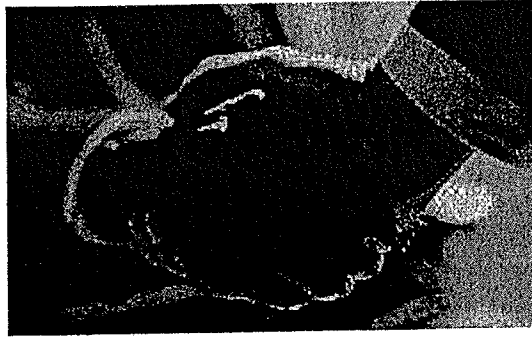
## **MAINTENANCE, REPAIRS, ETC., AFTER COMPLETION**

The Contractor, at his entire cost and expense, shall maintain all portions of the work included in the contract to meet the requirements of these specifications for and during a period of three (3) months from and after the date of the conditional acceptance of the entire work by the City, and in addition, shall at his entire cost and expense, make all repairs and replacements of the work and appurtenances which may become necessary, in the judgment of the Engineer, at any time or times, during said three (3) months, on account of any failure or defects in said work and appurtenances due to improper work done or materials furnished by the Contractor.

## **DELINQUENT TAXES, ETC.**

The City shall have the right to set off against all monies due and payable under the provisions of this contract the sum representing the total amount of delinquent taxes and/or water sewer charges owed the City by the Contractor or any of its subcontractors. The monies so set off shall be credited to the amount shown by the tax and or water sewer records to be delinquent, said records shall be prima facie evidence of the true and correct amount of taxes and or water sewer charges due to the City.

The term "delinquent taxes" as used herein applies only to uncollected taxes, license fees, and penalties owed by the Contractor or subcontractor, a subsidiary, or principal owner thereof; "principal owner" as used herein is one which owns a majority share or otherwise maintains a controlling interest in the Contractor or subcontractor. The City shall notify the Contractor in writing of its intention to make the aforesaid set off. If the Contractor and the City cannot agree as to either the amount or propriety of the set off, a formal hearing shall be held. The scope of said hearing shall be limited to the Contractor's good faith objections as to the validity or propriety of the tax and/or water sewer assessment or contemplated set off. If the dispute remains extant, the amount subsequently set off shall be deemed paid under protest.



# **City of Wilmington DBE Program and Bidders Requirements**

## **DBE PROCUREMENT PROGRAM**

Responsibilities of the Equal Opportunity/Contract Compliance Office (EO/CCO) are assumed by the City of Wilmington's Small, Minority Business Enterprise Office (SMBEO) in the Mayor's Office of Economic Development. The City of Wilmington has established laws and procedures to increase accessibility of contracting opportunities for small and minority businesses. The EO/CCO authority derives from Chapter 35, Article IV of the Wilmington City Code. This section of the Code addresses Equal Opportunity in Employment and City Contracts.

Mayor's Office of Economic Development/SMBEO  
800 North French Street, 3<sup>rd</sup> Floor, Wilmington, DE 19801  
(302) 576-2121 (Office) • (302) 571-4326 (Fax)  
[www.wilmingtonde.gov](http://www.wilmingtonde.gov)



## **DISADVANTAGED BUSINESS PROGRAM**

In the performance of this contract, the contractor agrees to provide the information as described herein and to make its best efforts to include one or more types of disadvantaged businesses as subcontractors.

A Disadvantaged Business Enterprise means a business that is at least fifty-one percent (51%) owned and controlled by one or more socially disadvantaged individuals who, in fact, control the management and daily business operations of the business.

"Disadvantaged Individuals" are those who have been actual victims of discriminatory practices or individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business who are not so disadvantaged.

In determining the degree of diminished credit and capital opportunities, the City may consider, but shall not be limited to, reviewing the assets and net worth of disadvantaged individuals and disadvantaged businesses.

For purposes of determining the disadvantage in competing for City contracts, there shall be a presumption of economic disadvantage if an individual's net worth, exclusive of up to one hundred and fifty thousand dollars (\$150,000.00) of equity in his or her primary residence, is less than five hundred thousand dollars (\$500,000.00). The City may, in the administration of its programs, direct its assistance toward those economically disadvantaged individuals who are among the chronically unemployed and may identify demographic subgroups of disadvantaged individuals identified by race or national origin whenever current, verifiable local statistics confirm the existence of unemployment rates among such individuals that are more than fifty (50) percent above the prevailing overall unemployment rate statewide.

All contractors doing business with the City shall show good faith efforts to obtain minority and other disadvantaged subcontracting businesses' participation. Good faith efforts shall be evidenced by listing each disadvantaged business enterprise (DBEs) contacted, showing the name and address of each, the names of contact persons, telephone numbers, sources used to identify DBEs, methods used to make contact, dates firms were contacted, responses, dates responses were received, type of subcontract, reasons for rejection if the firm is not used, and estimated value of each subcontract, through completion of the City's Form DBE-1.

The federal set-aside program requirements for any applicable federally funded contract are fully applicable to the City of Wilmington, such that contractors will be subject to federal penalties of non-compliance if a contract or any subcontract awarded involves the federal set-aside program and the contractor fails to meet its requirements as to that program.

## GOAL STATEMENT PROVISION FOR DISADVANTAGED BUSINESS PARTICIPATION

In order to expand opportunities and insure fair participation for disadvantaged individuals and businesses in its construction, goods and services and professional service contracts, the City has set purchasing goals for its fiscal year 1991 in each of these three procurement categories. Except to the extent that the Director of the Minority Business Office determines otherwise, such as for utilities, telephone, etc., the City shall endeavor to achieve, and shall require evidence of good faith efforts by bidders and contractors to achieve the goals of contracting with disadvantaged individuals or disadvantaged businesses for the following percentages of the total dollar amount of each contract in these three purchasing categories:

1. A goal of 20% for all construction contracts;
2. A goal of 10% for all professional service contracts; and
3. A goal of 5% for all goods and other contracts.

### Notes:

1. If the contractor customarily performs the work required in any subcontracting category by workers regularly employed by the contractor in his own organization, the contractor does not have to try to subcontract such work to others solely to comply with the DBE requirements. In such cases, however, the contractor shall clearly note this fact on the applicable DBE form(s), and the burden of proof shall be on the contractor to demonstrate the accuracy thereof upon inquiry by the City.
2. Female-owned businesses do **not**, per se, qualify as DBEs.
3. Questions regarding the DBE program and directory should be directed to the City's EEO/Contractor Compliance Office at (302) 576-2121.

## **ADDITIONAL GOOD FAITH EFFORT (CHANGES TO Chapter 35 of the City Code)**

Ordinance No. 09-057, effective December 1, 2009, requires the following DBE changes within the "Good Faith Efforts" in bidding regarding disadvantaged business enterprises (DBE's).

### **Subcontractors Listing**

Identify all subcontractors that the bidder plans to utilize as well as listing the amount of money that will be paid to each of the subcontractors as part of the contract

### **DBE Replacement**

Contractors are further required to make good faith efforts to replace any disadvantaged business enterprise ("DBE") that is terminated or has otherwise failed to complete its work on a contract. In such situations, the general contractor shall be required to notify immediately the City's DBE Office and provide reasonable documentation regarding any DBE's inability or unwillingness to perform the contracted work. The City's DBE Office shall require the general contractor to obtain prior approval for the DBE that will be used as a substitute, and the general contractor must provide copies of new or amended subcontracts along with documentation of the good faith efforts made in acquiring the substitute DBE.

### **DBE Payment**

General contractors shall pay all correct invoices for the completed work of any DBE subcontractor within 10 days of receipt by the prime contractor of payment by the City. Noncompliance with this section shall subject the general contractor to penalties as provided in Section 35-135(e).

The ordinance further provides administrative additional penalties for noncompliance in addition to the penalties already provided for in the Ordinance:

1. Suspension of contract;
2. Withholding of contract funds;
3. Termination of contract based on material breach;
4. Refusal to accept a future bid; and
5. Disqualification from eligibility for providing goods or services to the City for a period not to exceed 2 years.

## **DBE FORMS**

Contractors must file with the City, as applicable, the City's DBE Forms as follows:

1. **\*DBE-1:** A listing of the subcontractors included in the bid, by which a bidder acknowledges having read the DBE goal provisions in Attachment 1 and states that the bidder will expend a percentage of the dollar amount of the contract for DBE subcontractors, if any.
2. **\*DBE-2:** A listing of the subcontractors and other information to provide evidence of good faith efforts to include DBE's in subcontracts. This form must be completed and submitted with the bid, regardless of the level of DBE participation.
3. **\*DBE-3:** DBE verification form stating the ownership information regarding any business seeking to qualify as a City-certified DBE, if not listed in DBE Directory.
4. **DBE-4:** A DBE contract participation report requiring that the general contractor submit a report regarding DBE contract participation at the time the contract is entered into, when 50% and when 100% of each DBE subcontractor's portion of the construction project has been completed.
5. **\*DBE-5:** A listing of ***ALL subcontractors*** to be utilized on the contract. This form must be completed and submitted with the bid, regardless of the level of DBE participation.

### **FEDERAL Dollars involved in City Contracts:**

A DBE Utilization form(s), including reference to minority business enterprise participation if a federal program is involved, and an indication as to whether a disadvantaged business enterprise (DBE) status is claimed. These EPA (DBE Forms 6100-3 & 6100-4) forms are required by both the SRF and EPA Grant funding programs.

If you need additional information on the DBE Program or assistance completing the DBE Forms, please contact the office by one of the following methods:

Email: [smbeo@wilmingtonde.gov](mailto:smbeo@wilmingtonde.gov)

Phone: (302) 576-2121

Address: Small, Disadvantage Business Enterprise Office (SMBEO)  
Mayor's Office of Economic Development  
Louis L. Redding Building, 3<sup>rd</sup> Floor  
800 North French Street  
Wilmington, DE 19801  
[www.wilmingtonde.gov](http://www.wilmingtonde.gov)

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\*Mandatory to be submitted back with Bid Documents.

## **EFFORTS TO OBTAIN DBE SUBCONTRACTORS DBE FORM 1 – DBE FORM 2 EXPLANATION**

**[NOTE: DBE FORM-2 MUST BE COMPLETED BY ALL BIDDERS REGARDLESS OF THE LEVEL  
OF PARTICIPATION OF DBEs IN THE BID.]**

All contractors doing business with the City are required to show good faith efforts to obtain DBE subcontracting businesses' participation. The burden is on the bidder to evidence such good faith efforts by means of the information required on this page. Failure to complete this form and/or failure to make good faith efforts to obtain DBE participation are grounds for rejecting any bid. Further, bidders are expected to make such good faith efforts to obtain DBE participation in connection with each and every subcontract, if any. The City's goals for DBE participation are listed on Attachment 1 to this form. These goals are not set-aside requirements, but they are the overall goals which the City is endeavoring to achieve through the disadvantaged business program. Each person or firm who or which submits a bid for City contracts is expected to demonstrate good faith efforts by actively and aggressively seeking out DBE participation in the contract to the maximum extent, to meet the City's goals, given all relevant circumstances, and shall complete all forms and follow guidelines as required by the Minority Business Office. The following are examples of the kinds of efforts that may be taken but are not deemed to be exclusive or exhaustive and the City's Minority Business Office may consider other factors and types of efforts that may be relevant:

1. Efforts made to select part of the work to be performed by DBEs in order to increase the likelihood of achieving the City's goal for that type of contract. Selection of parts of the work should at least equal the City's goal for DBE participation in that type of contract.
2. Written notification, at least ten (10) days prior to the opening of a bid, soliciting individual DBEs interested in participation in the contract as a subcontractor and for specific items of work.
3. Efforts made to negotiate with DBEs for specific items of work as detailed below and whether initial contacts to solicit DBE participation were followed up to determine with certainty whether DBEs were interested. A description of information provided to DBEs regarding plans and specifications and estimated quantities for parts of the work to be performed. A statement of why additional agreements with DBEs were not reached. Documentation of each DBE contacted but rejected and the reasons for the rejection.
4. Documentation that DBEs are not available or not interested.
5. Advertisements in general circulation media, trade association publications, and DBE media of interest in utilizing DBEs and specific areas of interest.
  - a. Efforts to use effectively the services of organizations that provide assistance in recruitment and placement of DBEs.
  - b. Whether the bidder selected portions of the work to be performed by DBEs 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 DBE participation, even when the bidder might otherwise perform these work items with its own forces.

## **DBE FORM 3 – DBE FORM 4 – DBE FORM 5 EXPLANATION**

### **DBE FORM 3**

**DBE-3:** DBE verification form stating the ownership information regarding any business seeking to qualify as a City-certified DBE.

- This form must be submitted back with the bid when the contractor is working with a company who they believe to be eligible for the City of Wilmington's DBE Program. The SMBEO Office reserves the right to determine the eligibility and verification of eligibility for the firm listed on DBE Form 3.
- The burden is on the bidder to evidence such good faith efforts by means of providing the contact information for the DBE firm listed on the DBE Form 3. If a firm is determined to be an eligible DBE firm, the total dollar value of the participation by the DBE will be counted toward the contract requirement. The total dollar value of participation by a certified DBE will be based upon the value of work actually performed by the DBE and the actual payments to DBE firms by the Contractor.
- Failure to complete the DBE 3 form and/or failure to make good faith efforts to obtain DBE participation are grounds for rejecting any bid.

### **DBE FORM 4**

**DBE-4:** **DISADVANTAGED BUSINESS ENTERPRISE – CONTRACT PARTICIPATION REPORT**

- The Contractor shall provide the DBE Office with an accounting of payments made to Disadvantaged Business Enterprise firms, including material suppliers, contractors at all levels (prime, subcontractor, or second tier subcontractor). This accounting shall be furnished to the DBE Office when the contract is entered into by the general contractor and the subcontractor, when 50% and when 100% of each DBE subcontractor's portion of a project has been completed. Failure to submit this information accordingly may result in the following action or other action as deemed by the City:
  1. Withholding of money due in the next partial pay estimate; or
  2. Contractor may be disqualified from further bidding for a period as designated.

### **DBE FORM 5**

**DBE-5** **SUBCONTRACTORS' REPORT**

- The Contractor shall provide the DBE Office with a listing of ALL sub contractors to be entered into contract with this bid. DBE subcontractor(s) are not to be listed on this form but on form DBE #1 (Ord. 09-057).
- Failure to complete the required Subcontractor's form (DBE Form 5) will be grounds for the disqualification of such bid as being a responsive bid.

**To Be Submitted with Bid**

CONTRACT: \_\_\_\_\_

FORM DBE-1  
(Rev. 10/09)

***Failure to submit this completed form will be cause for rejection of your proposal***

Bidder acknowledges that he has read the D.B.E. goal provisions of the City for this fiscal year and that bidder will expend the dollar amount of the contract for D.B.E. subcontractors through the use of the following disadvantaged business enterprises, subject to the certification by the City, as subcontractors and that Bidder has made good faith efforts\* as evidenced by its listing of disadvantaged businesses that were contacted as detailed herein and on the following pages. (Must be completely filled out.)

**CITY OF WILMINGTON  
DISADVANTAGED BUSINESS ENTERPRISE ("D.B.E.")  
SUBCONTRACTOR LISTING**

<b>D.B.E. Firm Name IRS Numbers</b>	<b>Mailing Address &amp; Contact Number</b>	<b>Type of Service</b>	<b>Dollar Amount of Contract</b>
Total Dollar Amount to be Expended for Disadvantaged Business Enterprises			
Total Amount of Contract			
Percentage of Contract used for D.B.E.			

\_\_\_\_\_  
Name of Authorized Official of Bidder

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company

\*Good faith efforts shall be evidenced by listing each and every disadvantaged business enterprise (DBEs) contacted, showing the name and address of each, the names of contact persons, telephone numbers, sources used to identify DBEs, methods used to make contact, dates firms were contacted, responses, dates responses were received, type of subcontract, reasons for rejection, and estimated value of subcontract.

**To Be Submitted with Bid**

CONTRACT: \_\_\_\_\_

FORM DBE-2  
(Rev. 10/09)

*Failure to submit this completed form will be cause for rejection of your proposal*

DBE Firm Name/Address	Contact Person(s) Email or Phone Number	Dates Contacted Initially and In Follow Up: Methods Used	Type of Subcontractor plus Estimated Value	Reason for Rejection (If Firm Not Used) (If Bid "Too High" Also Indicate Value)
1.				
			\$	
2.				
			\$	
3.				
			\$	

Were advertisements placed in general circulation media, trade association publications, and DBE media interested in DBE participation? If so, state details of the advertisement. If not, state why not.

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What efforts were made to use the services of organizations that provide assistance in recruitment and placement of DBEs?

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The following are examples of actions that may **not** be used as justification by the contractor or bidder for failure to meet DBE participation goals:

1. Failure to contract with a DBE solely because the DBE was unable to provide performance and/or payment bonds.
2. Equipment idled by contract with DBE.
3. Rejection of a DBE because of its union or non-union status.

If more DBE firms have been contacted, please list with supplemental form(s) on additional pages.



**To Be Submitted with Bid if DBE is not listed in City DBE Directory**

CONTRACT: \_\_\_\_\_

FORM DBE-3  
(Rev. 10/09)

*Failure to submit this completed form will be cause for rejection of your proposal*

**CITY OF WILMINGTON  
DISADVANTAGED BUSINESS REGISTRATION VERIFICATION FORM**

1.	NAME:		
2.	ADDRESS:		
3.	PHONE:	PRODUCT OR SERVICE LINE:	
4.	TYPE OF FIRM: <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Individual <input type="checkbox"/> Other _____		
5.	EMAIL:		
6.	DATE OF ORIGINATION OF FIRM:	EMAIL:	
7.	BUSINESS LICENSES HELD:	City:	State: Other:
8.	DISADVANTAGED OWNERSHIP OF FIRM:		
	NAME	OWNERSHIP % OF FIRM	DISADVANTAGED BUSINESS
a.			
b.			
c.			
d.			
e.			
f.			
9.	NON-DISADVANTAGED OWNERSHIP OF FIRM:		
	NAME	OWNERSHIP % OF FIRM	
a.			
b.			
c.			
d.			
e.			
f.			
8.	I hereby certify that the information above is true and complete to the best of my knowledge and belief, and that I have been duly authorized to make this certification on behalf of the firm.		

NAME (printed) \_\_\_\_\_

SIGNATURE \_\_\_\_\_

DATE \_\_\_\_\_

TITLE \_\_\_\_\_

FOR OFFICE USE ONLY

DATE RECEIVED: \_\_\_\_\_  
DATE APPROVED: \_\_\_\_\_  
INFORMATION VERIFIED: \_\_\_\_\_

The General Contractor is required to submit this Compliance Report to the Disadvantaged Business Development Officer, City/County Building, 3<sup>rd</sup> Floor, 800 French Street, Wilmington, Delaware 19801, when the contract is entered into by the general contractor and the subcontractor, when 50% and when 100% of each DBE subcontractor's portion of a construction project has been completed.

**DISADVANTAGED BUSINESS ENTERPRISE**  
**CONTRACT PARTICIPATION REPORT**

1. Contract No. \_\_\_\_\_ Amount of Contract \$ \_\_\_\_\_
2. Name of General Contractor: \_\_\_\_\_
3. Address: \_\_\_\_\_
4. E-Mail Address: \_\_\_\_\_
5. The above-named contractor intends to fulfill its commitment to expend \$ \_\_\_\_\_  
(\_\_\_\_%), of its contract with Disadvantaged Business Enterprises ("DBEs"). The following year-to-date expenditure(s) has been made with a DBE Subcontractor(s):

Name/Address of DBE Subcontractor	Nature of Participation	Dollar Value/ Percent of Participation	Dollar Amount Expended to Date
1.			
2.			
3.			

CONTRACT COMPLETION DATE: \_\_\_\_\_

General Contractor \_\_\_\_\_

Name of Authorized Officer \_\_\_\_\_

Date \_\_\_\_\_

DBE Subcontractor \_\_\_\_\_

Signature of Authorized Officer \_\_\_\_\_

Date \_\_\_\_\_

<b>Office Use Only</b> <b>(Prime)</b>
Payment Received: _____
Amount: _____
Date: _____
Payment Received: _____
Amount: _____
Date: _____

City of Wilmington \_\_\_\_\_

Date \_\_\_\_\_

Contract Compliance Officer's Name \_\_\_\_\_

City of Wilmington \_\_\_\_\_

Date \_\_\_\_\_

Contract Compliance Officer's Signature \_\_\_\_\_

CONTRACT: \_\_\_\_\_

FORM DBE-5  
(Rev. 10/09)

*Failure to submit this completed form will be cause for rejection of your proposal*

**CITY OF WILMINGTON  
SUBCONTRACTOR LISTING**  
(Do not include DBE Firms to be utilized)

<b>Subcontractor Name IRS Numbers</b>	<b>Mailing Address Contact Number or Email</b>	<b>Type of Service</b>	<b>Dollar Amount of Contract</b>
Total Dollar Amount to Non-Disadvantaged Business Enterprises			
Total Amount of Contract			

Bidder acknowledges that he has identified all sub contractors that will be utilized as well as listing the amount of money that will be paid to each of the subcontractors as part of the contract (use additional pages if necessary).

\_\_\_\_\_  
Name of Authorized Official of Bidder

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company

\_\_\_\_\_  
Date

STATE OF DELAWARE  
DEPARTMENT OF LABOR  
DIVISION OF INDUSTRIAL AFFAIRS  
OFFICE OF LABOR LAW ENFORCEMENT  
PHONE: (302) 761-8200

Mailing Address:  
4425 North Market Street  
3rd Floor  
Wilmington, DE 19802

Located at:  
4425 North Market Street  
3rd Floor  
Wilmington, DE 19802

PREVAILING WAGES FOR HIGHWAY CONSTRUCTION EFFECTIVE MARCH 15, 2019

CLASSIFICATION	NEW CASTLE	KENT	SUSSEX
BRICKLAYERS	55.89	55.89	55.89
CARPENTERS	55.95	55.63	44.22
CEMENT FINISHERS	35.48	35.70	28.39
ELECTRICAL LINE WORKERS	29.40	47.49	23.24
ELECTRICIANS	70.49	70.49	70.49
IRON WORKERS	65.24	26.10	27.72
LABORERS	45.30	41.69	40.93
MILLWRIGHTS	17.62	17.10	14.76
PAINTERS	71.29	71.29	71.29
PILEDRIERS	72.65	25.98	29.47
POWER EQUIPMENT OPERATORS	67.07	43.32	39.68
SHEET METAL WORKERS	24.89	22.21	20.12
TRUCK DRIVERS	37.52	30.88	37.62

CERTIFIED:

03/15/2019

BY:

*[Signature]*  
ADMINISTRATOR, OFFICE OF LABOR LAW ENFORCEMENT

NOTE: THESE RATES ARE PROMULGATED AND ENFORCED PURSUANT TO THE PREVAILING WAGE REGULATIONS ADOPTED BY THE DEPARTMENT OF LABOR ON APRIL 3, 1992.

CLASSIFICATIONS OF WORKERS ARE DETERMINED BY THE DEPARTMENT OF LABOR. FOR ASSISTANCE IN CLASSIFYING WORKERS OR FOR A COPY OF THE REGULATIONS OR CLASSIFICATIONS, PHONE (302) 761-8200.

NON-REGISTERED APPRENTICES MUST BE PAID THE MECHANIC'S RATE.

THESE RATES ARE BEING PROVIDED IN ACCORDANCE WITH DELAWARE'S FREEDOM OF INFORMATION ACT.

THEY ARE NOT INTENDED TO APPLY TO ANY SPECIFIC PROJECT.

**Contractor/Subcontractor**  
**Responsibility Certification**

**Contractors:**

The City of Wilmington Division of Procurement and Records must receive this executed form not later than at the time of bid submission. It may be submitted prior to bid submission for review.

**Subcontractors:**

Must submit this form to requesting contractor.

CONTRACTOR/SUBCONTRACTOR RESPONSIBILITY CERTIFICATION  
FOR DEPARTMENT OF PUBLIC WORKS CONTRACTS  
VALUED AT MORE THAN \$100,000

Name of Company: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Contract/Project Name: \_\_\_\_\_

Contract Number: \_\_\_\_\_

As a condition of performing "City work" (all building or construction work or projects of any kind or nature as provided in City Code Sec. 2-651) for the City of Wilmington, Delaware, contractors and subcontractors (hereinafter referred to as "Bidders") must meet certain responsible contractor requirements and qualifications specified in the Wilmington City Code, Chapter 2, Article VI, Division 6, Subdivision III (Sec. 2-561 et seq.). Pursuant thereto, the Company named above certifies the following:

**PLEASE INITIAL EACH ITEM TO INDICATE COMPLIANCE**  
(Xs and check marks are *not* acceptable)

\_\_\_\_\_ 1. The Bidder and its employees have all valid, effective licenses, registrations, or certificates required by federal, state, county, or local law, including, but not limited to, licenses, registrations, or certificates required to:

- a. do business in the City of Wilmington and the State of Delaware; and
- b. perform the contract work, including, but not limited to, licenses, registrations or certificates for any type of construction or maintenance trade work or specialty work which the Bidder proposes to self-perform.

\_\_\_\_\_ 2. The Bidder meets all:

- a. bonding requirements as required by the applicable law or contract specifications; and
- b. insurance requirements per applicable law or contract specifications, including general liability insurance, workers' compensation insurance, and unemployment insurance.

\_\_\_\_\_ 3. The Bidder has a satisfactory record of integrity in accordance with Sec. 2-537(4) of the City Code, which further states as follows:

The following provisions, while not exclusive, shall be sufficient to justify a finding of nonresponsibility:

- a. failure to pay taxes and fees due and owing to the City;
- b. a conviction of the contractor or a principal officer thereof for commission of a criminal offense, as incident to obtaining or attempting to obtain a public contract or in the performance of such contract;
- c. a conviction, of the contractor or principal officer thereof, under state or federal statutes, for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously and directly affects responsibility as a city contractor.

\_\_\_\_\_ 4. The Bidder has a satisfactory record of timely performance of City contracts in accordance with Sec. 2-537(3) of the City Code, which further states as follows:

Contractors who are seriously deficient in current contract performance, when the number of contracts and the extent of deficiency of each are considered, shall, in the absence of evidence to the contrary or circumstances properly beyond the control of the contractor, be presumed to be unable to meet this requirement. Past unsatisfactory performance due to failure to apply necessary

tenacity, or perseverance to do an acceptable job, shall be sufficient to justify a finding of nonresponsibility.

- \_\_\_\_\_ 5. The Bidder has a satisfactory record of performance of contractual provisions in accordance with Sec. 2-537(5) of the City Code, which further states as follows:

Violation of contract provisions of a character which justify a finding of nonresponsibility include:

- a. deliberate failure without good cause to perform in accordance with the specifications provided in the contract;
- b. a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts;
- c. in particular, failure to comply with prevailing wage and related federal, state, and city requirements;

provided, however, that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for a finding of nonresponsibility.

- \_\_\_\_\_ 6. The Bidder has a satisfactory record of good faith efforts to achieve disadvantaged business enterprise participation in accordance with Sec. 2-537(8) of the City Code.

- \_\_\_\_\_ 7. The Bidder has not been debarred or suspended by any federal, state or local government agency or authority in the past three years.

- \_\_\_\_\_ 8. The Bidder has not defaulted on any project in the past three years.

- \_\_\_\_\_ 9. The Bidder has not had any type of business, contracting or trade license, registration, or other certification revoked or suspended in the past three years.

- \_\_\_\_\_ 10. The Bidder and its owners have not been convicted of any crime relating to the contracting business in the past ten years.

- \_\_\_\_\_ 11. The Bidder has not at any time been found in violation of any federal, state or local prevailing wage law.

- \_\_\_\_\_ 12. The Bidder has not within the past three years been found in violation of any law applicable to its contracting business, including, but not limited to, licensing laws, tax laws, prompt payment laws, wage and hour laws, environmental laws or others, where the result of such violation was the payment

of a fine, back pay damages or any other type of penalty in the amount of \$1,000 or more.

\_\_\_\_\_ 13. The Bidder will pay all craft employees that it employs on the project the current wage rates and fringe benefits as required under applicable federal, state or local wage laws.

\_\_\_\_\_ 14. All craft labor that will be employed by the Bidder for the project have completed at least the OSHA 10 hour training course for safety established by the U. S. Department of Labor, Occupational Safety & Health Administration.

\_\_\_\_\_ 15. The Bidder will employ craft employees in all classifications and individual trades required to successfully perform the work related to the project.

\_\_\_\_\_ 16. The Bidder has participated in a Class A Apprenticeship Program for the past twelve months, at a minimum, for each separate trade or classification in which it employs craft employees and shall continue to participate in such program or programs for the duration of the project. The twelve month participation requirement may be waived during the first year of implementation of this Ordinance, provided that the firm is participating in a Class A Apprenticeship Program at the time it submits its bid and submits information showing that the construction craft workers it plans to use have adequate skills to successfully perform the project. Once the Ordinance has been in effect for twelve months, i.e., September 4, 2013, a waiver of this requirement will no longer be available.

a. for purposes of this section, a Class A Apprenticeship Program is an apprenticeship program that is currently registered with and approved by the U.S. Department of Labor or a state apprenticeship agency and has graduated apprentices to journey person status for at least three of the past five years;

b. to ensure compliance with this section, the Bidder shall provide, with this certification, a list of all trades or classifications of craft employees it will employ on the project and documentation verifying it participates in a Class A Apprenticeship Program for each trade or classification listed;

c. in order to enhance the training of its workforce and to comply with this subsection, the firm must enroll a new person in a Class A Apprenticeship Program for each bid submitted to the City.

\_\_\_\_\_ 17. The Bidder shall make all reasonable best efforts to ensure that fifteen percent (15%) of the workforce hired for the project, especially with respect to new workers recruited and hired for the project, includes City of Wilmington residents. To ensure compliance with this section, the Bidder will also make residency information on its workforce available to the City upon request.



- \_\_\_\_\_ 18. The Bidder has all other technical qualifications and resources, including equipment, personnel and financial resources, to perform the referenced contract, or will obtain same through the use of qualified, responsible contractors.
- \_\_\_\_\_ 19. The Bidder acknowledges that within seven (7) calendar days following the date of receipt of Notice of Intent to Award Contract, it will provide a list of subcontractors it plans to utilize for services in the performance of the contract. The list must include a brief description of the subcontractor's scope of work. In addition, each subcontractor providing services equaling or exceeding \$100,000 must provide executed Subcontractor Responsibility Certifications containing information equivalent to that required for the Bidder in the Contractor Responsibility Certification. Note: Bidder must initial this item regardless of the value of the subcontract services.
- \_\_\_\_\_ 20. If at any time during the past five (5) years the Bidder has controlled or has been controlled by another corporation, partnership or other business entity operating in the construction industry, it will disclose such facts by attaching a detailed statement to its Contractor Responsibility Certification explaining the nature of the relationship.
- \_\_\_\_\_ 21. The Bidder acknowledges that it shall be required to provide appropriate documentation of the conditions specified in this Contractor/Subcontractor Responsibility Certification. The Bidder also understands that the City of Wilmington may request additional information or documents at any time as the City of Wilmington deems necessary to evaluate the responsibility of Bidder. Bidder agrees to provide such additional information or supporting documentation for this Certification.
- \_\_\_\_\_ 22. If a Bidder fails to provide the Contractor Responsibility Certification required by this section, the Bidder shall be disqualified from bidding the contract. If a Bidder fails to provide other information or documentation required by the City of Wilmington, it may be disqualified from being awarded the contract.
- \_\_\_\_\_ 23. The Bidder shall notify the City within seven days of any material changes to all matters attested to in this certification.

Under the penalty of perjury, the Bidder's authorized representative hereby certifies that all information included in the Contractor Responsibility Certification or otherwise submitted for purposes of determining the Bidder's status as a responsible contractor is true, complete and accurate and that he/she has knowledge and authority to verify the information in this certification or otherwise submitted on behalf of the Bidder by his or her signature below.

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Date

PLEASE SUBMIT **SIGNED ORIGINAL** VERSION OF THIS FORM TO:

**CITY OF WILMINGTON  
DEPARTMENT OF FINANCE, DIVISION OF PROCUREMENT  
LOUIS REDDING CITY COUNTY BUILDING  
800 N. FRENCH STREET, 5<sup>TH</sup> FLOOR  
WILMINGTON, DE019801**

Questions regarding the this form can be sent to  
[procurement@wilmingtonde.gov](mailto:procurement@wilmingtonde.gov) or call 302.576.2423

**WATER DISTRIBUTION SYSTEM MAINTENANCE**  
**Contract No- 20012WD**  
**City of Wilmington, Water Division**

**I. GENERAL INFORMATION**

- A. This Water Distribution System Maintenance contract (the "Contract") addresses all work associated with the City of Wilmington's water distribution system residing within the City's water franchise district. The City's water district encompasses all of the area known as the City of Wilmington, in addition to portions of New Castle County directly adjacent to the City boundary, as indicated on the City's Service District Map.
- B. There is a qualifications requirement associated with this contract. Bidders will be required to submit the Proposal Form in its entirety (PF-1 thru PF-6), which includes a Qualifications Statement representing their ability to meet the minimum qualification requirements referenced herein. It will be the City's sole discretion and ruling as to whether a Bidder has met the required qualifications. In the event that a Bidder does not meet the qualifications, said bid will be disqualified. The City's determination will be final.

This Qualifications Statement does not preclude the need for the Bidder to meet, and provide with their Bid, other representations required in the Bidding Documents such as, but not limited to, Prevailing Minimum Wage requirements, the Responsible Contractor requirements, and the Disadvantage Business Enterprise (DBE) requirements which are outlined in separate sections of this solicitation.

- C. The City reserves the right to reject any or all bids so deemed in its best interest to do so, and is, in no way, a guarantee that a contract will be awarded. The City reserves the right to request additional information, to conduct interviews, to visit the Bidder's operations facility and to waive any of the terms, conditions, and provisions contained in the solicitation.
- D. This Contract is a response-sensitive "Maintenance" contract, not a "Project". The Contractor has to demonstrate via the qualifications statement that it has the experience, the workforce and the logistical capacity to meet the continuous, stand-by response requirements and workload demand of the City 24/7/365 days a year of this maintenance contract, so as to minimize the interruption of water service to City customers. The Bidder is required to represent in the qualifications statement that they have performed a maintenance contract with similar performance requirements specifically referenced herein.
- E. Award will be based on the most responsive bidder, as determined by the City.

- F. The City reserves the right to award the Contract to multiple Contractors. It shall be the City's sole discretion as to how the work is allocated to the Contractors. Minimum quantities of work are not guaranteed by the City. The total annual dollar amount shall not exceed \$3,000,000.
- G. This Water Distribution System Maintenance contract will be for one (1) fiscal year, beginning July 1, 2019 through June 30, 2020. The City shall have the option of extending the contract for a second, third, fourth and fifth year, at a maximum of 2.0 percent (2.0%) increase per additional year, as negotiated and as agreed upon by both City and Contractor. The City reserves the right to request supporting information from the Contractor in support of a requested increase.

## II. DESCRIPTION

This work consists of replacing, repairing or installing water services, meters, valves/gates, fire hydrants, and water mains/piping, including both raw and finished water piping, in accordance with the applicable *Detailed Standards and Specifications of the Wilmington Water Division*; revised Nov 2008. The Contractor shall furnish all labor and equipment necessary to complete the work, including miscellaneous operations listed herein. The Water Division will supply the technical assistance to the extent outlined herein by Department of Public Works personnel.

Wilmington's water system includes approximately 412 miles of distribution and transmission water mains, ranging in size from 3-inches to 48-inches in diameter. The vast majority of pipe in the City's water supply system, approximately 323 miles or nearly 80%, is unlined cast iron pipe. Other piping materials include welded steel, lock-bar steel, pre-stressed concrete cylinder pipe, steel cylinder reinforced concrete pipe, HDPE pipe.

Pipes comprising the water system date back to the late 1800's. The water transmission and distribution system was built and expanded as follows:

Installation (Decade)	Length (mille)	% of Total
1870s	12.8	3%
1880s	10.74	3%
1890s	25.01	6%
1900s	28.5	7%
1910s	19.72	5%
1920s	29.35	7%
1930s	46.98	11%
1940s	23.52	6%
1950s	78.77	19%
1960s	40.44	10%
1970s	34.92	8%
1980s	24.19	6%
1990s	8.56	2%
2000s	14.37	3%

From the City's installation records for the water pipe system:

- 48.55 miles or 12% of the total dates to the 1800's
- 96.77 miles or 24% of the system is 100 years or older
- 196.62 miles or 48% of the system is 75 years or older

Water distribution-related operations include wet tapping, line stopping, welding, traffic control, roadway/curbing/sidewalk restoration, concrete work, HDPE related work including seaming, leaded joint work, welded steel piping systems, rock drilling, rock blasting, jack and boring operations, horizontal directional drilling, cleaning and lining systems, valve turning services, hydrant flushing services, casing pipe installation, blasting activities, meter installations, lead service line replacement, stone wall construction, coffer systems, dewatering systems, site remediation, tree protection and removal, landscaping/site restoration, erosion and sediment control systems, thrust restraint systems, drainage systems, concrete vault/wet well/channel construction, specialty concrete structures, liquid storage systems, mechanical conveyance systems, water treatment related systems, developer related situations, deep trench shoring, diving operations, leak detection, and permitting assistance.

All Delaware State Highway permits will be obtained by the Water Division. Utility markout functions are performed by the City. Contractor may be required to assist with the DelDOT permitting process by submitting proposed Maintenance-of-Traffic (MOT) plans.

The City has approximately 2,500 fire hydrants in the distribution system.

The City has approximately 10,000 valves in the distribution system

The City has approximately 39,000 metered service connections.

### III. SPECIFICATIONS

- A. Bidder shall certify that he has or will obtain the following specialized equipment for use in pursuing work for the City:
1. One (1) each - Mueller "B-101" tapping machine with accessories or approved equal.
  2. One (1) each - Mueller "D-5" tapping machine with accessories or approved equal.
  3. One (1) each - hydraulic pipe cutter or power operated pipe saw (i.e. Wach Saw) capable of cutting pipe from 4" to 48" inside diameter.
  4. One (1) each - Mueller "CL-12" drilling machine with accessories or approved.
  5. Necessary torque, open end, box, and ratchet wrenches for working with mechanical joint and flange pipe from 4" to 48" diameter.
  6. One (1) each - 1-1/2" and 3" centrifugal ditch pumps, 3" diaphragm ditch pump, 6 volume ditch pump of at least 1,000 gpm.
  7. Boring or jacking equipment capable of installing casing pipe from 4" to 36" diameter.
  8. One (1) each - gasoline engine, operated hydraulic test pump capable of developing at least 250 psi.
  9. Cell phone communication provided with all equipped trucks for each working crew.
  10. One (1) each – paving machine capable of paving up to 12 feet wide in one pass

### IV. CONTRACTOR RESPONSIBILITIES

The awarded Contractor shall be responsible for the requirements, specific to this contract, as outlined below.

- A. Ability and Experience of the Bidder: See Special Requirement No. SR- 4
- B. All pipe, valves, couplings, fittings, and other water appurtenances that are used on a specific job shall be furnished by the Contractor. Contractor to furnish these specific items and charge the City through the monthly invoicing process.
- C. Contractor to furnish all backfill and restoration materials. Contractor shall be familiar with State and City specifications and have current licenses for applicable work, (i.e.,

trench restoration, repaving, sidewalks, etc.)

- D. Contractor shall work under direction of a City representative. The City shall have complete discretion as to the sequence and priority of the work. The City will secure all street opening permits and inform applicable City departments as to schedule of work if required. Contractor shall conduct work in accordance with permit requirements and applicable City procedures.
- E. The Contractor, due to the nature of the work, will be required to interact in a professional, courteous manner with City customers, City Departments other than Public Works, State regulating agencies, public officials, Miss Utility, other utility companies, etc. All Delaware State Highway permits will be obtained by the Water Division.
- F. The Contractor, at the City's request, will be required to provide Maintenance of Traffic (MOT) plan configurations as a part of the State permitting process. When requested by the City, the Contractor will assist by providing MOT diagrams and layout drawings.
- G. Traffic Barrels and Road Signs shall be provided by the Contractor and charged according to the rates listed on the proposal form. The Contractor shall have all barricades, barrels and signs picked up as soon as roadway work is completed.
- H. All road cuts shall comply with the City's Road Cut Management System's (RCMS) requirements for City maintained roads and DelDOT requirements for State maintained roads. The Contractor shall notify the Engineer upon starting work to determine which permit must be obtained.
- I. Contractor shall furnish the City's representative with daily copy of labor and equipment time sheets (Daily Work Authorizations - DWA) and copy of delivery receipts for Contractor's furnished materials. The DWAs may be reviewed by the City inspector, each day, with carbon copies provided to the Engineer. All DWAs must include a basic sketch illustrating the location of all repairs or new installations as they relate to the nearest intersection or a fixed address.
- J. The Contractor is required to bill the City monthly for work that has occurred in that time frame. The Contractor shall provide electronic copies of the invoices to the City's Finance Department, Accounts Payable, and hard copies to the Department of Public Works.
- K. The Contractor, upon approval by the City, may utilize and bill for overtime hours to perform work related to this contract in accordance with the following conditions
  - a. Overtime hours shall be defined as any hours outside of the regular workday as described herein. The regular workday shall consist of eight (8) hours (plus one hour for lunch breaks) and the workweek shall consist of forty (40) hours plus one hour for lunch breaks Monday through Friday, inclusive.
  - b. Time and one-half shall be paid for hours worked in excess of eight (8) hours in any continuous twenty four (24) hour period or in excess of forty (40) hours per

work week.

- c. Time and one-half shall be paid for work performed on Saturday and double time for work performed on Sunday and Holidays.
- d. Work prior to the contractor's regular starting time or beyond their quitting time shall be compensated at the rate of time and one half. The regular work day for this contract shall be submitted with the proposal forms.
- L. Mobilization/Demobilization: the Contractor shall charge time for mobilization at the beginning of the project and demobilization at the end of the project. Charges for mobilization/demobilization during the project shall not be accepted. The maximum mobilization/demobilization time shall be 2 hours for each action.
- M. The Bidder shall fill out the supplemental equipment rental schedule included on the proposal forms. These items are not included in the totals used for the evaluation of bids; however, the City may request clarification for any rates that appear to exceed Rental Rate Blue Book rates as the qualifying standard for equipment rates. If the Contractor uses any equipment on a job site, which is not listed on the proposal forms, the Contractor shall request approval for the rates by the City's Representative before use of the equipment. Materials furnished by the Contractor will be charged at cost, plus 10%. Cost will be supported by vendor's invoice.
- N. The Contractor is required to execute, at a minimum, 60% of the assigned work with its employed workforce. DBE subcontractors are to be identified when submitting the bid and in accordance with the DBE policy outlined herein. In the event of employing a subcontractor, and before doing so, the Contractor shall request written approval from the City by submitting subcontractor information as outlined in Construction Contracts General Conditions. The Contractor cannot assign his responsibility under this contract, and the performance requirements outlined herein to another party without the written consent of the City
- O. Approved subcontracted services will be charged at Cost, plus 10%. Cost shall be supported by subcontractor's invoice.
- P. Exceptions to the Construction Contracts General Conditions:
  - a. Force Account Work: Unless otherwise agreed to in writing by the City and the Contractor, all Force Account Work shall be paid according to the prices listed on the proposal forms and the designated materials and subcontractor mark-ups listed in the Specifications. In special circumstances and as agreed upon by the City, lump sum pricing and/or additional unit prices may be acceptable due to the site specific working conditions, specific work elements and specific safety situations not specifically addressed by the units in the proposal form.
  - b. Maintenance of Traffic (MOT): The Contractor shall conform to all State and City regulations/requirements governing maintenance of traffic.



- c. Inventory: The Contractor will be required to carry an inventory of pipe and pipe related materials at their local yard that are commonly used in watermain repair/replacement. The costs of carrying the inventory will be embedded in the unit prices of the Proposal Form. The inventory costs are not to be billed separately to the City. As material comes out of inventory, and is used for a specific purpose for a specific job, only then can the item be billed as material used on the job as specified herein. Typical watermain repair falls into the 4" to 16" category. The Contractor shall store, in reasonable quantities, lengths of pipe, transition couplings, MJ fitting and sleeves, valves, and stainless steel repair clamps. Service line materials (Size ¾" to 2") shall also be stored in inventory consisting of corps, curb stops and copper tubing. All material to meet the *Detailed Standards and Specifications of the Wilmington Water Division*.
- d. Response Time-Sensitive Response: When so required by the City, and upon receipt of the call from the City, the Contractor, within one (1) hour shall have initiated the Miss Utility One-Call and be onsite assisting the City with securing the site, maintaining safe flow of traffic and pedestrians, establishing a safe work zone, assisting with valve closure, and developing a work plan, etc. Contractor to conform to Miss Utility law at all times when executing the work.
- e. Progression of Work: Once the on-site work has begun, the City expects the Contractor to make the repairs in a timely, productive manner. Standby time will not be paid by the City for delays in securing materials, manpower, equipment and tools necessary for a successful repair.
- f. Partial Payment: Unless otherwise agreed to in writing by the City and the Contractor, the City will not withhold 10% from payment requests submitted by the Contractor. Invoices shall be submitted on a weekly basis. The City shall not pay for invoices not submitted within 60 days.
- g. Last Payment to Terminate Liability of Owner: Any invoices not submitted within 30 days of the last day of the yearly contract (i.e. June 30<sup>th</sup>) shall not be paid by the City.
- h. Conditional Acceptance/Final Acceptance of Payment: Unless otherwise agreed to in writing by the City and the Contractor, these sections shall not apply to this contract.
- i. Night Weekend and Holiday Work: The Contractor shall be required to work night weekend and holiday work at the verbal or written request of the Engineer, the Water Service Division Supervisor, or other City representatives as designated by the Engineer. The contractor will not be required to reimburse the City for Construction Inspectors and their related expenses. The Contractor will be compensated as described in the Specifications.
- j. Hours of Labor: The Contractor and their employees shall be permitted to work greater than 8 hours of work in one calendar day as necessary to complete

necessary work and safely secure each job site.

- k. Wages Payable Under Municipal Contracts, Etc: Highway Wage Rates as defined by the State Department of Labor shall be considered the Prevailing Wage Rate applicable to this contract.
- Q. Final Restoration: In all cases where pavement restoration is required, the Contractor will be responsible for restoring **one (1) full lane width** according to all applicable standards. On Delaware State maintained roads, the Contractor shall request a copy of the DelDOT Utility Permit and Specifications.
- R. Work At or Near Known or Suspected Contaminated Sites: See SP-1 of the Special Provisions.
- S. Protection of Trees Within Project Limits: See SP-2 of the Special Provisions.
- T. Sample Invoice: The attached invoice is a sample of the information required for invoicing. See Special Provisions. See SP-3 of the Special Provisions.

## V. SPECIAL PROVISIONS

### SP – 1: Work At or Near Known or Suspected Contaminated Sites

The City of Wilmington has an industrial history dating back to the mid 1600's. As a result, there are many sites within the City that have known or potential contamination located in either the soil and/or the groundwater. Some of these contaminated properties are known, others are yet to be discovered. Therefore, contractors responding to this request for proposal ("RFP") which involves intrusive ground work in various undetermined locations throughout the City must be prepared to properly deal with the site contamination issues. The contractor should be aware that often if soil or water is contaminated, it must be managed in a manner different from normal protocols. In addition, often if hazardous soil or water is disturbed, it must be disposed of off-site. The contractor must also make every effort to ensure that there is no exacerbation of contamination when performing work at a contaminated site. Accordingly, the Contractor will be required to retain the services of an Environmental Consultant who 1) is certified by the Delaware Department of Natural Resources and Environmental Control ("DNREC") pursuant to the requirements of Delaware's Hazardous Substance Cleanup Act ("HSCA") as a "Certified HSCA Consultant" for work at or near contaminated sites or provide proof of a contract with Certified HSCA Consultant who will provide oversight for the contractor at or near contaminated sites; and (2) can provide an estimate to prepare a Site Safety, Health, and Emergency Response Plan ("SSHERP") for performing intrusive ground work at or near contaminated sites.

Environmental Consultant. The Certified HSCA Consultant selected by the contractor must be certified by DNREC pursuant to the requirements of HSCA, 7 Del. Code, Chapter 91. (DNREC's website contains the current list of HSCA Certified Consultants.) The HSCA Certified Consultant shall assist with the environmental aspect of the work to be performed including discussions with DNREC, management of worker exposure issues, proper management and disposal of soil and water discharged from the dewatering activities and safety oversight. The HSCA Certified Consultant selected must demonstrate the capacity to provide oversight of intrusive work on a contaminated site 24 hours a day, seven days a week in the event of an emergency repair. The HSCA Certified Consultant will be responsible for all state, federal and local reporting requirements, which may be triggered when working at a contaminated site.

Regarding the HSCA Certified Consultant, there is no specific line item on the PROPOSAL FORM for the Contractor to represent the cost of said Consultant. If and when a HSCA Certified Consultant is needed during the course of this contract, the item will be discussed by the Contractor and City, and a mutually agreeable cost will be negotiated. With the assistance of DNREC, the City has developed a map of all known and assumed contaminated sites within the City and will provide this map to the contractor upon selection. However, for purposes of estimating the number of contaminated sites in the City, it is generally assumed that approximately 10% of the property in the City is contaminated.

Site Safety, Health and Emergency Response Plan (SSHERP). It is the responsibility of the contractor to develop and implement a SSHERP to assure that all federal, state and local statutes and regulations are complied with when performing work at a contaminated site and that the health and safety of employees are protected. The SSHERP must also include an excavation of materials handling plan. The City will make available its own SSHERP in draft-final format, which the selected HSCA Certified Consultant may choose to review and adopt. However, the City makes no representations as to the completeness or sufficiency of this plan and the document is supplied only for informational purposes.

No fieldwork shall begin until the SSHERP has been submitted to DNREC and the City engineer or his/her designated representative for review.

## **SP – 2: Protection of Trees within Project Limits**

Tree Protections. Extreme caution shall be exercised so as not to damage existing trees, shrubbery, buildings, and fixtures in the immediate construction area; any damages caused directly or indirectly shall be repaired immediately at the Contractor's expense. Contractor shall restore resources within the project boundaries to a condition that will appear to be natural or match the conditions existing prior to the start of work.

- Extreme caution shall be exercised so as to not damage existing trees in the construction area, which includes protecting roots, stems, and branches. Vehicular traffic, storage of material and equipment, soil disturbance, and root cutting of roots greater than 2" in diameter is prohibited within tree drip lines, i.e. the width of a tree's canopy as measured by a circle extending perpendicularly from the outermost tips of branches to the ground.
- Contractor shall obtain a tree permit from Public Works for all necessary root pruning, tree removal and tree replacement.
- In the event that disturbance within the dripline is unavoidable during trenching/repairs, the Contractor shall inform the Public Works certified arborist (302.576.2582) immediately to determine if the tree should be treated (i.e. improve aeration of the root zones) or be removed and replaced, at the cost of the contractor.
- 2 trees shall be planted for each public tree removed and 1 tree shall be replanted for each tree removed on private property.
- The Public Works certified arborist shall evaluate construction damage/root pruning of trees and reserves the right to determine if the extent of damage significantly affects tree health and stability and requires removal and replacement.
- Tree replacements shall conform to size and species requirements deemed appropriate by the city for the space and locations in which each trees is to be planted. Replacement trees shall be in accordance with American Standard for Nursery Stock, be 2" caliper, balled and burlapped, include stakes, mulch and gator bags, be guaranteed for a minimum of 1-year from the date of acceptance by the city, and include maintenance watering of 20 gallons/tree/week during the growing season of April through October.
- All tree work shall conform to ANSI A300 arboriculture standards and an ISA certified arborist must supervise tree work.

**SP – 3:            Sample Invoice**

The following example is presented only as a guide. The eventual format will be negotiated as to its layout and content. Additional information such as, but not limited to, monthly metric reporting of Key Performance Indicators, as referenced herein, will be required on a monthly basis.

**COMPANY LOGO**

**INVOICE**

Invoice #  
Invoice date  
PO #  
City Contract #  
Billing Period  
Job Number if needed/contractor

**JOB SITE LOCATION**

Brief description of work – Including other relevant City information such as Work Order No's, or Asset No's.

Invoices should be broken down according to>>>>

**PERSONNEL**

	<u>AMT HRS</u>		<u>RATE/HR</u>		<u>SUB TOTAL</u>	
Forman:	xx	hrs		\$		\$
OT						
Laborer:						
OT						
Operator						
OT						
Driver						
OT						
Etc						

**EQUIPMENT:**

Type	xx	hrs		\$		\$
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**MATERIAL:** All material must be listed according to paid receipts that are to be provided with each invoice.

**DAILY REPORTS:** Daily reports are also to be attached to the invoice – daily reports will include all information listed above. Certified payroll is to be attached to each invoice. The invoice is actually a summary of the attached information behind the invoice.

**SP – 4:                    Ability and Experience of Bidder**

No award will be made to any Bidder who cannot satisfy the City that the Bidder has sufficient ability and experience for this type of project to enable him to prosecute and complete the work successfully. The City's decision or judgment on these matters will final, conclusive and binding.

The City may make such investigations as deemed necessary and the Bidder shall furnish to the City, under oath if so required, all such information and data for this purpose as the City may request. Interviews and site visits to the Bidders operations facility may be requested by the City.

The Bidder shall complete the Qualifications Statement, which is a component of the Proposal Form, to be attested to and submitted as a formal response to this solicitation.

At a minimum, the Bidder shall attest to the following:

- That the Bidder has performed a similar maintenance, on-call (24/7/365), response-sensitive contract to the performance requirements specified herein, for work conducted within the public right-of-way, for a municipality or private water company of similar size to that of Wilmington, within the last four (4) years. Applicable experience work is to have been conducted in public right-of-way, not on private property.
- That the Bidder is available 24/7/365 to meet the response/time sensitive requests of the City.
- That the Bidder can meet the one (1) hour response time requirement, when required by the City, as defined by the time it takes for the Contractor to have mobilized, and be present at the job location performing work specific to the job upon receiving the call from the City.
- That the Bidder can provide up to six (6) crews performing work simultaneously on response sensitive jobs, as determined by the City. The City is the sole entity which determines if a job is response/time sensitive or not.
- That the Bidder has its Operational Yard Facility within such distance to the City that allows for the response time requirement to be met.

**SP – 5:                    Basis of Award and Award of Contract**

Award will be based on the most responsive bidder, as determined by the City.

The City reserves the right to award to multiple Contractors. If multiple Contractors are awarded this contract, it shall be the City's sole discretion as to how the work is allocated and in what quantity the work is proportioned to the respective Contractors. Minimum quantities of work to any one Contractor are not guaranteed by the City.

## PROPOSAL FORM/QUALIFICATIONS STATEMENT

DATE: \_\_\_\_\_

Contract Number: WD20012WD

City of Wilmington Business License No: \_\_\_\_\_

This proposal is submitted with the knowledge that the Department of Finance, Division of Procurement and Records, reserves the right to reject any and all proposals when in its judgment it is in the best interest of the City of Wilmington to do so.

WE, the undersigned, hereby agree to furnish and deliver, per specifications, the item(s) listed below to the City of Wilmington, Water Division, Wilmington, Delaware 19801 beginning July 1, 2019 through June 30, 2020.

### 1. BASIC CREW FOR MAINTENANCE AND SMALL INSTALLATIONS

Quantity	Item	Time	Unit Price	Total
1	Working Foreman	8 hr/day	=	
1	Pipe Laborer	8 hr/day	=	
1	Pickup/Tool Truck	8 hr/day	=	
1	125 CFM Compressor w/Tools, including Jack Hammer	4 hr/day	=	
1	Gas Tamper	2 hr/day	=	
1	2" Electric Pump	4 hr/day	=	
1	Generator (2500W)	2 hr/day	=	
1	Chop Saw	1 hr/day	=	
1	Walk Behind Paving Roller	1 hr/day	=	
3	Road Signs	Day	=	
5	Traffic Barrels	Day	=	
1	Miscellaneous Tools to include 4" Cutoff Grinder, Acetylene Torch Outfit, Hilti Drill, and Impact Gun	8 hr/day	=	
1	Steel Road Plate	Day	=	
Total Per Day				

## **2. DISPOSAL AND HAULING OF MATERIALS**

Quantity	Item	Time	Unit Price	Total
1	Dump Truck Driver	8 hr/day	=	
1	5 Cubic Yard/Single Axle Dump Truck	8 hr/day	=	
1	10 Cubic Yard/Tandem Axle Dump Truck	8 hr/day	=	
Total Per Day				

## **3. MACHINE EXCAVATION AND DISPOSAL**

Quantity	Item	Time	Unit Price	Total
1	Backhoe Operator	8 hr/day	=	
1	Backhoe/Loader	8 hr/day	=	
1	R/T Backhoe with Hydro Hammer	1 hr/day	=	
1	Tag-A-Long Tilt Top Trailer	2 hr/day	=	
Total Per Day				

**SUBTOTAL I – (SUM OF ITEMS 1, 2, AND 3 PER DAY):** \_\_\_\_\_



## SUPPLEMENTAL EQUIPMENT

Item	Proposed Substitution	Rate Type	Unit Price
Welding Rig		Hourly	
Tractor Truck with Lowboy Trailer		Hourly	
Track Hoe 5/8 - 3/4 Yard		Hourly	
Nu-Mo Gopher		Hourly	
Rock Drill (Hand)		Hourly	
Rock Splitter (Hand)		Hourly	
Mueller Tap Machine 3/4 - 2"		Hourly	
Mueller Tap Machine 3" - 12"		Hourly	
Tri-pod Work Light		Hourly	
Rammax Compactor		Hourly	
Tri-pod Work Light		Hourly	
Wach Saw		Hourly	
Air Ventilator with Hose		Hourly	
Steel Sheeting 10' Length (6 sheets)		Hourly	
Trench Shoring Box (8' x 8')		Hourly	
Paving Machine (12 ft wide)		Hourly	
Asphalt Milling Machine		Hourly	
Arrow Board		Hourly	

\* The City reserves the right to request additional information in support of the rates provided above to verify the reasonableness of said rates. The City refers to the Rental Rate Blue Book (Equipment Watch) data as a determination of reasonableness.

**SUPPLEMENTAL LABOR**

<b>Labor Type</b>	<b>Rate Type</b>	<b>Rate</b>
Licensed Plumber	Hourly	_____
Welder w/ Certification	Hourly	_____
General Laborer	Hourly	_____

\* Please note, that “SUPPLEMENTAL EQUIPMENT” and “SUPPLEMENTAL LABOR” are not totaled on the bid proposal form.

## QUALIFICATIONS STATEMENT

1. State your level of experience with "Maintenance" Contracts with a municipality or private water company of similar size to Wilmington, where you were on call 24/7/365 with a minimum response time for mobilization into the field, within the past four (4) years. Work is to have been performed in public right-of-way. Please state the name of the client, the time the contract was held and a reference phone number with name of person.

*(Additional pages or sheets of information may be provide in order to address all questions)*

2. State your ability to be available 24/7/365 to meet the requirements of this maintenance contract.
3. State your ability to meet the one (1) hour response time requirement. When so determined by the City, and upon receipt of the phone call, the Contractor will have to mobilize to the job site and be actively performing work related activities specific to the job within one (1) hour.
4. State your ability to provide up to six (6) crews performing work simultaneously on response sensitive jobs. The City is the sole entity which determines if a job is time sensitive or not.
5. State the address of your Operations Facility where your base equipment, machinery, vehicles and office is located.

*This Qualifications Statement does not preclude the need for the Bidder to meet, and provide with their Bid, other representations required in the Bidding Documents such as, but not limited to, Prevailing Minimum Wage requirements, the Responsible Contractor requirements, and the Disadvantage Business Enterprise requirements which are outlined in separate sections of this solicitation. Failure to complete and/or submit this Qualifications Statement will be grounds for disqualification.*

**SIGNATURE PAGE**

I hereby attest that the information provided in the Proposal Form and Qualifications Statement is factual.

**FIRM:**

\_\_\_\_\_  
**CORPORATION, PARTNERSHIP OR INDIVIDUAL**

**PER:**

\_\_\_\_\_  
**Name (typed or printed)**

**TITLE:**

\_\_\_\_\_

**ADDRESS:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**PHONE NO.:**

\_\_\_\_\_  
**(Preferably Toll Free)**

**FEDERAL ID NO:**

\_\_\_\_\_

**FAX NO.:**

\_\_\_\_\_

**EMAIL:**

\_\_\_\_\_

CONSENT OF SURETY

DATE: \_\_\_\_\_

TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Gentlemen:

We, the \_\_\_\_\_  
\_\_\_\_\_  
(Surety Company's Address)

( ) a Surety Company authorized to do business in the State of Delaware, hereby agree that if

\_\_\_\_\_  
(Contractor)

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

is awarded Contract \_\_\_\_\_. We will write the required Performance and/or Labor and Materials  
Bond required by Paragraph 6 of the Instructions to Bidders.

\_\_\_\_\_  
Surety Company

BY: \_\_\_\_\_  
Attorney-in-Fact

## PROPOSAL FORM/QUALIFICATIONS STATEMENT

DATE: 5/7/19

Contract Number: WD20012WD

City of Wilmington Business License No: 001254

This proposal is submitted with the knowledge that the Department of Finance, Division of Procurement and Records, reserves the right to reject any and all proposals when in its judgment it is in the best interest of the City of Wilmington to do so.

WE, the undersigned, hereby agree to furnish and deliver, per specifications, the item(s) listed below to the City of Wilmington, Water Division, Wilmington, Delaware 19801 beginning July 1, 2019 through June 30, 2020.

### 1. BASIC CREW FOR MAINTENANCE AND SMALL INSTALLATIONS

Quantity	Item	Time	Unit Price	Total
1	Working Foreman	8 hr/day	= 68.00	544.00
1	Pipe Laborer	8 hr/day	= 54.00	432.00
1	Pickup/Tool Truck	8 hr/day	= 10.00	80.00
1	125 CFM Compressor w/Tools, including Jack Hammer	4 hr/day	= 5.00	20.00
1	Gas Tamper	2 hr/day	= 2.50	5.00
1	2" Electric Pump	4 hr/day	= 2.50	10.00
1	Generator (2500W)	2 hr/day	= 2.50	5.00
1	Chop Saw	1 hr/day	= 5.00	5.00
1	Walk Behind Paving Roller	1 hr/day	= 13.00	13.00
3	Road Signs	Day	= 5.00	5.00
5	Traffic Barrels	Day	= 5.00	5.00
1	Miscellaneous Tools to include 4" Cutoff Grinder, Acetylene Torch Outfit, Hilti Drill, and Impact Gun	8 hr/day	= 5.00	40.00
1	Steel Road Plate	Day	= 10.00	10.00
Total Per Day				<u>\$1,174.00</u>

## 2. DISPOSAL AND HAULING OF MATERIALS

Quantity	Item	Time	Unit Price	Total
1	Dump Truck Driver	8 hr/day	= 55.00	440.00
1	5 Cubic Yard/Single Axle Dump Truck	8 hr/day	= 25.00	200.00
1	10 Cubic Yard/Tandem Axle Dump Truck	8 hr/day	= 33.00	264.00
Total Per Day				<u>\$904.00</u>

## 3. MACHINE EXCAVATION AND DISPOSAL

Quantity	Item	Time	Unit Price	Total
1	Backhoe Operator	8 hr/day	= 83.00	664.00
1	Backhoe/Loader	8 hr/day	= 25.00	200.00
1	R/T Backhoe with Hydro Hammer	1 hr/day	= 25.00	25.00
1	Tag-A-Long Tilt Top Trailer	2 hr/day	= 5.00	10.00
Total Per Day				<u>\$899.00</u>

SUBTOTAL I – (SUM OF ITEMS 1, 2, AND 3 PER DAY): \$2,977.00

✓

**SUPPLEMENTAL EQUIPMENT**

<b>Item</b>	<b>Proposed Substitution</b>	<b>Rate Type</b>	<b>Unit Price</b>
Welding Rig		Hourly	50.00
Tractor Truck with Lowboy Trailer		Hourly	100.00
Track Hoe 5/8 - 3/4 Yard		Hourly	100.00
Nu-Mo Gopher		Hourly	35.00
Rock Drill (Hand)		Hourly	25.00
Rock Splitter (Hand)		Hourly	75.00
Mueller Tap Machine 3/4 - 2"		Hourly	50.00
Mueller Tap Machine 3" - 12"		Hourly	75.00
Tri-pod Work Light		Hourly	35.00
Rammax Compactor		Hourly	50.00
Tri-pod Work Light		Hourly	35.00
Wach Saw		Hourly	30.00
Air Ventilator with Hose		Hourly	35.00
Steel Sheeting 10' Length (6 sheets)		Hourly	100.00
Trench Shoring Box (8' x 8')		Hourly	50.00
Paving Machine (12 ft wide)		Hourly	100.00
Asphalt Milling Machine		Hourly	700.00
Arrow Board		Hourly	25.00

\* The City reserves the right to request additional information in support of the rates provided above to verify the reasonableness of said rates. The City refers to the Rental Rate Blue Book (Equipment Watch) data as a determination of reasonableness.



**SUPPLEMENTAL LABOR**

<b>Labor Type</b>	<b>Rate Type</b>	<b>Rate</b>
Licensed Plumber	Hourly	<u>150.00</u>
Welder w/ Certification	Hourly	<u>150.00</u>
General Laborer	Hourly	<u>54.00</u>

\* Please note, that "SUPPLEMENTAL EQUIPMENT" and "SUPPLEMENTAL LABOR" are not totaled on the bid proposal form.

## QUALIFICATIONS STATEMENT

1. State your level of experience with "Maintenance" Contracts with a municipality or private water company of similar size to Wilmington, where you were on call 24/7/365 with a minimum response time for mobilization into the field, within the past four (4) years. Work is to have been performed in public right-of-way. Please state the name of the client, the time the contract was held and a reference phone number with name of person.

BCCI has been under contract with the City of Wilmington through contract #16011WD for fiscal years 2016, 2017, 2018 and 2019. This contract was the "Water Distribution System Maintenance Contract" for those years. Prior to contract #16011WD, BCCI was the awarded contractor for the City's "Water Distribution System Maintenance Contract" for fiscal years 2005, 2006, and 2007, as well as fiscal years 2011 through 2015.

In addition to our City of Wilmington experience, we have been Suez Water of Delaware's (formerly United Water of DE) "on-call" maintenance contract every year since 2008. Suez's contract is almost identical in scope and requirements as that of the City of Wilmington's.

2. State your ability to be available 24/7/365 to meet the requirements of this maintenance contract.

BCCI's home office, equipment, and material storage yard is located just outside of the City's limits for easy, quick access to any emergency within the City of Wilmington's water service territory. The majority of BCCI's employee all live local to the New Castle County and surrounding areas for easy access to jobsites.

3. State your ability to meet the one (1) hour response time requirement. When so determined by the City, and upon receipt of the phone call, the Contractor will have to mobilize to the job site and be actively performing work related activities specific to the job within one (1) hour.

BCCI's home office, equipment, and material storage yard is located just outside the City's limites for easy and responsive access to any emergency within the City of Wilmington's water service territory. Many of our employees live local so that manpower can be onsite within the specified one hour time frame.

4. State your ability to provide up to six (6) crews performing work simultaneously on response sensitive jobs. The City is the sole entity which determines if a job is time sensitive or not.

BCCI currently employees fifteen pipe crews that are at this point all working local to the northern New Castle County region.

5. State the address of your Operations Facility where your base equipment, machinery, vehicles and office is located.

Brandywine Construction Co., Inc.  
101 Pigeon Point Road  
New Castle, DE 19720

*This Qualifications Statement does not preclude the need for the Bidder to meet, and provide with their Bid, other representations required in the Bidding Documents such as, but not limited to, Prevailing Minimum Wage requirements, the Responsible Contractor requirements, and the Disadvantage Business Enterprise requirements which are outlined in separate sections of this solicitation. Failure to complete and/or submit this Qualifications Statement will be grounds for disqualification.*

## SIGNATURE PAGE

I hereby attest that the information provided in the Proposal Form and Qualifications Statement is factual.

**FIRM:** Brandywine Construction Co., Inc.  
\_\_\_\_\_  
**CORPORATION, PARTNERSHIP OR INDIVIDUAL**

**PER:** John R. Doherty  
\_\_\_\_\_  
**Name (typed or printed)**

**TITLE:** President  
\_\_\_\_\_

**ADDRESS:** 101 Pigeon Point Road  
\_\_\_\_\_  
New Castle, DE 19720  
\_\_\_\_\_  
\_\_\_\_\_

**PHONE NO.:** 302-571-9773  
\_\_\_\_\_  
**(Preferably Toll Free)**

**FEDERAL ID NO:** 510080296  
\_\_\_\_\_

**FAX NO.:** 302-571-9775  
\_\_\_\_\_

**EMAIL:** info@bccico.com  
\_\_\_\_\_

## CONSENT OF SURETY

DATE: \_\_\_\_\_

TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Gentlemen:

We, the \_\_\_\_\_

\_\_\_\_\_  
(Surety Company's Address)

I, \_\_\_\_\_ a Surety Company authorized to do business in the State of Delaware, hereby agree that if

\_\_\_\_\_  
(Contractor)

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

is awarded Contract \_\_\_\_\_. We will write the required Performance and/or Labor and Materials

Bond required by Paragraph 6 of the Instructions to Bidders.

\_\_\_\_\_  
Surety Company

BY: \_\_\_\_\_  
Attorney-in-Fact

**To Be Submitted with Bid**CONTRACT: 20012WDFORM DBE-1  
(Rev. 10/09)***Failure to submit this completed form will be cause for rejection of your proposal***

Bidder acknowledges that he has read the D.B.E. goal provisions of the City for this fiscal year and that bidder will expend the dollar amount of the contract for D.B.E. subcontractors through the use of the following disadvantaged business enterprises, subject to the certification by the City, as subcontractors and that Bidder has made good faith efforts\* as evidenced by its listing of disadvantaged businesses that were contacted as detailed herein and on the following pages. (Must be completely filled out.)

**CITY OF WILMINGTON  
DISADVANTAGED BUSINESS ENTERPRISE ("D.B.E.")  
SUBCONTRACTOR LISTING**

<b>D.B.E. Firm Name IRS Numbers</b>	<b>Mailing Address &amp; Contact Number</b>	<b>Type of Service</b>	<b>Dollar Amount of Contract</b>
Rock Solid Contracting 56-2563762	1213 B Street Wilmington, DE 19801 302-655-8250	Hired Hauling	\$600.00
		MOT	\$10.00
Total Dollar Amount to be Expended for Disadvantaged Business Enterprises	\$610.00		
Total Amount of Contract	\$ 2,977.00		
Percentage of Contract used for D.B.E.	20.5%		

John R. DohertyPresident**Name of Authorized Official of Bidder****Title**Brandywine Construction Co., Inc.**Company**

\*Good faith efforts shall be evidenced by listing each and every disadvantaged business enterprise (DBEs) contacted, showing the name and address of each, the names of contact persons, telephone numbers, sources used to identify DBEs, methods used to make contact, dates firms were contacted, responses, dates responses were received, type of subcontract, reasons for rejection, and estimated value of subcontract.

## To Be Submitted with Bid

CONTRACT: 20012WD

FORM DBE-2  
(Rev. 10/09)

*Failure to submit this completed form will be cause for rejection of your proposal*

DBE Firm Name/Address	Contact Person(s) Email or Phone Number	Dates Contacted Initially and In Follow Up Methods Used	Type of Subcontractor, plus Estimated Value	Reason for Rejection (If Firm Not Used) (If Bid "To High" Also Indicate Value)
1. Everyone Can Achieve LLC	Earl Cooper	4/25/19 via Email	Flagging	Bid higher than performing
2010 Woodlawn Ave			\$ 68.99	with our own forces by 12.99 / hr
Wilmington, DE 19806				
2.				
			\$	
3.				
			\$	

Were advertisements placed in general circulation media, trade association publications, and DBE media interested in DBE participation? If so, state details of the advertisement. If not, state why not.

Work that is not performed "in-house" by BCCI (MOT, hired hauling) will be subcontracted to City DBE's

What efforts were made to use the services of organizations that provide assistance in recruitment and placement of DBEs?

We consulted the City of Wilmington's DBE Directory and solicited firms that perform work that BCCI typically subcontracts

The following are examples of actions that may **not** be used as justification by the contractor or bidder for failure to meet DBE participation goals:

1. Failure to contract with a DBE solely because the DBE was unable to provide performance and/or payment bonds.
2. Equipment idled by contract with DBE.
3. Rejection of a DBE because of its union or non-union status.

If more DBE firms have been contacted, please list with supplemental form(s) on additional pages.

**To Be Submitted with Bid if DBE is not listed in City DBE Directory**

CONTRACT: 20012WD

FORM DBE-3  
(Rev. 10/09)*Failure to submit this completed form will be cause for rejection of your proposal***CITY OF WILMINGTON  
DISADVANTAGED BUSINESS REGISTRATION VERIFICATION FORM**

1.	NAME:		
2.	ADDRESS:		
3.	PHONE:	PRODUCT OR SERVICE LINE:	
4.	TYPE OF FIRM: <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Individual <input type="checkbox"/> Other _____		
5.	EMAIL:		
6.	DATE OF ORIGINATION OF FIRM:	EMAIL:	
7.	BUSINESS LICENSES HELD:	City:	State: Other:
8.	DISADVANTAGED OWNERSHIP OF FIRM:		
	NAME	OWNERSHIP % OF FIRM	DISADVANTAGED BUSINESS
a.			
b.			
c.			
d.			
e.			
f.			
9.	NON-DISADVANTAGED OWNERSHIP OF FIRM:		
	NAME	OWNERSHIP % OF FIRM	
a.			
b.			
c.			
d.			
e.			
f.			
8.	I hereby certify that the information above is true and complete to the best of my knowledge and belief, and that I have been duly authorized to make this certification on behalf of the firm.		

John R. Doherty

NAME (printed)

5/7/19

DATE

SIGNATURE

President

TITLE

FOR OFFICE USE ONLY

DATE RECEIVED: \_\_\_\_\_  
DATE APPROVED: \_\_\_\_\_  
INFORMATION VERIFIED: \_\_\_\_\_

The General Contractor is required to submit this Compliance Report to the Disadvantaged Business Development Officer, City/County Building, 3<sup>rd</sup> Floor, 800 French Street, Wilmington, Delaware 19801, when the contract is entered into by the general contractor and the subcontractor, when 50% and when 100% of each DBE subcontractor's portion of a construction project has been completed.

**DISADVANTAGED BUSINESS ENTERPRISE**  
**CONTRACT PARTICIPATION REPORT**

1. Contract No. 20012WD Amount of Contract \$ 2,977.00
2. Name of General Contractor: Brandywine Construction Co., Inc.
3. Address: 101 Pigeon Point Road New Castle, DE 19720
4. E-Mail Address: info@bccico.com
5. The above-named contractor intends to fulfill its commitment to expend \$ \$610.00  
( 20.5%), of its contract with Disadvantaged Business Enterprises ("DBEs"). The following year-to-date expenditure(s) has been made with a DBE Subcontractor(s):

Name/Address of DBE Subcontractor	Nature of Participation	Dollar Value/ Percent of Participation	Dollar Amount Expended to Date
1. Rock Solid Contracting	Hauling and MOT	\$610.00 / 20.5%	
1213 B Street Wilmington, DE 19801			
2.			
3.			

CONTRACT COMPLETION DATE: \_\_\_\_\_

Brandywine Construction Co., Inc.  
General Contractor  
Rock Solid Contracting  
DBE Subcontractor

John R. Doherty  
Name of Authorized Officer  
John R. Doherty  
Signature of Authorized Officer

5/7/19  
Date  
                      
Date

<p align="center"><b>Office Use Only</b> <b>(Prime)</b></p> <p>Payment Received: _____</p> <p>Amount: _____</p> <p>Date: _____</p> <p>Payment Received: _____</p> <p>Amount: _____</p> <p>Date: _____</p>
---

City of Wilmington  
Contract Compliance Officer's Name  
                      
City of Wilmington  
Contract Compliance Officer's Signature

                      
Date  
                      
Date



*Failure to submit this completed form will be cause for rejection of your proposal*CITY OF WILMINGTON  
SUBCONTRACTOR LISTING  
(Do not include DBE Firms to be utilized)

Subcontractor Name IRS Numbers	Mailing Address Contact Number or Email	Type of Service	Dollar Amount of Contract
Total Dollar Amount to Non-Disadvantaged Business Enterprises	None		
Total Amount of Contract	\$2,977.00		

Bidder acknowledges that he has identified all sub contractors that will be utilized as well as listing the amount of money that will be paid to each of the subcontractors as part of the contract (use additional pages if necessary).

John R. Doherty

President

Name of Authorized Official of Bidder

Title

Brandywine Construction Co., Inc.

5/7/19

Company

Date

STATE OF DELAWARE  
DEPARTMENT OF LABOR  
DIVISION OF INDUSTRIAL AFFAIRS  
OFFICE OF LABOR LAW ENFORCEMENT  
PHONE: (302) 761-8200

Mailing Address:  
4425 North Market Street  
3rd Floor  
Wilmington, DE 19802

Located at:  
4425 North Market Street  
3rd Floor  
Wilmington, DE 19802

PREVAILING WAGES FOR HIGHWAY CONSTRUCTION EFFECTIVE MARCH 15, 2019

CLASSIFICATION	NEW CASTLE	KENT	SUSSEX
BRICKLAYERS	55.89	55.89	55.89
CARPENTERS	55.95	55.63	44.22
CEMENT FINISHERS	35.48	35.70	28.39
ELECTRICAL LINE WORKERS	29.40	47.49	23.24
ELECTRICIANS	70.49	70.49	70.49
IRON WORKERS	65.24	26.10	27.72
LABORERS	45.30	41.69	40.93
MILLWRIGHTS	17.62	17.10	14.76
PAINTERS	71.29	71.29	71.29
PILEDRIVERS	72.65	25.98	29.47
POWER EQUIPMENT OPERATORS	67.07	43.32	39.68
SHEET METAL WORKERS	24.89	22.21	20.12
TRUCK DRIVERS	37.52	30.88	37.62

CERTIFIED:

03/15/2019

BY:

*[Signature]*  
ADMINISTRATOR, OFFICE OF LABOR LAW ENFORCEMENT

NOTE: THESE RATES ARE PROMULGATED AND ENFORCED PURSUANT TO THE PREVAILING WAGE REGULATIONS ADOPTED BY THE DEPARTMENT OF LABOR ON APRIL 3, 1992.

CLASSIFICATIONS OF WORKERS ARE DETERMINED BY THE DEPARTMENT OF LABOR. FOR ASSISTANCE IN CLASSIFYING WORKERS OR FOR A COPY OF THE REGULATIONS OR CLASSIFICATIONS, PHONE (302) 761-8200.

NON-REGISTERED APPRENTICES MUST BE PAID THE MECHANIC'S RATE.

THESE RATES ARE BEING PROVIDED IN ACCORDANCE WITH DELAWARE'S FREEDOM OF INFORMATION ACT.

THEY ARE NOT INTENDED TO APPLY TO ANY SPECIFIC PROJECT.

**Contractor/Subcontractor**  
**Responsibility Certification**

**Contractors:**

The City of Wilmington Division of Procurement and Records must receive this executed form not later than at the time of bid submission. It may be submitted prior to bid submission for review.

**Subcontractors:**

Must submit this form to requesting contractor.

CONTRACTOR/SUBCONTRACTOR RESPONSIBILITY CERTIFICATION  
FOR DEPARTMENT OF PUBLIC WORKS CONTRACTS  
VALUED AT MORE THAN \$100,000

Name of Company: Brandywine Construction Co., Inc.

Address: 101 Pigeon Point Road


New Castle, DE 19720

Contract/Project Name: Water Distribution System Maintenance

Contract Number: 20012WD

As a condition of performing "City work" (all building or construction work or projects of any kind or nature as provided in City Code Sec. 2-651) for the City of Wilmington, Delaware, contractors and subcontractors (hereinafter referred to as "Bidders") must meet certain responsible contractor requirements and qualifications specified in the Wilmington City Code, Chapter 2, Article VI, Division 6, Subdivision III (Sec. 2-561 et seq.). Pursuant thereto, the Company named above certifies the following:


**PLEASE INITIAL EACH ITEM TO INDICATE COMPLIANCE**  
**(Xs and check marks are *not* acceptable)**

 1. The Bidder and its employees have all valid, effective licenses, registrations, or certificates required by federal, state, county, or local law, including, but not limited to, licenses, registrations, or certificates required to:

- a. do business in the City of Wilmington and the State of Delaware; and
- b. perform the contract work, including, but not limited to, licenses, registrations or certificates for any type of construction or maintenance trade work or specialty work which the Bidder proposes to self-perform.


 2. The Bidder meets all:

- a. bonding requirements as required by the applicable law or contract specifications; and
- b. insurance requirements per applicable law or contract specifications, including general liability insurance, workers' compensation insurance, and unemployment insurance.

 3. The Bidder has a satisfactory record of integrity in accordance with Sec. 2-537(4) of the City Code, which further states as follows:

The following provisions, while not exclusive, shall be sufficient to justify a finding of nonresponsibility:

- a. failure to pay taxes and fees due and owing to the City;
- b. a conviction of the contractor or a principal officer thereof for commission of a criminal offense, as incident to obtaining or attempting to obtain a public contract or in the performance of such contract;
- c. a conviction, of the contractor or principal officer thereof, under state or federal statutes, for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously and directly affects responsibility as a city contractor.

 4. The Bidder has a satisfactory record of timely performance of City contracts in accordance with Sec. 2-537(3) of the City Code, which further states as follows:

Contractors who are seriously deficient in current contract performance, when the number of contracts and the extent of deficiency of each are considered, shall, in the absence of evidence to the contrary or circumstances properly beyond the control of the contractor, be presumed to be unable to meet this requirement. Past unsatisfactory performance due to failure to apply necessary

tenacity, or perseverance to do an acceptable job, shall be sufficient to justify a finding of nonresponsibility.

- ☒ 5. The Bidder has a satisfactory record of performance of contractual provisions in accordance with Sec. 2-537(5) of the City Code, which further states as follows:

Violation of contract provisions of a character which justify a finding of nonresponsibility include:

- a. deliberate failure without good cause to perform in accordance with the specifications provided in the contract;
- b. a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts;
- c. in particular, failure to comply with prevailing wage and related federal, state, and city requirements;

provided, however, that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for a finding of nonresponsibility.

- ☒ 6. The Bidder has a satisfactory record of good faith efforts to achieve disadvantaged business enterprise participation in accordance with Sec. 2-537(8) of the City Code.

- ☒ 7. The Bidder has not been debarred or suspended by any federal, state or local government agency or authority in the past three years.

- ☒ 8. The Bidder has not defaulted on any project in the past three years.


- ☒ 9. The Bidder has not had any type of business, contracting or trade license, registration, or other certification revoked or suspended in the past three years.


- ☒ 10. The Bidder and its owners have not been convicted of any crime relating to the contracting business in the past ten years.


- ☒ 11. The Bidder has not at any time been found in violation of any federal, state or local prevailing wage law.


- ☒ 12. The Bidder has not within the past three years been found in violation of any law applicable to its contracting business, including, but not limited to, licensing laws, tax laws, prompt payment laws, wage and hour laws, environmental laws or others, where the result of such violation was the payment

of a fine, back pay damages or any other type of penalty in the amount of \$1,000 or more.


 13. The Bidder will pay all craft employees that it employs on the project the current wage rates and fringe benefits as required under applicable federal, state or local wage laws.


 14. All craft labor that will be employed by the Bidder for the project have completed at least the OSHA 10 hour training course for safety established by the U. S. Department of Labor, Occupational Safety & Health Administration.


 15. The Bidder will employ craft employees in all classifications and individual trades required to successfully perform the work related to the project.


 16. The Bidder has participated in a Class A Apprenticeship Program for the past twelve months, at a minimum, for each separate trade or classification in which it employs craft employees and shall continue to participate in such program or programs for the duration of the project. The twelve month participation requirement may be waived during the first year of implementation of this Ordinance, provided that the firm is participating in a Class A Apprenticeship Program at the time it submits its bid and submits information showing that the construction craft workers it plans to use have adequate skills to successfully perform the project. Once the Ordinance has been in effect for twelve months, i.e., September 4, 2013, a waiver of this requirement will no longer be available.


- a. for purposes of this section, a Class A Apprenticeship Program is an apprenticeship program that is currently registered with and approved by the U.S. Department of Labor or a state apprenticeship agency and has graduated apprentices to journeyman status for at least three of the past five years;
- b. to ensure compliance with this section, the Bidder shall provide, with this certification, a list of all trades or classifications of craft employees it will employ on the project and documentation verifying it participates in a Class A Apprenticeship Program for each trade or classification listed;
- c. in order to enhance the training of its workforce and to comply with this subsection, the firm must enroll a new person in a Class A Apprenticeship Program for each bid submitted to the City.

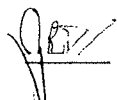
 17. The Bidder shall make all reasonable best efforts to ensure that fifteen percent (15%) of the workforce hired for the project, especially with respect to new workers recruited and hired for the project, includes City of Wilmington residents. To ensure compliance with this section, the Bidder will also make residency information on its workforce available to the City upon request.


 18. The Bidder has all other technical qualifications and resources, including equipment, personnel and financial resources, to perform the referenced contract, or will obtain same through the use of qualified, responsible contractors.

 19. The Bidder acknowledges that within seven (7) calendar days following the date of receipt of Notice of Intent to Award Contract, it will provide a list of subcontractors it plans to utilize for services in the performance of the contract. The list must include a brief description of the subcontractor's scope of work. In addition, each subcontractor providing services equaling or exceeding \$100,000 must provide executed Subcontractor Responsibility Certifications containing information equivalent to that required for the Bidder in the Contractor Responsibility Certification. Note: Bidder must initial this item regardless of the value of the subcontract services.

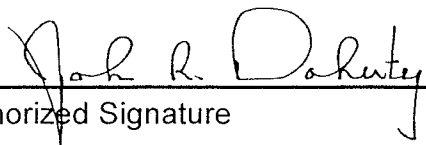
 20. If at any time during the past five (5) years the Bidder has controlled or has been controlled by another corporation, partnership or other business entity operating in the construction industry, it will disclose such facts by attaching a detailed statement to its Contractor Responsibility Certification explaining the nature of the relationship.

 21. The Bidder acknowledges that it shall be required to provide appropriate documentation of the conditions specified in this Contractor/Subcontractor Responsibility Certification. The Bidder also understands that the City of Wilmington may request additional information or documents at any time as the City of Wilmington deems necessary to evaluate the responsibility of Bidder. Bidder agrees to provide such additional information or supporting documentation for this Certification.

 22. If a Bidder fails to provide the Contractor Responsibility Certification required by this section, the Bidder shall be disqualified from bidding the contract. If a Bidder fails to provide other information or documentation required by the City of Wilmington, it may be disqualified from being awarded the contract.


 23. The Bidder shall notify the City within seven days of any material changes to all matters attested to in this certification.

Under the penalty of perjury, the Bidder's authorized representative hereby certifies that all information included in the Contractor Responsibility Certification or otherwise submitted for purposes of determining the Bidder's status as a responsible contractor is true, complete and accurate and that he/she has knowledge and authority to verify the information in this certification or otherwise submitted on behalf of the Bidder by his or her signature below.

  
Authorized Signature

5/7/19  
Date

John R. Doherty  
Print Name  
Vice President  
Title

  
Witness Signature

5/7/19  
Date

PLEASE SUBMIT **SIGNED ORIGINAL** VERSION OF THIS FORM TO:

CITY OF WILMINGTON  
DEPARTMENT OF FINANCE, DIVISION OF PROCUREMENT  
LOUIS REDDING CITY COUNTY BUILDING  
800 N. FRENCH STREET, 5<sup>TH</sup> FLOOR  
WILMINGTON, DE019801

Questions regarding the this form can be sent to  
[procurement@wilmingtonde.gov](mailto:procurement@wilmingtonde.gov) or call 302.576.2423



Kelly A. Williams  
Commissioner

City of Wilmington  
Delaware

LOUIS L. REDDING CITY/COUNTY BUILDING  
800 FRENCH STREET-6<sup>TH</sup> FLOOR  
WILMINGTON, DELAWARE  
19801-3537



DEPARTMENT OF PUBLIC WORKS  
Water Division

MEMORANDUM

To: Phil Ceresini, CPPB  
Purchasing Agent

From: Luis Camacho  
Civil Engineer II

*LEC*

Date: May 13, 2019

MAY 22 AM 9:3

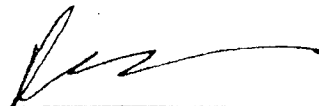
Subject: <sup>WO</sup> Contract 20012PW - Water Distribution System Maintenance Recommendation of Award

Proposals received on the above-mentioned contract are as follows:

BIDDER	BASE BID AMOUNT
Brandywine Construction Co., Inc.	\$2,977.00/day
Castle Construction of Delaware	\$3,348.25/day

Upon evaluation of these bids, it is recommended that Brandywine Construction Co., Inc., the lowest bidder, be awarded the contract.

Approval:

  
\_\_\_\_\_  
Kelly A. Williams  
Commissioner  
Department of Public Works

## CERTIFICATE OF AWARD OF CONTRACT

I hereby certify that Contract No. 20012WD is on this 22th of May 2019 awarded to Brandywine Construction Company, Inc. in the amount of \$2,977.00/per day not to exceed \$3,000,000.00 as per Proposal dated 5/7/19 and that this award is made in compliance with Wilm. Code (Charter), Section 8-200, to wit:

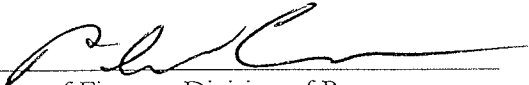
1. Plans and specifications for the work, supplies, or materials were filed with the Department of Finance, Division of Procurement and Records for public inspection on 4/9/19.
2. The advertisement calling for sealed bids on this contract was published in the News Journal on 4/9/19 & 4/16/19 stated that bids would be opened at 3:00 p.m. on 5/7/19
3. All sealed bids received were publicly opened in the office of the Department of Finance, Division of Procurement and Records in the presence of the City Auditor and Department not represented desiring to make the purchase at 3:00 p.m. on 5/7/19. Other persons present at the opening of the bids were: Phil Ceresini & Mike Maldonado
4. Bids were submitted by the following contractors in the following amounts:

Contractor	Address	Date of Bid	Amount
Brandywine Construction Co, Inc.	New Castle, DE	5/7/19	\$2,977.00/day
Castle Construction of Delaware	New Castle, DE	5/7/19	\$3,348.25/day

5. City License Number \_\_\_\_\_

6. Upon recommendation of Department of Public Works and after due consideration, I determined that the contractor to whom this award is made was the lowest responsible bidder. In support of this determination I have received the following written recommendations, which are on file at my office:

<u>Author</u>	<u>Employment Position</u>	<u>Date</u>
Kelly Williams	Commissioner	5/22/19

  
\_\_\_\_\_  
Department of Finance, Division of Procurement

**BRANDYWINE CONSTRUCTION CO., INC.**

**CERTIFIED COPY OF RESOLUTIONS**

I, the undersigned, Secretary of Brandywine Construction Co., Inc., a Delaware Corporation, hereby certify that the following Resolutions excerpted from the Minutes of the Corporation were duly adopted by unanimous consent of the Board of Directors of the Corporation on May 2, 2019.

Resolved, that the President or Vice President of this Corporation be and she or he hereby is authorized to execute and deliver on behalf of this Corporation a contract and other contract documents by and between this Corporation and The City of Wilmington, Delaware, Department of Finance, Contract #20011PW "SEWER MAINTENANCE" for the Contract Price of \$1,285,880.00 and it was

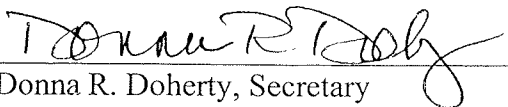
FURTHER RESOLVED, that the Secretary and Assistant Secretary of this Corporation be and (he or she) hereby is authorized to attest to the said contract and other documents.

I further certify that the foregoing Resolutions have not been rescinded or modified and remain in full force and effect.

I further certify that the following are the names of all Officers qualified to sign for the Corporation.

President:	<u>John R. Doherty</u>
Vice President:	<u>Donna R. Doherty</u>
Secretary & Treasurer:	<u>Donna R. Doherty</u>
Assistant Secretary:	<u>Vickie L. Buckalew</u>

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Corporation this 17th Day of June, 2019 AD.

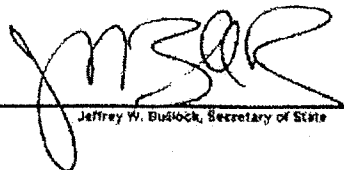
  
Donna R. Doherty, Secretary

# Delaware

The First State

Page 1

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF  
DELAWARE, DO HEREBY CERTIFY "BRANDYWINE CONSTRUCTION CO., INC." IS  
DULY INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN  
GOOD STANDING AND HAS A LEGAL CORPORATE EXISTENCE SO FAR AS THE  
RECORDS OF THIS OFFICE SHOW, AS OF THE TWENTY-NINTH DAY OF MAY,  
A.D. 2019.

  
Jeffrey W. Bullock, Secretary of State

510018 8300

SR# 20194735774

You may verify this certificate online at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

Authentication: 202915154

Date: 05-29-19



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

6/25/2019

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).

PRODUCER Arthur J. Gallagher Risk Management Services, Inc. 11311 McCormick Road, Ste 450 Hunt Valley MD 21031-8622	CONTACT NAME: Certificates Administrator	
	PHONE (A/C, No, Ext): 443-798-7499 FAX (A/C, No): 443-798-7290 E-MAIL ADDRESS: BW2.BSD.Certs@ajg.com	
INSURED Brandywine Construction Company 101 Pigeon Point Road New Castle DE 19720	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A: Zurich American Insurance Company	16535
	INSURER B: Continental Casualty Ins Co	20443
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

## COVERAGES

CERTIFICATE NUMBER: 670690091

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:			GLO581795706	3/1/2019	3/1/2020	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input 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			BAP581795606	3/1/2019	3/1/2020	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			5094300235	3/1/2019	3/1/2020	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	WC581795506	3/1/2019	3/1/2020	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

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

City of Wilmington is included as additional insured with respect to the general liability policy as required by written contract.

## CERTIFICATE HOLDER

## CANCELLATION

City of Wilmington  
Attn: Sid Sharma  
800 N. French Street  
Wilmington DE 19801

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

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--- - - C O N T R A C T -----

THIS AGREEMENT made the 17<sup>th</sup> day of June in the year Two Thousand Nineteen and between the City of Wilmington, a municipal corporation of the State of Delaware, acting through the agency of the Department of Finance, Division of Procurement and Records, party of the first part (hereinafter designated the Owner), and **Brandywine Construction Company., Inc.** party of the second part (hereinafter designated the Contractors)

WITNESSETH, that the Contractor, in consideration of agreements herein made by the Owner, agrees with the Owner as follows:

Article 1. The Contractor shall and will furnish and deliver per specifications, on contract **20012WD "WATER DISTRIBUTION SYSTEM MAINTENANCE"** for the **Department of Public Works** in accordance with Advertisement for Bids by the Department of Finance, Division of Procurement and Records date 4/9/19 & 4/16/19 and specifications identified as Contract No. **20012WD** and by the signatures of the parties hereto, are, together with the said Advertisement for Bids, Instructions to Bidders, Forms of Proposal, and/or other documents pertinent thereto, hereby acknowledge and incorporated into these presents and are to be taken as a part of this Contract.

Article 2. It is understood and agreed by and between the parties hereto that the amount of this Contract is in the amount of \$2,977.00/per day not to exceed \$3,000,000.00 as per Proposal dated 5/7/19 to the Department of Finance, Division of Procurement and Records.

Article 3. In the performance of this Contract, the parties agree that they shall not discriminate or harass, or permit discrimination or harassment, against any person because of age sex, martial status, race, religion, color, national origin or sexual orientation.

Article 4. This Agreement shall bind the heirs, executors, administrators, successors and assigns to the respective parties hereto.

In witness whereof the party of the first part has, by recommendation of the **Commissioner of Public Works**, caused the hand of **Michael S. Purzycki**, Mayor, and the corporate seal of the City of Wilmington, attested by the City Clerk, to be hereunto affixed; and the party of the second part has caused the hand of its' President, (or his authorized representative) and its' corporate seal, attested by the Secretary or assistant Secretary, to be hereunto affixed.

Dated the day and year first above written in the City of Wilmington, County of New Castle, State of Delaware.

Signed, Sealed and delivered in  
the presence of:

**THE CITY OF WILMINGTON**

By: \_\_\_\_\_  
Michael S. Purzycki, Mayor

\_\_\_\_\_  
Witness

**ATTEST:**

\_\_\_\_\_  
City Clerk

**Brandywine Construction Company, Inc.**

By: John L. O'Day  
President (Seal)

Vicki L. Buckelew  
Witness

**ATTEST:**

Tonna R. Doherty  
Secretary

**AN ORDINANCE TO NAME THE SOUTH WILMINGTON WETLANDS  
PARK PROJECT THE “SOUTHBRIDGE WILMINGTON WETLANDS  
PARK”**

**#4773**

**Sponsor:**

**Council  
President  
Shabazz**

**Co-Sponsor:**

**Council  
Member  
Harlee**

**WHEREAS**, Wilmington City Council has enacted Section 2-3 of the Wilmington City Code regarding the authorization and procedures for naming City streets, parks, playgrounds, plazas, buildings, facilities, statues, monuments, and other lands reserved for public use in order to commemorate a places of historic, cultural, and social significance to the city, its residents, neighborhoods and communities and their respective history and heritage; and

**WHEREAS**, the South Wilmington Wetlands Park was created in an effort to end decades of flooding due to inadequate combined sewer overflow systems, to restore and enhance existing wetlands, and to create a new park for the community; and

**WHEREAS**, City Council deems it necessary to recognize the importance of the Southbridge community.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON  
HEREBY ORDAINS:**

**SECTION 1.** The City Council hereby names the South Wilmington Wetland park as the “Southbridge Wilmington Wetlands Park.”

**SECTION 2.** This Ordinance shall be effective upon its passage by City Council and approval by the Mayor.

First Reading .....February 20, 2020  
Second Reading .....February 20, 2020  
Third Reading .....



Passed by City Council,

\_\_\_\_\_  
President of City Council

ATTEST: \_\_\_\_\_  
City Clerk

Approved this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Mayor

**SYNOPSIS:** This Ordinance officially names the South Wilmington Wetlands park as the “Southbridge Wilmington Wetlands Park.”

**FISCAL IMPACT STATEMENT:** There is no fiscal impact on the City as a result of this Ordinance.

W0108982

Referred back to Public Safety Committee  
and Postponed to Feb. 20, 2020

RES 20-008

Wilmington, Delaware

~~February 6, 2020~~

February 20, 2020

#4770

Sponsor:

Council  
Member  
Johnson

**WHEREAS**, pursuant to Section 2-363 of the City Code, the Council deemed it necessary and proper to specify the requirements for review and approval of City-sponsored grant applications and proposals, including authorization for expedited grant applications when necessary prior to Council's approval by resolution; and

**WHEREAS**, the City, through the Wilmington Police Department ("WPD), has submitted grant applications to the State of Delaware Criminal Justice Council in the amount of \$100,000.00; and

**WHEREAS**, the proposed grant funds would be used purchase ten (10) Trikke Police Interceptor mobile vehicles along with safety equipment and training; and

**WHEREAS**, the mobile vehicles will help officers maintain an increased presence in public areas where traditional vehicles cannot gain access (ex. River Walk, bike paths, city parks, etc.); and

**WHEREAS**, the vehicle has been tested on site, and officers found that they were more readily able to interact with the community while using those vehicles as opposed to patrol cars.; and

**WHEREAS**, the vehicle is able to put officers in direct contact with the community while simultaneously enabling the officer to respond quickly to an incident; and

**WHEREAS**, no matching funds are required; and

**WHEREAS**, the Council deems it necessary and proper to authorize the grant application, for the aforesaid purpose.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WILMINGTON** that the Wilmington Police Department's grant applications to the State of Delaware Criminal Justice Council in the total amount of \$100,000.00 is hereby authorized.

**BE IT FURTHER RESOLVED** that the Chief of Police, or his designee, shall be authorized to take all necessary actions to accept any and all funds associated with the grant application and to fulfill the grant requirements.

Passed by City Council,

ATTEST: \_\_\_\_\_  
City Clerk

**SYNOPSIS:** This Resolution authorizes the Wilmington Police Department's grant applications to the State of Delaware Criminal Justice Council in the total amount of \$100,000.00. The proposed grant funds would be used to purchase ten (10) Trikke Police Interceptor mobile vehicles along with safety equipment and training, providing police officers with additional contact with the community while simultaneously enabling the officers to respond quickly to incidents.

**FISCAL IMPACT STATEMENT:** There is no negative fiscal impact to the City as no local matching funds are required by the grants.

W0109403

**AN ORDINANCE TO AUTHORIZE AND APPROVE A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF WILMINGTON, DELAWARE AND OPERATIONS MANAGEMENT INTERNATIONAL, INC. FOR THE MANAGEMENT, ADMINISTRATION, OPERATION, AND MAINTENANCE OF THE WILMINGTON WASTEWATER TREATMENT PLANT, RENEWABLE ENERGY AND BIOSOLIDS FACILITY, MAIN PUMP STATIONS, STORAGE AND CONTROL STRUCTURES AND SYSTEMS ASSOCIATED WITH THE CONTROL OF COMBINED SEWER OVERFLOWS (INCLUDING GLOBAL OPTIMAL REAL TIME CONTROL SYSTEM), AND ASSOCIATED INFRASTRUCTURE**

**#4774**

**Sponsor:**

**Council  
Member  
Freel**

**Co-Sponsor:**

**Council  
President  
Shabazz**

**WHEREAS**, pursuant to Section 2-308 and Section 8-200 of the City Charter, the City of Wilmington is authorized to enter into contracts for the supply of personal property or the rendering of services for a period of more than one year if approved by City Council by ordinance; and

**WHEREAS**, the City publicly advertised a request for qualifications for a professional services agreement (Contract 20004PWPS) to manage, administer, operate, and maintain the Wilmington Wastewater Treatment Plant, Renewable Energy and Biosolids Facility, Main Pump Stations, Storage and Control Structures and Systems associated with the Control of Combined Sewer Overflows (including Global Optimal Real Time Control System), and Associated Infrastructure (collectively, the “Managed Assets”) in order to develop a list of companies qualified to provide the aforementioned professional services to the City (the “Professional Services”); and

**WHEREAS**, the Department of Public Works and the Department of Finance, in consultation with engineers and industry experts, evaluated multiple submissions and developed a short list of companies that were invited to respond to the City’s request for proposals regarding Contract 20004PWPS (the “RFP”); and

**WHEREAS**, an evaluation committee assessed the proposals submitted in response to the RFP and ranked the proposal submitted by the Jacobs Engineering Group, Inc.

("Jacobs") as the highest ranked proposal that would provide the highest quality of technical expertise under the most economically feasible arrangement; and

**WHEREAS**, Jacobs seeks to perform the Professional Services through its affiliate, Operations Management International, Inc; and

**WHEREAS**, the Professional Services Agreement between the City of Wilmington, Delaware and Operations Management International, Inc. for the Management, Administration, Operation, and Maintenance of the Wilmington Wastewater Treatment Plant, Renewable Energy and Biosolids Facility, Main Pump Stations, Storage and Control Structures and Systems associated with the control of Combined Sewer Overflows (including Global Optimal Real Time Control System), and Associated Infrastructure (the "Professional Services Agreement") is for a term of twenty (20) years from July 1, 2020 through June 30, 2040, with the possibility, through mutual agreement and reflected in a contract amendment, that the City and Operations Management International, Inc. may elect to extend the Professional Services Agreement for two (2) two-year renewal terms thereafter; and

**WHEREAS**, the estimated cost of the first year of the Professional Services Agreement is Nineteen Million, Nine Hundred Sixty-Two Thousand, Forty-Eight Dollars (\$19,962,048.00); and

**WHEREAS**, the cost of the Professional Services Agreement will increase annually based upon a designated blend of indices by a rate no less than one and one-quarter percent (1.25%) and no greater than three and three-quarters percent (3.75%), provided however, if in any two (2) consecutive Contract Years the actual adjustment calculated by the adjustment formulas set forth in the Professional Services Agreement is equal to or greater than six

percent (6%), then the City and Operations Management International, Inc. shall negotiate an appropriate adjustment to address such inflationary conditions; and

**WHEREAS**, the effective management, administration, operation, and maintenance of the Managed Assets and the wastewater system of which the Managed Assets are a part is of the utmost importance to matters of public health and thus to the welfare of the public, as well as a significant factor generally in assuring the collective well-being of citizens of the City by virtue of the prominence of this enterprise and these assets among the various public activities and elements of public infrastructure necessary to sustain the economic vitality of the City; and

**WHEREAS**, the Professional Services Agreement has been developed in accordance with the requirements of Section 8-200 of the City Charter and is otherwise in accordance with law; and

**WHEREAS**, it is the recommendation of the Department of Public Works that the City enter into the Professional Services Agreement.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON  
HEREBY ORDAINS:**

**SECTION 1.** The Professional Services Agreement between the City of Wilmington, Delaware and Operations Management International, Inc. for the Management, Administration, Operation, and Maintenance of the Wilmington Wastewater Treatment Plant, Renewable Energy and Biosolids Facility, Main Pump Stations, Storage and Control Structures and Systems associated with the control of Combined Sewer Overflows (including Global Optimal Real Time Control System), and Associated Infrastructure, a copy of which agreement, in substantial form, is attached hereto as Exhibit "A," for the period of twenty

(20) years from July 1, 2020 through June 30, 2040, at an estimated price in the first year of Nineteen Million, Nine Hundred Sixty-Two Thousand, Forty-Eight Dollars (\$19,962,048.00), with an annual increase of between one and one-quarter percent (1.25%) and three and three-quarters percent (3.75%) with potential adjustments for inflationary conditions, with the possibility of two (2) two-year extensions thereafter, is hereby approved.

**SECTION 2.** The Mayor, or his designee, is hereby authorized to execute as many copies of the Professional Services Agreement, as well as take all additional undertakings related thereto, as may be necessary.

**SECTION 3.** This Ordinance shall become effective upon its passage by City Council and approval by the Mayor.

First Reading..... February 20, 2020  
Second Reading..... February 20, 2020  
Third Reading.....

Passed by City Council,

\_\_\_\_\_  
President of City Council

ATTEST: \_\_\_\_\_  
City Clerk

Approved this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Mayor

**SYNOPSIS:** This Ordinance authorizes the City to enter into a professional services agreement with Operations Management International, Inc. for the management, administration, operation, and maintenance of the Wilmington Wastewater Treatment Plant, Renewable Energy and Biosolids Facility, Main Pump Stations, Storage and Control Structures and Systems associated with the control of Combined Sewer Overflows (including

Global Optimal Real Time Control System), and Associated Infrastructure for a period of twenty (20) years, with the possibility of two (2) two-year extensions, through mutual agreement reflected in an amendment of the Professional Services Agreement.

**FISCAL IMPACT STATEMENT:** The fiscal impact of this Ordinance is a professional services agreement for twenty (20) years with two (2) two-year extension options with an estimated year one cost of Nineteen Million, Nine Hundred Sixty-Two Thousand, Forty-Eight Dollars (\$19,962,048.00). The cost of the agreement will increase annually at a minimum rate of one and one-quarter percent (1.25%) and a maximum rate of three and three-quarters percent (3.75%) as determined by the indices incorporated in the agreement, subject to an adjustment for inflationary conditions, if actual annual adjustment for any two (2) consecutive years is equal to, or greater than, six percent (6%).

W0109561



# **EXHIBIT A**

PROFESSIONAL SERVICES AGREEMENT

**DATED AS OF JULY 1, 2020**

**BETWEEN**

**CITY OF WILMINGTON, DELAWARE**

**AND**

**OPERATIONS MANAGEMENT INTERNATIONAL, INC.**

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## **PROFESSIONAL SERVICES AGREEMENT**

This SERVICE AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between the CITY OF WILMINGTON, a municipal corporation of the State of Delaware ("City") and Operations Management International, Inc., a California corporation ("Company").

**WHEREAS**, the City owns a wastewater treatment facility, as more fully described herein ("Facility; and

**WHEREAS**, pending the fulfillment of the conditions precedent set forth herein, the City desires the Company, and the Company desires to, provide professional services for the management, administration, operation and maintenance of the Managed Assets on the terms and conditions set forth herein; and

**WHEREAS**, the City shall retain ownership and oversight of the Managed Assets, as more fully described herein; and

**WHEREAS**, the City shall have termination rights as provided herein.

**NOW THEREFORE**, in consideration of the aforesaid premises and the mutual agreements, covenants and assurances herein, and the terms and conditions herein stated, the City and the Company, intending to be legally bound, hereby agree as follows:

## ARTICLE I – DEFINITIONS

Except as expressly provided herein, Capitalized terms shall have the meanings set forth below, and if not defined here, their ordinary meaning.

- 1.1 “Abnormal Substance” means a substance, material or object present in the Influent which cannot be removed or treated by the Managed Assets, including but not limited to those substances, materials or objects which are not susceptible of treatment at the Managed Assets or materially interfere with or obstruct the operations of the Managed Assets. As an example and not in limitation of what constitutes an Abnormal Substance, any substance, including (without limitation) metals, discharged by an SIU in violation of the MIPP or any Permit issued thereunder to an SIU is an Abnormal Substance; provided, however, that any such substance is not an Abnormal Substance if it is discharged in compliance with a duly authorized variance from the MIPP so long as such variance is consistent with Applicable Law and does not cause the Facility to fail to comply with Applicable Law.
- 1.2 “Affiliate” means, with respect to any Person, any other Person that controls, or is controlled by or under common control with such Person.
- 1.3 “Applicable Law” means any statute, law, charter, regulation, ordinance, rule, judgment, order, decree, permit, license, requirement, approval or restriction of the appropriate Governmental Authority, or any interpretation or administration of any of the foregoing by the appropriate Governmental Authority charged with the responsibility for the foregoing, applicable from time to time to the ownership, possession, operation, improvement, expansion, equipping, design or financing of the Managed Assets or the Collection System or the performance of obligations under this Service Agreement, whether now or hereinafter in effect; provided, however, that any such statute, law, charter, regulation, ordinance, rule, judgment, order, decree, permit, license, requirement, approval, restriction, interpretation, or administration is lawful and binding. Applicable Law includes, without limitation, Environmental Laws.
- 1.4 “Average Biochemical Oxygen Demand” means that number which represents the average daily number of pounds of Biochemical Oxygen Demand in Influent received at the Facility during any consecutive twelve (12) month period.
- 1.5 “Average Suspended Solids” means that number which represents the average daily number of pounds of Suspended Solids in Influent received at the Facility during any consecutive twelve (12) month period.
- 1.6 Reserved.
- 1.7 “Base Flow and Loads” means

Base BOD5 Load (lbs/day) 124,800

Base TSS Load (lbs/day) 121,400

Base Flow (mgd) 68

- 1.8 “Biosolids” means sludge and other process related materials which are produced at the Facility during, or result from, the processing of Influent received at the Facility, including (without limitation) material that settles out of Influent in the Facility.
- 1.9 “Biochemical Oxygen Demand” or “BOD” means the amount of oxygen required by bacteria while stabilizing decomposable organic matter in five (5) days under aerobic conditions, the analysis of which shall conform to the provisions of 40 CFR 136, “Test Procedures for the Analysis of Pollutants,” unless other test procedures have been specified in the NPDES permit.
- 1.10 “Business Day” means a day other than a Saturday or Sunday or day on which the City or the Company is required or permitted by Applicable Law to be closed for business (without consideration of whether the Facility is open or closed).
- 1.11 “Capital Items” means any addition, alteration, improvement, or other change to the Managed Assets including the installation of new structures, equipment, systems or technology.
- 1.12 “CFR” means the Code of Federal Regulations, as amended from time to time.
- 1.13 “Change in Law” means any of the following which shall occur after July 1, 2020: (a) the lawful enactment, adoption, promulgation, modification, repeal, or change in interpretation by the appropriate Governmental Authority charged with responsibility therefore of any Applicable Law (excluding Federal or State income tax law), provided that the Change in Law shall also include: (b) the order or judgment of any Governmental Body issued on or after the Contract Date (unless such order or judgment is issued to enforce compliance with Applicable Law which was effective as of the Contract Date) to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of the Company or of the City, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission or lack of reasonable diligence; or (c) the denial of an application for, a delay in the review, issuance or renewal of, or the suspension, termination, or interruption of any Governmental Approval, or the imposition of a term, condition or requirement which is more stringent or burdensome than the standards in effect as of the Effective Date in connection with the issuance, renewal or failure of issuance or renewal of any Governmental Approval, to the extent that such occurrence is not the result of willful or

negligent action, error or omission or a lack of reasonable diligence of the Company or of the City, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such occurrence shall not be construed as such a willful or negligent action or lack of reasonable diligence.

- 1.14 “Chemical Oxygen Demand” means oxygen equivalent of the organic matter that can be oxidized as measured by using a strong chemical oxidizing agent in an acidic medium, the analysis of which shall conform to the provisions of 40 CFR 136, "Test Procedures for the Analysis of Pollutants", unless other test procedures have been specified in the NPDES Permit.
- 1.15 “City” means City of Wilmington, a municipal corporation of the State of Delaware.
- 1.16 “City Code” means the Wilmington City Code, as amended from time to time.
- 1.17 “City Charter” means the Wilmington City Charter.
- 1.18 “City Fault” means any action, failure to act or circumstance described in any of clauses (a) or (b) of Section 10.3.
- 1.19 “City Uncontrollable Circumstances” means any act, event or condition beyond the reasonable control of the City and not the result of willful action or lack of reasonable diligence of the City. City Uncontrollable Circumstances shall include, but not be limited to, any of the following:
  - (a) An Act of God (except reasonably anticipated weather conditions normal for the geographic area of the Site), landslide, lightning, earthquake, hurricanes, flood, acts of a public enemy, war, blockade, insurrection, riot, civil disturbance or similar occurrence; or
  - (b) Any Company Fault.
- 1.20 “Clean Water Act” means Title 33 of the United States Code, Sections 1251-1387, as amended from time to time.
- 1.21 “Collection System” means the sewage collection system located in the Service Area within the boundaries of the City and connected to (but are not part of) the Managed Assets, including, without limitation, all interceptors, pumping stations and treatment facilities.
- 1.22 “Commencement Date” means the dates the conditions precedent set forth in Article VI are fulfilled or waived by the Company, or by the City.



- 1.23 “Company” means Operations Management International, Inc., and its successors and permitted assigns.
- 1.24 “Company’s Discounted Rate” means the discounted rates set forth in Exhibit 14 at a 2.6 labor multiplier for Company labor not permanently staffed at the Managed Assets plus reasonable costs and expenses. Construction, subcontractor, and materials costs for projects approved by the City will be compensated based on actual costs plus 10% or as otherwise negotiated, for overhead costs of the Company and its Affiliates.
- 1.25 “Company Fault” means any action, failure to act or circumstance described in any of clauses (a) through (e) of Section 10.2.
- 1.26 “Company Uncontrollable Circumstances” means any act, event or condition beyond the reasonable control of the Company and not the result of willful action or lack of reasonable diligence of the Company. Company Uncontrollable Circumstances shall include, but not be limited to, any of the following:
- (a) An Act of God (except reasonably anticipated weather conditions normal for the geographic area of the Site), landslide, lightning, earthquake, hurricanes, flood, acts of a public enemy, war, blockade, insurrection, riot, civil disturbance or similar occurrence; or
  - (b) A Change in Law; or
  - (c) Labor disputes other than disputes involving employees of the Company; or
  - (d) The loss or inability to obtain any utility services, including water, sewerage, fossil fuels and electric power necessary for operation of the Facility; or
  - (e) Receipt, treatment or disposal of Non-Specification Influent or any discharge in violation of the MIPP, or treatment or disposal of Effluent or Biosolids produced in whole or in part from the Non-Specification Influent; or
  - (f) Any City Fault; or
  - (g) A Pre-Existing Environmental Condition that materially impacts the Company’s ability to perform its obligations under this Service Agreement; or
  - (h) For the first eighteen (18) months of the Term only, latent defects in the thermal dryer or co-generation units, whether such defect has been disclosed to Company or not; or
  - (i) The Agreement between Cherry Island Renewable Energy, LLC and the Delaware Solid Waste Authority expires or terminates for whatever reason.

- 1.27 “Contract Administration Memorandum” or “CAM” means the principal formal tool duly executed by both parties for the administration of matters arising under this Service Agreement between the parties after communications have been concluded, to evidence the resolution reached by the City and the Company as to matters of interpretation and administration, including the performance of Capital Items contemplated by the Service Agreement.
- 1.28 “Contract Year” means the 12-month period commencing on July 1 of any calendar year and ending on June 30 of the succeeding calendar year during the Term.
- 1.29 “Corrective Maintenance” means any maintenance activity which is required to correct a failure that has occurred or is in the process of occurring. This activity includes maintenance (1) that is necessary to restore, repair or return a Managed Asset to the proper and safe operation or intended function after a failure or defect, or both, occurs; (2) identified from the performance of planned maintenance; or (3) required to address an emergency.
- 1.30 “Daily Flow” means the total amount of Influent received at the Facility in any calendar month divided by the number of days in the month that the Facility was operating, or in the event that such method of determining Influent received daily at the Facility is inconsistent with Applicable Law, such other method of determining Influent received daily at the Facility that is consistent with Applicable Law.
- 1.31 “Damages” shall have the meaning given this term in Section 12.1.
- 1.32 “Designated Representative” means one or more individuals (including a consultant to the City), but in no event more than five, authorized by the Mayor or the Commissioner of Public Works of the City from time to time in a written instrument delivered to the Company to act on behalf of the City under this Service Agreement.
- 1.33 “Dispute” shall have the meaning given this term in Section 14.1.
- 1.34 “DNREC” means the Delaware Department of Natural Resources and Environmental Control and its successors.
- 1.35 “Effective Date” means the date first above written on which this Service Agreement was made and entered into.
- 1.36 “Effluent” means Influent that is discharged from the Managed Assets, but not including Biosolids.
- 1.37 “Enforcement Response Plan” shall mean the City’s enforcement response plan, as more fully described in Section 9.1.

- 1.38 “Environmental Claim” means any civil, criminal or administrative action, suit, communication (written), demand, claim, hearing, citation, notice, warning, consent decree, contract right, notice of violation, investigation, judgment or order by any person or entity lawfully authorized to issue, bring, give or make the same alleging, claiming, concerning or finding liability or potential liability arising out of, based on or resulting from, in whole or in part the actual or alleged presence, threatened release, release, emission, disposal, storage, treatment, transportation, generation, manufacture or use of any Hazardous Substance or waste at or from any location.
- 1.39 “Environmental Laws” means any and all Federal, State and local statutory or common laws, regulation, rules, ordinance, permits, authorizations, approvals, registrations and licenses, administrative orders, judicial decrees, judgments or requirements, relating to pollution or protection of the environment, natural resources or human health.
- 1.40 “EPA-Region III” means United States Environmental Protection Agency – Region III.
- 1.41 “Extraordinary Items Component” shall have the meaning given this term in Section 5.4.8
- 1.42 “Facility” means the wastewater treatment plant and REBF located in Wilmington, Delaware, on the Site and more fully described in Exhibit 1.
- 1.43 “Facility Flow” means that number which represents the average daily number of gallons of Influent received at the Facility in any consecutive twelve (12) month period, measured in accordance with Section 3.5 and rounded to the nearest one hundred thousand gallons.
- 1.44 “Federal Bankruptcy Code” means Title of the United States Code, as amended from time to time.
- 1.45 “Fiscal Year” means 12-month period commencing on July 1 of any calendar year and ending on June 30 of the succeeding calendar year.
- 1.46 “Governmental Approvals” means all approval, authorizations, certifications, consents, exemptions, filings, leases, licenses, permits, registrations, and rulings required by or with any Governmental Authority in order to operate, maintain and improve the Managed Assets or otherwise meet the requirements of this Service Agreement.
- 1.47 “Governmental Authority” means any Federal, State, or local government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity.
- 1.48 “Guaranty Agreement” means the Guaranty Agreement of Jacobs Engineering Group, Inc. in substantially the form attached hereto as Exhibit 7.

- 1.49 “Hazardous Substance” means any chemical, pollutant, contaminant, toxic substance, hazardous or extremely hazardous material or substance, waste, radioactive material, or oil and petroleum product, as such terms or any similar terms are used under any applicable Environmental Laws.
- 1.50 “Influent” means domestic, commercial, institutional, industrial, and other wastewater, and inflow and infiltration of stormwater into the pipes, interceptors and other facilities which collect and transport such wastewater.
- 1.51 “Initial Company Investments” means Items that are required under this Service Agreement to be put in place upon the inception of this Service Agreement, and as more fully described in Exhibit 3.
- 1.52 “Long Term Control Plan” means the City’s Combined Sewer Overflow Final Long-Term Control Plan, dated September 2010, revised August 2013 and revised July 2015.
- 1.53 “Main Pump Stations” means the pump stations identified in Exhibit 1.
- 1.54 “Major Maintenance Account” means an account funded by the City to be used for Corrective Maintenance and Repair and Replacements, as more specifically set forth in Section 3.8.1.
- 1.55 “Managed Assets” means the Facility, the Main Pump Stations, storage and control structures and systems associated with the control of Combined Sewer Overflows (including the Global Optimal Real Time Control System) and REBF.
- 1.56 “mgd” means million gallons per calendar day.
- 1.57 “MIPP” means a Municipal/Industrial Pretreatment Program, as more fully described in 40 CFR Part 403 and in City Code Chapter 11, Article V.
- 1.58 “Multijurisdictional Agreement” means that certain Agreement between the City and New Castle County concerning the Wilmington Industrial Pretreatment Program, which shall be substantially in the form of the draft attached hereto as Exhibit 13 or in such other form as shall be approved by the Company (such approval not to be unreasonably conditioned or withheld).
- 1.59 “NPDES Permit” means the National Pollutant Discharge Elimination System wastewater discharge permit being NPDES Permit No. DE0051071 and Delaware Permit No. WPCC 3063A/96 issued on May 7, 2013 and any future renewals, as issued and reissued by the DNREC for the Facility.
- 1.60 “Non-Specification Influent” means any Influent received at the Facility other than Specification Influent.

- 1.61 “Operating Items” means any expenditure that is reasonably necessary for operation, maintenance or administration of the Managed Assets that is not a Capital Item.
- 1.62 “Permits” means any and all permits and licenses necessary for the Company to fulfill its obligations under this Service Agreement, including without limitation, the Required Permits.
- 1.63 “Person” means a corporation, partnership, business trust, trust, joint venture, company, firm or individual or any Federal, State or local government.
- 1.64 “Planned Maintenance” means work under which Predictive and Preventative Maintenance is carried out on a pre-determined schedule. Planned Maintenance includes any maintenance activity for which a pre-determined job procedure has been documented, for which labor, materials, tools, and equipment required to carry out the task have been estimated, and their availability assured before the commencement of the task.
- 1.65 “Pre-Existing Environmental Condition” means the presence on the Site of any Hazardous Substances on or prior to the Commencement Date, including without limitation, any underground storage tanks that exist on the Site on or prior to the Commencement Date and are regulated under Environmental Laws.
- 1.66 “Predictive Maintenance” means the process of monitoring equipment condition, failure symptoms and/or performance, comparing against base conditions, and performing Preventative or Corrective Maintenance when the failure symptoms deteriorate past acceptable levels.
- 1.67 “Preventative Maintenance” means routine and/or repetitive activities required or recommended by the equipment supplier, manufacturer or Company to maximize the service life of the Managed Assets.
- 1.68 “Prime Rate” means the prime rate as published in The Wall Street Journal or a mutually agreeable alternative source of the prime rate if it is no longer published in The Wall Street Journal or the method of computation thereof is substantially modified.
- 1.69 “Publicly Owned Treatment Works” means treatment works as defined in Section 212 of the Clean Water Act, which is owned by a state or municipality (as defined by Section 502(4) of the Clean Water Act).
- 1.70 “Real Time Control System” means the storage and flow control structures and associated electronic and electrical control systems added to the collection system for the purpose of managing Combined Sewer Overflows.

- 1.71 “Renewable Energy and Biosolids Facility” or “REBF” means the renewable energy and biosolids facility that is part of the wastewater plant, and as more fully described on Exhibit 1.
- 1.72 “Required Permits” means the Permits listed in Exhibit 2.
- 1.73 “Repair and Replacement” means repair or replacement or Corrective Maintenance to the Managed Assets not caused by the negligence or willful misconduct of Company, including, but not limited to general non-routine/non-repetitive activities required for operational continuity, safety, and performance generally resulting from failure or necessary to avert a failure of the Managed Assets or some component thereof.
- 1.74 “Scheduled Termination Costs” means the costs payable by the City to the Company upon early termination of this Service Agreement, as specified in Section 11.4.
- 1.75 “Septic Waste” means the liquid and solid material pumped from a septic tank or cesspool during cleaning and which is normally characterized by large quantities of grit and grease, a highly offensive odor, great capacity to foam upon agitation, poor settling and dewatering characteristics, and high solids and organic content.
- 1.76 “Service Agreement” means this Professional Services Agreement dated the Effective Date, by and between the City and the Company, as such agreement may be amended, restated or supplemented from time to time.
- 1.77 “Sewer Use Ordinance” means Chapter 11 of the City Code and any other municipal legislative enactment which (i) is enforceable in Federal, State, or local courts, (ii) authorizes or enables the City to apply and enforce the requirements of the Clean Water Act, and any requirements created by or pursuant to this Service Agreement, and (iii) establishes User Charges.
- 1.78 “Significant Industrial User” or “SIU” shall have the meaning given this term in City Code Section 11-200.4 and in 40 CFR 403.3(v), as amended from time to time.
- 1.79 “Site” means the site of the Managed Assets described in Exhibit 1.
- 1.80 “Specification Influent” means Influent possessing the following characteristics and not exceeding the following limits:
- (a) Characteristics:
    - (i) containing no Hazardous Substance in concentrations which exceed those allowed under Applicable Law; and
    - (ii) containing no Abnormal Substance.

(b) Limits:

- (i) Daily Flow – 105 mgd
- (ii) Biochemical Oxygen Demand – 177,000 lbs/day
- (iii) Suspended Solids – 188,000 lbs/day

The limits on Daily Flow, Biochemical Oxygen Demand and Suspended Solids are subject to the issuance and maintenance of an NPDES Permit which authorizes such limits. In the event that the NPDES Permit specifies limits for Daily Flow, BOD or Suspended Solids which correlate to lower limits than those stated above to be applicable, then such lower limits shall constitute the limits for Specification Influent.

It is acknowledged by the City and the Company that the calculation of the Daily Flow is on an average monthly basis and that the occurrence of precipitation or snow melt in the Wilmington, Delaware area may result in the receipt at the Facility during any twenty-four (24) hour period following such precipitation or snow melt of an amount of Influent significantly in excess of such average daily amount. Accordingly, provided that the Daily Flow limits set forth in the table above are not exceeded, Specification Influent shall include receipt at the Facility of up to 340 mgd of Influent during any twenty-four (24) hour period following the occurrence of precipitation or snow melt in Wilmington, Delaware, as reported by the Delaware Geological Survey for the City of Wilmington and vicinity or City successor reporting source, or in the event any such reporting source is discontinued, as reasonably determined by the City and the Company.

- 1.81 “State” means the State of Delaware.
- 1.82 “Subcontract” means any contract or purchase order made by Company, or by any Subcontractor to the Company, for services, equipment, labor, materials, supplies, or other items to perform the obligations of the Company under this Service Agreement.
- 1.83 “Subcontractor” means any Person, other than the employees of the Company or the City (as the case may be), who contracts with the Company or the City (as the case may be) to furnish services, equipment, materials, labor, supplies, or other items in connection with this Service Agreement.
- 1.84 “Suspended Solids” means solids that are in suspension in, wastewater, the analysis of which shall conform to 40 CFR 136, "Test Procedures for the Analysis of Pollutants."
- 1.85 “Term” shall mean, the period of time beginning on the Commencement Date and ending twenty (20) years after the Commencement Date.
- 1.86 “USC” means the United States Code, as amended from time to time.

- 1.87 “US EPA” means the United States Environmental Protection Agency.
- 1.88 “User Charge” means the rates and charges assessed, established or levied by the City' Council of Wilmington in accordance with the City Code, as amended from time to time, for wastewater for any purpose and at any point in or outside the City of Wilmington, either by meter, fixed charge or otherwise.
- 1.89 “User Charge System” means a system not inconsistent with 40 C.F.R. Part 35, designed to produce sufficient revenues required for operation and maintenance (including replacement) of the Managed Assets.
- 1.90 “Value Added Projects” means any Capital Item identified and agreed to in accordance with Section 3.9, the construction and operation of which results in substantial increased revenues to the Company or substantial decreased operating expenses for the Managed Assets; provided, however, that a Capital Item shall not be a Value Added Project if it is (i) an Initial Company Investment, or (ii) of the same general type, serving the same general purpose or performing the same general function as an Initial Company Investment, or (iii) essential for or directly related to the operation of the Managed Assets.



## ARTICLE II- TERM AND PAYMENT OF CITY TRANSACTION COSTS

### 2.1 Payment of City Transaction Costs

The City and Company acknowledge that Company's Service Fee is reflective of its reimbursement to the City of Five Hundred Thousand Dollars (\$500,000) as reimbursement for the City's costs related to the procurement of the services of the Company and the negotiation, execution and delivery of this Service Agreement. Such payment shall be paid in equal 1/5th increments over the first five (5) years of the Term by a \$100,000 check payment due at the end of each Fiscal Year.

### 2.2 Term

The Term of this Service Agreement shall commence on the Commencement Date, which is anticipated to be July 1, 2020, and shall continue for a period ending twenty (20) years after the Commencement Date unless sooner terminated under any of the early termination provisions of this Service Agreement in Article XI of this Service Agreement, provided however, that the rights and obligations of the City and Company under Article VI of this Service Agreement shall commence on the Effective Date. The parties may elect to extend the term of this Service Agreement for two (2) two-year renewal terms, through mutual agreement and reflected in a contract amendment.

## ARTICLE III- SCOPE OF SERVICES

### 3.1 Availability of Managed Assets

The City grants the Company the right to manage, operate, maintain and improve the Managed Assets in accordance with this Service Agreement and Applicable Law.

The Company and its employees, officers, agents, licensees, and invitees shall have unrestricted access to and from, and use of, the Site. The Designated Representative may visit and inspect the Managed Assets and the Site at any time without notice. In addition to the foregoing rights of access, representatives and agents of the City may visit or inspect the Managed Assets and the Site at any reasonable time during normal business hours after giving the Company twenty-four (24) hours' notice; provided, however, that the Company may exclude employees, agents or consultants of any Person (other than a consulting engineer retained by the City in connection with this Service Agreement) engaged in the business of constructing, or of being the owner or operator of, wastewater treatment facilities at all times except the following: (a) during an Event of Default hereunder, and (b) during the one- year period prior to either of the end of the Term, or any other date on which the City and the Company agree to terminate this Service Agreement. Any such visits shall be conducted in a manner that does not cause unreasonable interference with the Company's operations. The Company may require any Person on the Site to comply with its reasonable rules and regulations.

The City shall deliver to the Facility, and the Company shall receive at the Facility, Specification Influent originating in the Service Area and collected and delivered by the Collection System.

### 3.2 Permits

3.2.1 The City represents and warrants that (i) the Required Permits are the only Permits required as of the Effective Date by any Governmental Authority for the City to own, operate and maintain the Managed Assets, (ii) the Required Permits are in full force and effect except as set forth on Exhibit 2 and (iii) neither the City nor any co-permittee of the City's is in violation of any requirement of any of the Required Permits, except as disclosed in writing by the City to the Company prior to the Effective Date.

The City shall apply for and obtain any permits that are not in Exhibit 2. At the request of the City, the Company shall cooperate with the City in obtaining such permits, and the City shall reimburse the Company for the Company's documented related costs and expenses.

- 3.2.2 The City and the Company shall be co-permittees on the NPDES Permit (subject to satisfaction on or prior to the Effective Date, of the condition precedent set forth in Section 6.1.7). The City and the Company shall, to the extent required by Applicable Law, be co-permittees on all Permits in addition to the NPDES Permit relating to the Managed Assets. The City and the Company shall (i) each use its reasonable efforts to make the Company the co-permittee on the NPDES Permit and all other Permits as to which the Company is required by Applicable Law to be the co-permittee, (ii) cooperate with one another in applying for, obtaining and maintaining in effect all other Permits and (iii) not take any action or fail to take any action the taking or failure to take of which would cause the violation of any requirement of any Permit. Except as set forth in this Section 3.2.2, the Company shall at its expense apply for, obtain and maintain in effect all Permits.
- 3.2.3 The Collection System consists of combined and separate sewers. The City is required to manage and mitigate Combined Sewer Overflows in accordance with an approved Long-Term Control Plan ("LTCP"). The LTCP has an established goal of capturing and treating 85% of storm-related sewage flows in the Collection System.
- 3.2.4 The City shall at its expense, obtain and maintain in effect all permits, licenses and approvals required for the City to own, operate and maintain the Collection System and to perform its obligations under this Service Agreement.

### 3.3 Management, Operation and Maintenance

- 3.3.1 Except as otherwise provided herein, the Company shall (i) manage, operate, and maintain the Managed Assets in good working order and repair consistent with generally accepted industry principles and practices, (ii) process at the Facility Specification Influent in accordance with this Service Agreement and in compliance with the requirements of all Permits and Applicable Law, (iii) process at the Facility Non-Specification Influent as provided in Section 3.3.2 and as permitted by Applicable Law and (iv) mitigate CSOs consistent with the LTCP.
- 3.3.2 If the Facility receives Non-Specification Influent, the Company shall: (a) use all reasonable efforts consistent with industry standards to maintain Facility performance as if such Non-Specification Influent had not been received, (b) advise the City of such situation and the Company's planned course of action within thirty-six (36) hours of the Company's first knowing of the receipt of Non-Specification Influent; and (c) use reasonable efforts consistent with industry practice to return the Effluent to compliance with the requirements of the Permits as soon as reasonably possible, but, in any event, within thirty (30) days after the

Facility has ceased receiving Non-Specification Influent and assuming that during such thirty (30) day period the Facility has received only Specification Influent. Receipt of Non-Specification Influent shall constitute a Company Uncontrollable Circumstance and the City shall be responsible for the effect of such Non-Specification Influent on the Managed Assets and their operation and on Effluent and Biosolids and their treatment and disposal and the resulting costs and damages therefrom, to the extent that the receipt of such Non-Specification Influent could not have been prevented by reasonable effort consistent with industry standards on the part of the Company.

3.3.3 The scope of management, operation and maintenance services of the Company under this Service Agreement shall require the Company to undertake the following, subject to the terms and conditions set forth in this Service Agreement:

(a) Provide all personnel and associated wages, salaries, and benefits; chemicals; fuels; vehicles and vehicle expense items; materials, supplies, and other consumables; and other services necessary to manage, operate and maintain the Managed Assets: (i) in accordance with Applicable Laws, and (ii) in good working order and repair consistent with manufacturers' recommendations, applicable operation and maintenance manuals, and accepted industry standards.

(b) Employ predictive and preventive maintenance programs, to enforce existing equipment warranties, and maintain all warranties on equipment placed in service after the Commencement Date. Such programs shall include but not be limited to:

(i) Computer-based process control and management systems;

(ii) Professionally developed quality assurance systems;

(iii) Site, Facility and equipment security (based on current condition, inclusive of upgrades to IT security in proposed initial Capital Improvements); and

(iv) Building and grounds upkeep and maintenance including, but not limited to, repainting, minor/spot pavement repair and replacement, minor/spot roof repair. Major repairs and replacements are addressed as described in Section 3.8.

(c) Staff the Managed Assets with qualified personnel who meet the certification requirements of the State and provide continued upgrading, education, and training of such personnel in modern wastewater control, safety and equipment maintenance.

(d) Install a fully-functional computerized maintenance management system capable of providing a record of repair for each piece of equipment or line section; scheduling and controlling preventive maintenance; monitoring of predictive and corrective maintenance programs and associated costs; issuing work orders and purchase requests; maintaining spare parts inventory; and issuing exception, equipment status, and repair priority reports.

(e) Compile, maintain and provide to the City comprehensive records and reports for the Facility and systems operations, regulatory matters, laboratory analyses, maintenance plans and activities, related financial matters, permit and compliance results, equipment status, and other relevant information in accordance with Applicable Law. The Company shall also prepare and deliver to the City the following reports:

(i) Reports and notices as required by the NPDES Permit, and the filing of such reports with the appropriate Governmental Authority as required by Applicable Law and providing copies thereof to the City.

(ii) Computer-based records of all maintenance and repairs for the Facility, which the City shall have the right to inspect and copy during normal business hours.

(iii) Copies of routine operating reports showing flows and performance of the Main Pump Stations, and major unit treatment processes of the Facility. These reports shall be furnished on at least a quarterly basis.

(iv) Monthly reports indicating the metered flows received at the Facility.

(v) Periodic reports to the City and presentations regarding the progress of work as reasonably requested by City. The Company agrees to make timely responses to all reasonable requests for information from the City.

(vi) Annual management reports, including annual reports on the physical condition of the Facility and Managed Assets.

(vii) Yearly report that provides the Annual Operation and Maintenance Costs to the City for treatment and disposal at the WWTP based on flow (\$/MGD); Total Suspended Solids (TSS) (\$/lb); and Biochemical Oxygen Demand (BOD) (\$/lb). The Company will provide the City with a draft copy of the report with the opportunity to comment before finalizing said report. Company will assist City in any additional supporting information required for the unit cost values.

(f) At least quarterly, or as necessary, meet with the Designated Representative to review operations of the Managed Assets and the construction of key capital improvements to the Managed Assets which may affect service provided by the Managed Assets. Conduct annual comprehensive plant and system inspections with the Designated Representative to evaluate and document compliance with this Service Agreement by the Company.

(g) Prepare and revise as necessary a comprehensive emergency preparedness plan for interaction and coordination with City departments and offices including, but not limited to, Fire, Police, Public Works, and Emergency Management; agencies of the County; and other entities with which the City may have dealings.

(h) Maintain professional, responsible, and responsive working relationships with City customers; City departments and offices; representatives of the City; regulatory agencies; agencies of the County; and other entities with which the City may have dealings.

(i) Implement and maintain an employee safety program in compliance with all Applicable Law.

(j) Provide the City with a written transition and start up plan and schedule at least forty-five (45) days prior to the Commencement Date, or as soon thereafter as is reasonably practicable. The transition plan shall include scheduling of mobilization activities and technical program implementation. The Company agrees to review the plan with the City prior to implementation.

### 3.4 Septic and Other Imported Wastes

The Company shall not accept any Septic Waste or other imported wastes conveyed by truck or other vehicle to the Facility without specific, express written authorization from the City.

### 3.5 Metering and Weighing

The Company shall, at its expense, maintain in good working order and repair, and replace when necessary, devices for the Facility capable of (a) measuring the daily amount of Influent received at the Facility and Effluent and (b) weighing the daily amount of Biosolids leaving the Facility for disposal.

The measuring and weighing devices shall be calibrated in accordance with standard industry practices.

If at any time the measuring or weighing devices are incapacitated, the Company shall estimate as accurately as practicable the data required by the Company to perform its

obligations under this Service Agreement. The data provided by such devices or estimated by the Company shall be used for all purposes for which such data are required under this Service Agreement; provided, however, that the Company shall, at the request of the City, provide the City with such data and shall permit the City, at the City's expense, to take measurements regarding the amount of Influent received at the Facility, Effluent and Biosolids in order to confirm the data of the Company and, provided further, that the Company acknowledges that the data provided by the Company are subject to dispute resolution pursuant to Article XIV and Exhibit 6.

### 3.6 Laboratory Testing

The Company shall perform all laboratory sampling, testing, analyses, quality control and quality assurance required by any applicable Permits and as the Company determines is necessary in order to perform its obligations under this Service Agreement. The data provided by such laboratory testing shall be used for all purposes for which such data are required under this Service Agreement; provided however, that the Company shall, at the request of the City, provide the City with such data and shall permit the City, at the City's expense, to perform laboratory testing in order to confirm the data of the Company; and, provided further that the Company acknowledges that the data provided by the Company is subject to dispute resolution pursuant to Article XIV and Exhibit 6.

The Company shall from time to time (but no less often than required by Applicable Law) take representative samples of Influent received at the Facility, Effluent and Biosolids for laboratory testing in order to determine whether Non-Specification Influent has been received at the Facility and the chemical components of such Influent.

### 3.7 Biosolids Dewatering and Disposal

The Company shall dewater and dispose of Biosolids. The City and the Company shall reasonably cooperate to determine ways to reduce or maintain the cost of Biosolids management and disposal.

### 3.8 Repair and Replacement, Capital Items

#### 3.8.1 Maintenance, Repair and Replacement

(a) The Company shall institute, and maintain in force for the duration of the Service Agreement, a sound asset management program designed to ensure that the City's facilities, processes and associated equipment (the "System") are maintained and replaced as needed to assure that (i) a safe work environment is maintained, (ii) structural defects in buildings and structures are repaired in a

timely manner, and (iii) the System is determined, through third party inspection, to be fully functional with critical electrical and mechanical components having an aggregate average remaining condition-based useful lives in excess of 5 (five) years at the end of the Service Agreement Term. Expenditures necessary to achieve this standard shall be handled as set forth in subsection (c) and (d), below.

(b) Preventative and Predictive Maintenance Costs: The Company shall bear all costs of performing Preventative and Predictive Maintenance of the Managed Assets.

(c) Repair and Replacement Costs: Corrective Maintenance, Repair and Replacements of the Managed Assets less than or equal to \$250,000 per event shall be the responsibility of the Company. Such per event threshold shall be escalated annually in accordance with the methodology set forth in Sections 5.4.2 (b) and Section 5.5. However, the per event threshold shall be adjusted in increments of \$25,000 once the cumulative effect of such annual escalations is equal or greater than the respective increment (e.g., \$275,000, \$300,000). The costs of such expenditure shall be based on the cost of materials and outside labor (if specialty skills are required which are beyond the ability of on-site Company labor), and excludes Company labor costs for staff regularly located at the project and costs for Company equipment cost for equipment regularly available at the Project, but includes overtime expenses or specialty equipment needed for any Corrective Maintenance or Repair and Replacement of the Managed Assets. Directly related pieces of a Managed Asset (i.e. pump and associated motor) required to make a Managed Asset or system operable shall be aggregated to constitute a single event. Notwithstanding the foregoing, the following Corrective Maintenance, Repair and Replacements shall be funded by the Major Maintenance Account (or as a Capital Item at the City's discretion) in their entirety: (i) Corrective Maintenance and Repair and Replacements of structures and underground assets such as, but not limited to, roofs, roadways, walls, tanks, force mains, underground piping, utility poles, tertiary pond dredging/disposal and re-lining regardless of costs.

(d) Major Maintenance Account: Corrective Maintenance and Repair and Replacement of the Managed Assets, that are not otherwise the responsibility of Company, as set forth above in Subsection (c) shall be funded in their entirety by the Major Maintenance Account or as a Capital Item, at City's discretion. The Major Maintenance Account amount shall be established by mutual agreement by the parties for each Contract Year and paid to Company in 1/12th installments and reconciled at the end of each Contract Year against actual expenditures. The City, in its sole discretion, shall request a refund of any unspent funds or roll any



unspent funds into the next Contract Year amount during the annual reconciliation. The Company shall not undertake any Corrective Maintenance, Repair and Replacement which is to be funded by the Major Maintenance Account without prior authorization from the City. Costs billed against the Major Maintenance Account shall be billed at Company's Discounted Rate. The Company will provide an itemized Monthly report of all Major Maintenance Account expenditures to date during a contract year and notify the City in writing when eighty-five percent (85%) of the established annual amount has been expended.

### 3.8.2 Capital Items

The parties acknowledge that it may be necessary or desirable from time to time during the term of this Service Agreement to modify, alter or improve the Managed Assets in their then-current condition at the request of the City due to growth, expansion or otherwise, or as a result of a City or Company Uncontrollable Circumstance. Such additional Capital Items shall be the general responsibility of the City. However, the Company shall be responsible for identifying any such Capital Items reasonably necessary for continuing compliance with Law or for maintaining the overall operations and efficiency of the Managed Assets.

(a) Capital Items at City Request. In the sole discretion of the City, the Company shall make any Capital Item requested by the City, not otherwise required by this Service Agreement, including an Expansion, if such Capital Item does not adversely affect the ability of the Company to perform its obligations under this Service Agreement and the City (i) agrees to pay the Company as set forth in the proposal to the City under Section (c), below, (ii) consents to the amendment of this Service Agreement or waives or modifies any obligations of the Company that it cannot perform because of such Capital Item, (iii) adjusts the Service Fee by the amount of any reasonable increases or decreases in the operation and maintenance expenses incurred by the Company because of such Capital Item, and (iv) pays any penalties or other similar charges that are payable because of the effect of such Capital Item on the Company's performance of obligations under this Service Agreement.

(b) Capital Items due to City or Company Uncontrollable Circumstances. In the sole discretion of the City, the Company shall make or cause to be made any Capital Item required as a result of a City or Company Uncontrollable Circumstance or to repair or replace any damaged or destroyed portion of the Managed Assets necessary for the Company to perform its obligations under this Service Agreement. Costs for Capital Items due to a City or Company Uncontrollable Circumstance shall be made in accordance with the Company's Discounted Rate for the repair, replacement or restoration of, or addition to, any portion of the Managed Assets necessitated by such

event. Notwithstanding the forgoing, nothing in this Section 3.8.2 (a) or (b) shall relieve the City of its obligation to make or cause to be made all Capital Items necessary for the Company to perform its obligations under this Service Agreement, unless such Capital Item is due to Company Fault.

(c) Procedure for Implementing Capital Items.

Company shall present to the City in writing (a) a statement of work with sufficient detail to enable a third party to evaluate the cost thereof; (b) a firm price quotation for design and construction, (c) an estimated completion schedule; (d) a schedule of payments (and termination payments when applicable); and (e) the effect, if any, of such Capital Item on the Company's obligations hereunder, including any adjustment to the Service Fee necessitated as a result of the Capital Item. Final agreed upon terms for the implementation of a Capital Item shall be memorialized in a CAM.

The City may, in its discretion, request that the Company obtain a price quotation by obtaining bids from at least three (3) qualified bidders and that it follow the procurement procedures provided to the Company in writing by the City; provided, however, that the Company shall not be required to follow such procedures to the extent that a City or Company Uncontrollable Circumstance requires the Company immediately to make changes to the Managed Assets which in the reasonable judgment of the Company and the City render such City procurement procedures impracticable within the time required for such changes to the Managed Assets to be made.

Capital Item proposals shall be deemed to have been accepted if the City, within sixty (60) days of receipt of the Company's proposal, has not provided the Company with written notice that it does not accept the proposal. Any disputes shall be resolved in accordance with Article XIV and Exhibit 6. The City reserves the right to award the project to an entity, other than the Company, or a Company Affiliate. The City shall reimburse the Company for the Company's reasonable cost of preparation of plans and specifications at the Company's Discounted Rate provided the City has given its prior approval to the cost of such preparation of plans and specifications. When requested to do so by the City, the Company shall provide to the City without remuneration, initial rough estimates of the cost of any Expansion.

3.8.3 The City shall have title to all Capital Items made to the Managed Assets.

3.8.4 Except as provided in Section 3.8.2 all Capital Items shall be performed by an Affiliate of Company on Company's behalf.

3.9 Value Added Projects

- 3.9.1 The City may engage Company at its discretion, to pursue specific value-added projects that offer economic and other benefits through the execution of a CAM. The City may require performance guarantees by the Company that assure that the payments made by the City for project costs are fully recovered (at a minimum) by the monetary benefits.
  - 3.9.2 The Company (through its Affiliate) shall be responsible for the design, construction, operation and maintenance of any value-added projects authorized by the City at the Company's Discounted Rate.
  - 3.9.3 In connection with the annual accounting of the Service Fee provided in Article V, the Company shall, by its chief financial officer or their designee, report on the financial performance of each completed project on an annual basis.
  - 3.9.4 All Value Added projects shall be agreed upon by the parties in writing and memorialized by a CAM as to scope, schedule, compensation, performance guarantees, termination payments (where applicable), and form of security required by the City, and any Value Added Project Savings or other impact to be reflected in the Service Fee.
- 3.10 Renewable Energy and Biosolids Facility
- 3.10.1 The Company shall assume full operational, maintenance and performance responsibility for the REBF upon initiation of this Service Agreement. The Parties intend that by the 5<sup>th</sup> Contract Year, the process for the processing, management and disposal of Biosolids will be revisited and the price guarantees related to the REBF biosolids drying will be revised to reflect on the approach decided on by the City at such time.
- 3.11 Company Investments
- 3.11.1 The Company shall complete an initial condition assessment report on major assets in the first year of this Service Agreement, and every three years thereafter (or other mutually agreed schedule) to develop capital investment needs over the term of the Service Agreement. The condition assessment report shall identify likely asset management investment needs over the ensuing three (3) years at a minimum.
  - 3.11.2 The Company shall conduct Technical Audit and Project Development studies to identify process improvements and additions that offer economic value and further the City's social and environmental goals, including achievement of net-zero energy performance. Each study shall include a conceptual engineering design for each improvement or addition considered. Each proposed project shall

include a schedule of life-cycle costs (capital and O&M), savings and revenues over the term of the agreement for each process improvement or addition considered in the analysis. The initial study shall be completed in year 1 of the Service Agreement and subsequent studies conducted every three years thereafter or other mutually agreed schedule.

3.11.3 The Company shall provide the Initial Capital Investments, set forth in Exhibit 3, at its expense. Additionally, the Company shall make the ongoing investments set forth in Exhibits 8 and 9 at its expense.

3.11.4 Company shall conduct, at its cost, an REBF Energy Study with the PJM grid and Delmarva Power (the “PJM Interconnect Study”) to examine improvements to the power side of the REBF to provide additional reliability and redundancy.

3.11.5 SCADA and CSO System Improvements:

The Company shall be responsible for the integrated operation of the wastewater plant and the Combined Sewer Overflow (CSO) mitigation systems. In this regard, the Company shall make investments in the SCADA and CSO Systems in accordance with Exhibit 8. The Company shall also develop and deploy modeling and integration tools, as more specifically described in Exhibit 3, to optimize the operation of the combined wastewater plant and CSO mitigation systems to achieve improvements in CSO capture efficiencies.

3.11.6 Annual Innovation Workshop:

The Company shall coordinate, staff and fund an annual innovation workshop aimed at continuous improvement towards the City’s short and long-term goals for the City system. The Company team shall include its Executive Sponsor, project leadership team and Company’s subject matter experts.

Except as otherwise provided in Article III all professional services contemplated by Article III shall be performed by Company’s Affiliate.

## ARTICLE IV – CITY RESPONSIBILITIES

### 4.1 Transport of Sewage

The City shall provide the Collection System within the Service Area to collect, transport, and deliver to the Facility all Specification Influent originating in the Service Area. After the Effective Date, the City shall not divide or dispose of Specification Influent originating in the Service Area using any other method or facility other than the Facility so long as the Facility has the capacity under applicable Permits to process all such Specification Influent.

### 4.2 Maintenance of Collection System

The City shall at its expense maintain and repair in good working order the Collection System. The City shall maintain in effect, and amend as necessary from time to time, the requirements, rules, regulations and ordinances which currently exist in regard to the Collection System and which are applicable to the use of sewers, the construction of house laterals, the installation and maintenance of sewer connections and the control of infiltration and inflow in order to permit the City to meet its obligations under this Service Agreement and Applicable Law.

### 4.3 Sewer Use Ordinance and User Charge System

The City agrees to maintain and enforce a User Charge System and Sewer User Ordinance in accordance with Chapter 11 of the City Code and Title 40 of the CFR or any applicable successor regulations and Applicable Law and prudent industry practice. The revenues (and any reserve funds available) from said charges and the income from other sources available to the City in any year and appropriated by the City for such year for the purposes set forth below including, but not limited to, impact fees, connection charges, ancillary sewer charges and sewer assessments, shall at all times be at least sufficient to pay the payments required to be paid by the City to the Company under this Service Agreement and all reasonable expenses to adequately fund the Major Maintenance Account and Capital Items reasonably necessary to ensure the Managed Assets operate in accordance with Applicable Law and operate and maintain the Collection System.

### 4.4 Enforcement of MIPP

The City shall administer and enforce the MIPP in accordance with all prudent industry practice and Applicable Law, and as more fully described in Article VIII and Article IX.

#### 4.5 LTCP Compliance

Unless modified by mutual agreement, the City shall retain responsibility for compliance with its Long-Term Control Plan for CSO mitigation in accordance with prudent industry practice. The Company and City shall mutually develop, agree to establish and execute an integrated approach to wastewater plant and CSO operations to maximize flow to the plant during wet weather.

#### 4.6 Funding of Repair and Replacement Costs

The Major Maintenance Account, funds needed for Corrective Maintenance and Repairs and Replacements in excess of the Major Maintenance Account and Capital Items shall be funded by the City, as reasonably requested by the Company in order to maintain compliance with Applicable Law and to achieve the Company's end of term obligations as set forth in Section 3.8.1. The determination of needs shall be based on periodic condition assessment studies conducted by the Company and reviewed and approved by the City. Funding of such projects shall be either through the use of the Major Maintenance Account or through Capital Borrowings by the City. The City agrees to respond to all requests requiring its approval under the terms of this Service Agreement in a timely manner.

#### 4.7 PJM Interconnect Study Capital Projects

The City shall fund the implementation of capital projects identified by the PJM Interconnect Study. If such projects are not performed by Company as a Capital Item, City shall ensure such improvements are completed and operational by the commencement of the third Contract Year.

#### 4.8 Funding of Economically Justifiable Projects

The City shall be responsible for all investment costs in projects that are outcomes of the Technical Audit and Project Development Studies that it chooses to pursue, except to the extent necessary to comply with Applicable Law, in which case the City shall agree to fund in accordance with the terms of Article III.

#### 4.9 Existing Condition of Facility, Inventory and Equipment

The City shall be responsible for ensuring the remedial items related to the condition of the facility are remediated by its outgoing contractor and providing Company with all inventory, spare parts, office equipment and heavy equipment in its outgoing contractor's possession which will become (or are) property of the City at the end of the outgoing contractor's term.

- 4.10 The City shall maintain Tetra Tech CSOFT agreements and licenses until successor systems are functional.

## ARTICLE V – ANNUAL SERVICE FEE

### 5.1 Service Fee

From and after the Commencement Date, the City shall pay the Service Fee to the Company for the Company's provision of services under this Service Agreement. The Service Fee shall be calculated according to this Article V. Examples of the calculation of the Service Fee are included in Exhibit 4.

### 5.2 Annual Service Fee Estimate

On or before December 31 of each Fiscal Year, the Company shall determine and provide to the City an estimate of the Service Fee for the following Fiscal Year according to the provisions of this Service Agreement. The estimated Service Fee shall be based on the available information regarding the Facility Flow for the twelve (12) month period immediately preceding the calculation of the estimated Service Fee. The Company may amend its estimate at any time before March 1 of such Fiscal Year by a statement delivered to the City. Except with respect to adjustments to the Extraordinary Items Component of the Service Fee, the estimates made in accordance with this Section 5.2 will be the basis of all payments required to be made by the City under Section 5.3 during such Fiscal Year until the annual accounting provided in Section 5.3.

### 5.3 Monthly Payment; Annual Accounting; Prepayment

5.3.1 During each Fiscal Year the Company shall render an invoice to the City by the first (1st) of the month prior to the month of services being rendered for (a) one-twelfth (1/12) of the Service Fee for such Fiscal Year plus (b) any adjustments to the estimated Service Fee resulting from adjustments to the Extraordinary Items Component applicable to the month immediately preceding the month in which such invoice is rendered plus (c) any amounts in addition to (a) and (b) above payable by the City to the Company and not previously billed.

5.3.2 The Service Fee shall be due and paid within thirty (30) days of invoice date, and paid in the amount billed in each such invoice notwithstanding any circumstance, happening or event whatsoever, except to the extent otherwise provided in the provision in Section 19.17.2.

5.3.3 The Company shall provide to the City within forty-five (45) days after the end of each Fiscal Year an annual statement, which shall show for such Fiscal Year the computation of all amounts owed or payable to the Company by the City under this Service Agreement, all amounts owed or payable to the City by the Company under this Service Agreement, all amounts paid by the City to the Company under this Service Agreement and all amounts paid by the Company to the City under



this Service Agreement for such Fiscal Year, including corrections and reconciliations to actual values of all estimated amounts. If the annual statement reflects any balance owed by either the City or the Company to the other, such amount shall be paid within thirty (30) days after the delivery of such annual statement to the City.

#### 5.4 Calculation of Service Fee

The annual total Service Fee shall be calculated in accordance with the following formula:

$$SF = BF + AMF + SDF + PW + SWU + EC + MMA + EIC$$

where,

SF = Service Fee

BF = Base Fee

AMF = Asset Management Fee

SDF = Sludge Disposal Fee

PW = Potable Water Component

SWU = Stormwater User Component

EC = Electricity Component

MMA = Major Maintenance Account

EIC = Extraordinary Items Component

Each component of the Service Fee shall be determined in accordance with this Article. All adjustments contemplated by this section shall be memorialized in a CAM.

##### 5.4.1 Base Fee

(a) For the first contract year, the Base Fee shall be \$13,804,578.

(b) Annual Adjustment of Base Fee.

The Base Fee for each subsequent Contract Year shall be determined by multiplying (1) the Base Fee for the current Contract Year and (2) the Base Fee Adjustment Factor.

$$\text{Base Fee Adjustment Factor} = (1 + [((\text{CPI-WS}) .40 + (\text{ECI}) .50 + (\text{CPI-U}) 0.10)])$$

CPI-WS = The twelve-month percent change (from November of the prior year to November of the current year) in the Water and sewerage maintenance in U.S. city average, all urban consumers, not seasonally adjusted as published by U.S. Department of Labor, Bureau of Labor Statistics in the CPI Detailed Report Series Id: CUUR0000SEHG01.

ECI = The twelve-month percent change (from the Third quarter of the prior year to the Third quarter in the current year) in the Employment Cost Index for Total Compensation for Civilian Workers, Not Seasonally Adjusted as published by U. S. Department of Labor, Bureau of Labor Statistics in the Detailed Report Series ID: CIU1010000000000A.

CPI-U = The twelve-month percent change (from November of the prior year to November of the current year) in the All Items in U.S. city average, all urban consumers, not seasonally adjusted as published by U.S. Department of Labor, Bureau of Labor Statistics in the CPI Detailed Report Series Id: CUUR0000SA0

#### 5.4.2 Asset Management Fee

(a) The Asset Management Fee shall be \$1,548,780 for the first Contract Year.

(b) Annual Adjustment of Asset Management Fee.

The Asset Management Fee in subsequent Contract Years shall be determined by multiplying (1) Asset Management Fee for the current Contract Year and (2) the Water- Sewer Adjustment Factor.

$$\text{Water Sewer Adjustment Factor} = (1 + [(CPI-WS)])$$

#### 5.4.3 Sludge Disposal Fee

(a) For the first Contract Year, the Sludge Disposal Fee shall be \$1,316,525. The Sludge Disposal Fee is based on a baseline sludge of 11,046 dry tons per year. Sludge disposal for sludge quantities in excess of the baseline amount shall be paid for through the Extraordinary Item Component of the Service Fee.

(b) Annual Adjustment of Sludge Disposal Fee.

The Sludge Disposal Fee for the 2<sup>nd</sup> through 5<sup>th</sup> Contract Year (unless otherwise agreed to by the Parties) shall be determined by multiplying (1) the Sludge Disposal Fee for the current Contract Year and (2) the Water Sewer Fee Adjustment Factor.

$$\text{Water Sewer Adjustment Factor} = (1 + [(CPI-WS)])$$

After the 5<sup>th</sup> Contract Year, the Sludge Disposal Fee shall be negotiated and agreed upon by the Parties.

#### 5.4.4 Potable Water Component

The Company shall pay directly for all potable water costs incurred in operation of the Managed Assets and shall be reimbursed for such costs in accordance with this Section 5.4.4.

(a) The Potable Water Component for the first Contract Year shall be \$481,305, which reflects the anticipated Potable Water fees which are to be incurred in the first Contract Year.

(b) For subsequent Contract Years, the Potable Water Component shall be established at the start of each Contract Year based on current year's actual use and subsequent year's projected use and taking into account any known rate increase.

(c) Annual Reconciliation of Potable Water Component.

At the end of each Contract Year, the Company's actual costs for potable water shall be reconciled with the Potable Water Component, in accordance with Section 5.3.3. The City shall issue payment to the Company for expenditures in excess of the budgeted amount or the Company will issue a credit to the City for budgeted amounts billed in excess of actual expenditures.

#### 5.4.5 Stormwater User Fee Component

The Company shall pay directly for all stormwater user fees incurred in operation of the Managed Assets and shall be reimbursed for such costs in accordance with this Section 5.4.5.

(a) The Stormwater User Fee Component for the first Contract Year shall be \$162,641, which is the anticipated amount of stormwater user fees to be incurred in the first Contract Year.

(b) For subsequent Contract Years, the Stormwater User Fee Component shall be established at the start of each Contract Year based on current year's actual use and subsequent year's projected use and taking into account any known rate increase.

(c) Annual Reconciliation of Stormwater User Fee Component. At the end of each Contract Year, the Company's actual costs for stormwater user fees shall be reconciled with the Stormwater User Fee Component, in accordance with Section 5.3.3. The City shall issue payment to the Company for expenditures in excess of

the budgeted amount or the Company will issue a credit to the City for budgeted amounts billed in excess of actual expenditures.

#### 5.4.6 Electricity Component

The Company shall pay directly for all electricity charges incurred in the operation of the Managed Assets. The estimated total Electricity Component fee for the first contract year is \$648,219 based on the projected costs listed in the Electricity Component calculation below.

##### 5.4.6.1 Electricity Component Calculation

$$\text{Electricity Component} = \text{PS} + \text{DC} + \text{WVEC}$$

Where,

PS = The projected electricity usage cost for the Main Pump Stations for the Contract Year

DC = The projected costs for Demand Charges for all Managed Assets

WVEC = The projected cost for the Guaranteed Maximum Net Usage at the WWTP

$$\text{WVEC} = \text{GMU} \times \text{RU}$$

GMU = Guaranteed Maximum Net Usage at the WWTP (kW-hr)

RU = Base Electrical Usage Rate for the Contract Year (\$/kW-hr)

GMU will be fixed at 5,000,000 kW-hr/yr. for the first three Contract Years. Company intends to operate the cogeneration system to the best of its ability to produce electricity, until such time as mutually agreed upon with the City and Company that the units should be taken out of service. In Contract Years 2 through 3, where Company exceeds the GMU, Company will provide a payment to the City due to reduced gas usage equal to the GMU exceedance at a unit rate of \$0.02/kW-hr.

The GMU after Contract Year Three will be renegotiated based on the progress on the improvements recommended by PJM Interconnected Study.

GMU is based on a 250 kW minimum import and purchase requirement per Contract Year from the electrical grid. Any increase in the required minimum import and purchase shall be a Company Uncontrollable Circumstance.

Adjustments in the GMU will be negotiated between the Company and City in any year the cogeneration engines in the REBF undergo major regularly scheduled maintenance that requires significant downtime.

For the first Contract Year, RU is \$0.061/kW-hr. Subsequent years RU shall be based on the City's projections.

#### 5.4.6.2 Annual Reconciliation of Electricity Component.

At the end of each Contract Year, the electricity costs shall be reconciled as follows:

(a) The actual Main Pump Station electricity use charges will be reconciled against the projected charges (PS). The City shall issue payment to the Company for costs in excess of the amount invoiced to the City or the Company will issue a credit to the City for invoiced amounts in excess of actual expenditures.

(b) The actual Demand Charges for the Managed Assets will be reconciled against the projected charges (DC). The City shall issue payment to the Company for costs in excess of the amount invoiced to the City or the Company will issue a credit to the City for invoiced amounts in excess of actual expenditures.

(c) The impacts of changes to the actual RU cost will be reconciled with the projected RU costs. Any resulting changes in the actual WWEC will be reconciled against the projected WWEC charges. The City shall issue payment to the Company for costs in excess of the amount invoiced to the City or the Company will issue a credit to the City for invoiced amounts in excess of actual expenditures.

(d) If the Company incurs costs for electricity use in excess of the GMU during a Contract Year, the current year RU will apply, and the Company will pay the actual charges.

(e) For any exceedance of the GMU in Contract Year(s) 2 and/or 3, the Company will provide a credit to the City for unused gas based on \$0.02/kW-hr above the GMU. If the minimum landfill gas purchase under the CIRE contract is not satisfied during the contract year, the credit to the City will be reduced based on the unused minimum purchase of landfill gas.

#### 5.4.7 Major Maintenance Account.

The City shall fund the Major Maintenance Account annually to provide sufficient funding for expenditures which are the financial responsibility of the City as set forth in Section 3.8.

- (a) For the first Contract Year, the Major Maintenance Account amount shall be \$2,000,000.
- (b) Expenditures shall be billed against the Major Maintenance Account at Company's Discounted Rate and shall require the City's prior approval.
- (c) The Major Maintenance Account amount will be adjusted annually through mutual agreement based on Company's projection of City's infrastructure needs.
- (d) Annual Reconciliation of Major Maintenance Account.

Expenditures against the Major Maintenance Account shall be reconciled annually, and any unused amount can be either reimbursed to the City or rolled over to the subsequent Contract Year's amount, at the City's discretion.

- (e) The Major Maintenance Account shall not be a limitation of the City's obligations regarding Repair and Replacement and Corrective Maintenance. Repairs and Replacements or Corrective Maintenance expenditures in excess of the Major Maintenance Account shall be billed in the month following the expenditure, as an Extraordinary Item.

#### 5.4.8. Extraordinary Item Component

The Extraordinary Items Component ("EIC") of the monthly Service Fee, which may be a charge or a credit, shall be equal to the sum of:

(1) the amounts payable by the City for increased operation, maintenance or other costs incurred on account of the occurrence of Company Uncontrollable Circumstances chargeable to the City hereunder, net of any operation and maintenance cost savings achieved by the Company during or as a result of a Company Uncontrollable Circumstance; plus

(2) All Repair and Replacement or Corrective Maintenance expenditures incurred on account of a Company Uncontrollable Circumstance, including any expenditures in excess of the Major Maintenance Account, as set forth in Section 5.4.7(e). The provisions of Exhibit 1 Section 2.1 regarding the Company's obligation for a \$250,000 (or such amounts as escalated annually) per event contribution to asset management costs shall not be operative; plus or minus

(3) any noncompliance charges or other Service Fee offsets due from the Company or payment due to Company; plus

(4) Cost for conditioning and disposal of a Class B biosolids product for dry sludge in excess of the amount set forth in Section 5.4.3; plus or minus

(5) any other increase or reduction in the monthly Service Fee provided for under any other Article of this Service Agreement including changes to the Facility implemented by the City using third-party contractors and Value-Added projects.

In the event of a City or Company Uncontrollable Circumstance that requires immediate response or immediate changes to the Managed Assets which otherwise constitute a Capital Item, the City may, on a temporary basis, direct the Company to proceed and promptly reimburse the Company for work undertaken at the Company's Discounted Rate while the procedures required under Section 3.8.2(c) are followed by the City and Company.

#### 5.5. Annual Adjustment Limits on Escalation

The annual adjustment factors (Base Fee Adjustment Factor and Water Sewer Adjustment Factor) of the Service Fee elements set forth in Section 5.4.1, 5.4.2 and 5.4.3 shall be a minimum increase of 1.25%, and a maximum increase of 3.75%. However, if in any two consecutive Contract Years the actual adjustment calculated by the adjustment formulas set forth in Section 5.4.1, 5.4.2 and 5.4.3 is equal to or greater than 6%, the parties shall negotiate an adjustment to the Service Fee, the adjustment factors, or other remedy, to address the inflationary conditions. Any increases to the Service Fee under this Section 5.5 as a result of inflationary conditions equal to or greater than 6% shall be subject to cost substantiation. If the parties are unable to agree on an appropriate remedy, the issue shall be resolved in accordance with the dispute resolution provisions set forth in Article XIV and Exhibit 6.

#### 5.6. Adjustments due to Facility Flow and Loads in Excess of Base Flow and Loads.

In the event Facility Flow and Loads are less than 90% or more than 110% of the Base Flow and Load in any Contract Year, the Company or City shall be entitled to an adjustment in the Service Fee for cost substantiated increases or decreases in costs associated with the Base Fee, the Asset Management Fee, and/or the Electricity Component. Such costs shall be reflected in the annual reconciliation.

#### 5.7. Cost Substantiation.

The Company shall provide cost substantiation for such costs for which the City is financially responsible under this Section 5. The cost substantiation provided by the

Company shall include copies of such documentation as shall be necessary to reasonably demonstrate that the cost has been paid or incurred. Such documentation shall be in a format reasonably acceptable to the City and shall include reasonably detailed information concerning all Subcontracts and, with respect to self-performed work, (1) the amount and character of materials, equipment, chemicals, laboratory supplies, and services furnished or utilized, the persons from whom purchased, the amounts payable therefor and related delivery, transportation, and sales tax costs; (2) equipment used and any rental payable therefor; (3) any additional expense for water, electric, telephone, power, or other expense; and (4) additional Company employee hours, duties, and raw wages.

#### 5.8 Interest

Except for payment of services rendered in the first month of each Contract Year, Company shall be entitled to interest on all amounts not paid by the City if the City fails to pay within thirty (30) days after the due date hereunder, at an interest rate equal to the Prime Rate, calculated based on the number of days such amounts remain unpaid after thirty (30) days after the due date thereof. Payment of services rendered in the first month of each Contract Year shall be entitled to a 15-day grace period.

#### 5.9 Estimates and Unavailability of Data.

If the final value of the indices set forth in this Article V are not available for the applicable period when required hereunder, the amount of the adjustment to be made shall be estimated by using the preliminary value of the index for the applicable period or the final value of the index for the latest available period. Calculations and payments based on such estimate shall be adjusted as soon as reasonably practicable after the final value of the index for the applicable period is published. If an index is no longer published at the time that adjustment is to be calculated, or if the base or method of calculation used for an index is altered, the calculation shall be made using a comparable similar index or method reasonably satisfactory to the Company and the City. In the event that the parties are unable to reach agreement on a comparable similar index, or method of calculation, the comparable similar index or method of calculation shall be decided using the dispute resolution procedure set forth in Article XIV and Exhibit 6.



## ARTICLE VI – CONDITIONS

6.1 The Company's obligations under this Service Agreement (except for the obligations contained in this Article VI) are subject to the satisfaction of the following conditions precedent (unless as otherwise set forth in this Article VI or otherwise waived in writing by the Company):

- 6.1.1 The City shall have delivered to the Company a certificate executed by a duly authorized agent or representative of the City, dated the Commencement Date, to the effect that each of the representations of the City set forth in Section 18.2 are true and correct as if made on such date.
- 6.1.2 Except as disclosed in writing to the Company by the City prior to the Effective Date, there shall be no actions, suits or proceedings pending against the City that would affect in any material respect (A) the validity, binding effect, or enforceability of (or seek to enjoin or assess penalties regarding) this Service Agreement, or any of the permits necessary to operate the Facility or the MIPP or the obligations of the City under the MIPP and any ordinances and/or resolutions related thereto; or (B) the operation of the Managed Assets by the Company; or (C) the condition of the Site, and there shall be no outstanding materially adverse judgement or administrative decision regarding the forgoing.
- 6.1.3 The City shall provide reasonable assistance to the Company in securing a commercial agreement substantially similar to that in place as that between the City and Cherry Island Renewable Energy, LLC (CIRE). In the event that the Company and CIRE are unable to reach agreement, the landfill gas will be provided by the City through the City's existing agreement, which will be managed by the Company.
- 6.1.4 The Multijurisdictional Agreement shall be in full force and effect.
- 6.1.5 There shall have been no Change in Law which, in the reasonable judgment of the Company, materially adversely affects the ability of the Company, or the City, to perform their respective obligations pursuant to or as contemplated by this Service Agreement, the MIPP or any of the Permits with respect to the Facility.
- 6.1.6 The City shall have the full right, power, and authority to execute and deliver this Service Agreement and shall have evidenced the same to the Company, in form and substance reasonably satisfactory to the Company.
- 6.1.7 The Company shall have been notified by the City that the City's former service provider or providers has or have been removed as a permittee to the permits or approvals necessary to operate the Managed Assets if such service provider or providers was or were previously listed as a permittee.
- 6.1.8 There has been no material adverse change in the Managed Assets or the Site from the Effective Date until the Commencement Date, except with respect to the condition of the thermal dryer, which upon the Commencement Date shall be in operable condition. In the event that this condition is not satisfied on the Commencement Date, Company agrees to treat such condition as a Company Uncontrollable Circumstance.

- 6.1.9 As of the Commencement Date, the portion of the Managed Assets constituting the REBF will be available for Company to fulfil its obligations under this Service Agreement. In the event that the portion of the Managed Assets constituting the REBF are unavailable, the Parties obligations will be carried out as set forth in Exhibit 15.
- 6.1.10 The City shall verify that the CHP Sludge Heating Exchangers and flow meters have been installed to the City specifications and standards and are functioning in the manner expected and that all certificates of occupancy or other material permits, licenses and approvals necessary for the use and operation of the Facility have been issued or obtained and are in full force and effect.
- 6.2 The City's obligations under this Service Agreement (except for the obligations in this Article VI) are subject to the complete satisfaction of the following conditions precedent (unless otherwise waived in writing by the City):
- 6.2.1 The Company shall have delivered to the City a certificate executed by a duly authorized officer, employee or agent of the Company, dated the Commencement Date, to the effect that each of the representations of the Company set forth in Section 18.1 are true and correct as if made on such date.
- 6.2.2 Except as disclosed in writing to the City by the Company prior to the Effective Date, there shall be no actions, suits or proceedings pending which question in any material respect the (A) validity, binding effect, or enforceability (or seek to enjoin or assess penalties) relating to any of the rights or obligations of the parties under this Service Agreement, (B) the operation of the Managed Assets by the Company; or (C) the condition of the Site to which the Company has been named a party, and there shall be no outstanding materially adverse judgment or administrative decision as to any of the foregoing.
- 6.2.3 There shall have been no Change in Law which, in the reasonable judgment of the City, materially adversely affects the ability of the City, or the Company, to perform their respective obligations pursuant to or as contemplated by this Service Agreement, the MIPP or any of the Permits with respect to the Facility.
- 6.2.4 The Company shall have delivered the Performance Bond referenced in Section 16.1, and the Guaranty referenced in Section 17.1.
- 6.2.5 The City shall have received an opinion of counsel selected by the Company and approved by the City, in form and substance satisfactory to the City, to the effect that:
- (a) The Service Agreement has been duly authorized, executed, and delivered by the Company and constitutes a legal, valid, and binding obligation of the Company, enforceable against the Company in accordance with its terms (except as the enforcement thereof may be limited by applicable bankruptcy, reorganization, insolvency, moratorium and similar laws affecting creditors' rights generally and by equitable principles of general application);

- (b) Except as otherwise disclosed in writing to the City prior to the Effective Date, neither the execution or delivery by the Company of the Service Agreement, nor the performance by the Company of its obligations in connection with the transactions contemplated hereby or thereby, or the fulfillment by the Company of the terms or conditions hereof or thereof (i) conflicts with, violates, or results in a breach of any constitution, charter, law, or governmental regulation applicable to the Company, or (ii) conflicts with, violates, or results in a breach of any term or condition of any order, judgment, or decree, or any agreement or instrument, to which the Company is a party, or by which the Company or any of its properties or assets are bound, or constitutes a default thereunder; and
- (c) No approval, authorization, order or consent of, or declaration, registration or filing with any Governmental Authority is required for the valid execution and delivery of this Service Agreement by the Company, except as such as have been duly obtained or made.

### 6.3 Failure to Satisfy Conditions Precedent.

6.3.1 Except as otherwise set forth in this Article VI, the Service Agreement shall become null and void without any liability on the part of either party, except with respect to any party that intentionally or willfully breaches its obligations hereunder, if the conditions precedent set forth in Sections 6.1 and 6.2 are not satisfied or waived within twelve (12) months of the Effective Date; provided, however, either party may extend such period for an additional six (6) months if their respective conditions precedent are not satisfied prior to the expiration of such 12 month period and this Service Agreement is still in effect.

## ARTICLE VII – PERFORMANCE INCENTIVES

As Value-Add Projects are identified, the Parties shall mutually agree upon performance incentives for the contemplated improvements and approaches for shared savings.

## ARTICLE VIII – MUNICIPAL INDUSTRIAL PRETREATMENT PROGRAM

### 8.1 The Municipal Industrial Pretreatment Program

The City shall continue to maintain, administer, and enforce a MIPP for the Service Area that complies with Applicable Law, including but not limited to the requirements contained in Chapter 11 of the City Code and in 40 CFR Part 403 or any other Federal, State, or local requirements needed to maintain the operational performance or permit compliance of the Managed Assets. The City shall promptly amend the MIPP to incorporate additional or changed requirements imposed under Applicable Law, and that, if so lawfully ordered by the DNREC, or any other Governmental Authority having jurisdiction, the City will amend the MIPP in order to comply with any requirements governing the content and implementation of an industrial pretreatment program.

### 8.2 Industrial Discharge Permits

The City shall continue to issue industrial discharge permits to each SIU as required by City Code Chapter 11, Article V and by all other Applicable Law.

### 8.3 Approval of Significant Industrial Users

8.3.1 Before the City approves a connection of any Person who may constitute a SIU to any sewer system that shall ultimately discharge into the Managed Assets, the City shall submit to the Company in writing all pertinent data in the City's possession concerning the proposed wastes from the potential SIU, such data to include estimates of flow and probable analysis. The Company shall reply in writing to the City within fifteen (15) days after receipt of the data indicating the Company's recommendation for approval of the proposed connection or its recommendation for disapproval with supporting reasons therefor. If the City does not concur with the Company's recommendation, it shall provide the following information: (i) the engineering reasons that a particular waste would neither violate the requirement of the MIPP nor result in Non-Specification Influent or whether the particular waste(s) would be acceptable if pretreatment facilities are constructed by the SIU.

8.3.2 The City shall not be bound by any findings or recommendations of the Company as to whether a person constitutes a SIU.

8.3.3 If the connection is approved by the City, the City shall provide the Company with an executed copy of any agreement, contract, permit or license developed as a result of this Section.

### 8.4 Monitoring of Significant Industrial Users

The Company shall monitor all SIUs in the City Owned Sewer Collection System through sampling and inspections in accordance with approved frequencies in order to obtain information, independent of information supplied by the SIUs, related to compliance with all terms and conditions of their discharge permits and the applicable sewer use ordinance. The Company shall be responsible for the costs of such monitoring and sampling as specified in this Section 8.4, as well as the cost of reports prepared based on this data. To the extent that the Company incurs costs for any consumables, operating expenses, Capital Items, sampling, monitoring or preparation of reports arising out of discharges in violation of the MIPP or any increase in the number of SIUs from the number existing on the Effective Date, the Company shall be reimbursed for said costs in accordance with Section 5.4.8 as an EIC for Operating Items. The Company shall provide the City a copy of the information obtained and any reports prepared pursuant to this Section 8.4 within forty-eight (48) hours after such information or reports are available.

#### 8.5 Company Inspection of Collection System

The Company shall have the right at any time, and from time to time following notice to the City to observe, inspect, and sample any waste being discharged into the Collection System within the Service Area.

#### 8.6 Pretreatment Limits Methodology

The Company shall review and participate in the development of any methodology the City plans to use to establish pretreatment limits, including, but not limited to, industrial waste surveys, sampling, identification of Hazardous Substances, identification of SIUs, allocation algorithms, reserve capacities, and default considerations. The City shall have the right to approve any such methodology and pretreatment limitations, and any modifications or revisions to the pretreatment limitations and any modifications or revisions thereto, notwithstanding any review or recommendations of the Company. Except as otherwise provided herein, costs of the program will be borne by the City and industrial users. No review by or comments of the Company shall relieve the City of any of its obligations under this Service Agreement or impose any liability on the Company.

#### 8.7 Permits under MIPP

The City shall provide the Company with a copy of any Permits issued under the MIPP promptly after such Permits are issued.

#### 8.8 Violations of MIPP or Permits

In the event the City fails to comply with limitations for Specification Influent with respect to Facility Flow, BOD or Suspended Solids, or any Person (including, without limitation, any Significant Industrial User) fails to comply with its permit requirements in accordance with the approved MIPP and the Company determines that a particular waste being discharged is in violation of the MIPP, then the Company shall notify the City of such noncompliance promptly after obtaining knowledge of it; provided, however, that any reasonable delay or immaterial failure of the Company to provide such notice to the City shall not relieve the City of any of its obligations under this Service Agreement or impose any liability on the Company. The City shall promptly prepare a compliance schedule and immediately initiate enforcement action in accordance with Article IX.

## ARTICLE IX – MIPP ENFORCEMENT

### 9.1 Enforcement Response Plan

The City shall be responsible for enforcing the MIPP in accordance with CFR 403, City Code Chapter 11 Article 5, and the Enforcement Response Plan (“ERP”). In the event that the Public Works Commissioner, or any Designated Representative, has actual knowledge of the violation or noncompliance with the provisions of the MIPP by any Person, the City shall initiate an enforcement action against such Person to the extent of the City’s authority under the MIPP after the receipt of such knowledge within a reasonable period of time under the circumstances, in accordance with the ERP. The City shall report monthly to the Company regarding the progress of any active enforcement action and shall provide a written report regarding the results of such enforcement action within ten (10) days after the conclusion thereof. In the event that Non-Specification Influent is received at the Managed Assets which is suspected to be in violation of the MIPP, the City shall, within five (5) Business Days of the date that the Public Works Commissioner, or any Designated Representative, has obtained knowledge of the receipt of such Non-Specification Influent at the Managed Assets, commence an investigation to determine the identity of the source. The City shall report periodically to the Company regarding the progress of any such investigation and shall provide a written report regarding the results of such investigation action within ten (10) Business Days after the conclusion thereof. The scope and duration of any enforcement action and/or investigation action shall be determined by the City in its sole discretion.

### 9.2 Company Enforcement Cooperation

The Company shall cooperate fully with the City in connection with enforcing the MIPP, implementing the ERP and conducting any investigation action or enforcement action. The Company will provide applicable records and reports from its monitoring, sampling and reporting activities as described in Section 8.4 at no additional cost to the City. The Company shall provide other information and personnel as reasonably requested by the City, provided that any reasonable expenses of the Company in connection with such cooperation shall be paid to the Company by the City within thirty (30) days after receipt by the City of an invoice therefore from the Company.

### 9.3 Changes to the Enforcement Response Plan

The City shall promptly notify the Company of any material changes or revisions to the ERP.



## ARTICLE X – BREACH

### 10.1 Breach

No party shall have the right to terminate its obligations under this Service Agreement for cause for any breach unless an Event of Default (as defined in Sections 10.2 and 10.3) on the part of the other party shall have occurred.

### 10.2 Company Events of Default

Each of the following shall constitute a Company Default with respect to the Company's obligations and duties to the City:

- (a) The failure on the part of the Company to pay any amount required to be paid to the City under this Service Agreement within sixty (60) days after receipt by the Company of a statement therefor from the City;
- (b) Except to the extent covered by items (i), (ii), or (iii), of this Section 10.2, the failure or refusal by the Company to fulfill any of its obligations to the City in accordance with this Service Agreement unless such failure or refusal shall be excused or justified by an Company Uncontrollable Circumstance; provided, however, that no such failure or refusal shall constitute an Event of Default unless and until:
  - (i) the City shall have given prior written notice to the Company stating that in its opinion a particular default or defaults (to be described in reasonable detail in such notice) exist, and
  - (ii) the Company shall have neither corrected such default nor initiated reasonable steps to correct the same, or, in the case of defaults which are not susceptible to correction, to prevent the same to the extent practicable from recurring, in either case within a reasonable period of time (which shall in any event be not more than forty-five (45) days from the date of the notice given pursuant to clause (i) of this Section 10.2(b)); provided, however, that if the Company shall have commenced to take reasonable steps to correct such default and diligently pursued such correction, or, in the case of defaults which are not susceptible to correction, to prevent the same to the extent practicable from recurring, in either case within such reasonable period of time, the same shall not constitute an Event of Default for as long as the Company is diligently continuing to take reasonable steps to correct such default, or, in the case of defaults which are not susceptible to correction, to prevent the same to the extent practicable from recurring, and

(iii) in the event the Company disputes the occurrence of such default or defaults and has initiated dispute resolution pursuant to Article XIV and Exhibit 6 within a reasonable period of time (which shall in any event be not more than thirty-five (35) days from the date of the notice given pursuant to clauses (a) and (b) of this Section 10.2), a decision of the arbitrators has been rendered that a default or defaults by the Company exist and the Company shall have neither corrected such default nor initiated reasonable steps to correct the same, or, in the case of defaults which are not susceptible to correction, to prevent the same to the extent practicable from recurring, in either case within a reasonable period of time; provided, however, that if the Company shall have commenced to take reasonable steps to correct such default, or, in the case of defaults which are not susceptible to correction, to prevent the same to the extent practicable from recurring, in either case within such reasonable period of time, the same shall not constitute an Event of Default for so long as the Company is continuing to take reasonable steps to correct such defaults, or, in the case of defaults which are not susceptible to correction, to prevent the same to the extent practicable from recurring.

(c) The Guarantor shall have failed to maintain at least one of the following credit ratings for the Guarantor or the indebtedness of the Guarantor, as applicable: (i) "BBB" or better from Standard & Poor's Corporation or its successors ("Standard & Poor's"), (ii) "BBB" or better from Fitch Investors Services, L.P. or its successors ("Fitch"), or (iii) "Baa-2" or better from Moody's Investors Service or its successors ("Moody's"); provided, however, that if Standard & Poor's, Moody's or Fitch (collectively, the "Rating Agencies") changes its rating system (a "Replacement Rating System"), the credit ratings set forth above shall be replaced by the comparable credit rating under the Replacement Rating System;

(d) The issuance of an order of a court of competent jurisdiction appointing a receiver, liquidator, custodian or trustee of the Company or of a major part of the Company's property, respectively, which order shall not have been discharged within one hundred twenty (120) days, or the issuance of a decree of such a court adjudicating the Company insolvent or sequestering a major part of the Company's property, respectively, which decree shall have continued undischarged and unstayed for one hundred twenty (120) days, or the filing against the Company of a petition to reorganize the Company pursuant to the Federal Bankruptcy Code or any similar statute

applicable to the Company which filing shall not be dismissed within one hundred twenty (120) days after such filing;

(e) The filing by the Company of a petition of involuntary bankruptcy under any provision of any bankruptcy law or the consenting of the Company to the filing of any bankruptcy or reorganization petition against the Company under any such law, or the filing by the Company of a petition to reorganize the Company pursuant to the Federal Bankruptcy Code or any other similar statute applicable to the Company; or

### 10.3 City Events of Default

Each of the following shall constitute a City Default with respect to the City's obligations and duties to the Company:

(a) The failure on the part of the City to pay any amount required to be paid to the Company under this Service Agreement within sixty (60) days after receipt by the City of a statement therefor from the Company;

(b) Except to the extent covered by items (i), (ii), or (iii) of this Section 10.3, the failure or refusal by the City to fulfill any of its obligations to the Company in accordance with this Service Agreement, unless such failure or refusal shall be excused or justified by a City Uncontrollable Circumstance, provided however, that no such failure or refusal shall constitute an Event of Default unless and until:

(i) the Company shall have given prior written notice to the City stating that in its opinion a particular default or defaults (to be described in reasonable detail in such notice) exist, and

(ii) the City shall have neither corrected such default nor initiated reasonable steps to correct the same within a reasonable period of time (which shall in any event be not more than forty-five (45) days from the date of the notice given pursuant to clauses (a) and (b) of Section 10.3), provided however, that if the City shall have commenced to take reasonable steps to correct such default, or, in the case of defaults which are not susceptible to correction, to prevent the same to the extent practicable from recurring, in either case within such reasonable period of time, the same shall not constitute an Event of Default for as long as the City is continuing to take reasonable steps to correct such default, and

(iii) in the event the City disputes the occurrence of such default or defaults and has initiated dispute resolution pursuant to Article XIV and Exhibit 6 within a reasonable period of time (which shall in any event

be not more than thirty-five (35) days from the date of the notice given pursuant to clause (i) of this Section 10.3(b)), a decision of the arbitrators has been rendered that a default or defaults by the City exist and the City shall have neither corrected such default nor initiated reasonable steps to correct the same within a reasonable period of time; provided however, that if the City shall have commenced to take reasonable steps to correct such default, or, in the case of defaults which are not susceptible to correction, to prevent the same to the extent practicable from recurring, in either case within such reasonable period of time, the same shall not constitute an Event of Default for so long as the City is continuing to take reasonable steps to correct such defaults, or, in the case of defaults which are not susceptible to correction, to prevent the same to the extent practicable from recurring.

#### 10.4 Termination on Default

If any party shall have a right of termination for cause in accordance with Section 10.1, the same may be exercised only by written notice of termination given to the party in default. Such notice shall describe in reasonable detail the Event of Default which is the basis for termination. The proper exercise of such right of termination shall be in addition to and not in substitution for such other remedies, whether damages or otherwise, as the party exercising the right of termination may have.

#### 10.5 Survival of Certain Rights and Obligations

The rights and obligations of the parties under Article XI and Sections 12.1 and 12.2 shall survive any termination of this Service Agreement. No termination of this Service Agreement under Section 10.4 or otherwise hereunder shall limit or otherwise affect the respective rights and obligations of either party under this Service Agreement.

## ARTICLE XI – TERMINATION

### 11.1 Termination by City for Breach

11.1.1 In the event the City terminates this Service Agreement pursuant to Section 10.1, the Company shall not be (a) entitled to any compensation subsequent to receiving notice of termination from the City or (b) required to continue to perform any services to the City under this Service Agreement subsequent to receiving notice of termination from the City, except as provided in Section 11.5.

11.1.2 Upon termination of this Service Agreement by the City pursuant to this Section 11.1, and simultaneously with the payment by the City to the Company pursuant to Section 11.1.3, the Company shall pay to the City any amount the Company owes the City pursuant to Section 12.1; and a onetime payment of three hundred thousand dollars (\$300,000); as escalated annually by the Base Fee Adjustment Factor. The onetime payment is to provide a means for the City to offset immediate transition expenses in the event of Company default but shall not be construed as a limitation of remedies otherwise available to the City under this Service Agreement or Applicable law.

11.1.3 In the event the City terminates this Service Agreement pursuant to Section 10.1, the City shall, simultaneous with the payment by the Company to the City pursuant to Section 11.1.2, pay to the Company the Scheduled Termination Costs and any termination costs due as a result of a Value-Add Project or Capital Item.

### 11.2 Termination by Company for Breach

11.2.1 In the event the Company opts to terminate this Service Agreement pursuant to Section 10.1:

(a) The City shall pay any amount the City owes the Company pursuant to Section 12.2, the Scheduled Termination Costs, and any termination costs due as a result of a Value-Add Project or a Capital Item.

(b) The City shall pay the Company a demobilization fee in the amount of Three Hundred Thousand Dollars (\$300,000), as escalated annually by the Base Fee Adjustment Factor. This payment is to provide a means for the Company to offset immediate transition expenses in the event of City default but shall not be construed as a limitation of remedies otherwise available to the Company under this Service Agreement or Applicable law.

11.2.2 The amounts payable by the City under Section 11.2.1 shall be due and payable within thirty (30) days of the date of termination.

### 11.3 Extraordinary Termination by the Company

In the event the Facility ceases to be regulated as a Publicly Owned Treatment Works for purpose of all Applicable Law or the Facility and those discharging to the Facility ceases to be eligible to avail themselves of the Domestic Sewage Exclusion set forth at 42 U.S.C. Section 6903 (27) and regulations related thereto at 40 C.F.R. Section 261(4)(a)(I) and Delaware Administrative Code Section A, the Company may terminate this Service Agreement by delivering to the City written notice thereof and this Service Agreement shall terminate immediately upon the delivery of such notice.

If the Company terminates this Service Agreement pursuant to this Section 11.3, the City shall pay the Company a demobilization fee in the amount of Three Hundred Thousand Dollars (\$300,000), as escalated annually by the Base Fee Adjustment Factor, the Scheduled Termination Costs, and any termination costs due as a result of a Value Add Project or an EIC Capital Item. The amounts payable by the City under this Section 11.3 shall be due and payable within thirty (30) days of the date of termination.

### 11.4 Scheduled Termination Costs

11.4.1 The Scheduled Termination Costs ("STC") payable by the City to the Company upon early termination of this Service Agreement are as provided in Exhibit 5 attached hereto.

11.4.2 In the event that a termination date falls between two dates specified on Exhibit 5, the amount payable as of the termination date shall be determined by linear interpolation between the amounts otherwise payable on the two specified dates.

11.4.3 In the event that all or a portion of one or more Initial Company Investments has not been completed as of the termination date, and any such Initial Company Investments was designated for completion by such termination date (as determined by the applicable completion date specified in Exhibit 3), then the STC payable by the City to the Company as of such termination date shall be reduced by an amount equal to the cost of constructing or acquiring any such Initial Company Investments, or portion thereof, which has not been completed as of the termination date. The cost of constructing or acquiring any such Initial Company Investments, or portion thereof, shall be determined by a professional engineer (who may be an employee of or consultant to the Company), who shall provide a written statement to the City setting forth such

determination. Such determination shall be subject to dispute resolution by the City pursuant to Article XIV and Exhibit 6.

#### 11.5 Carryover and Continued Operations

If this Service Agreement is terminated by the City or the Company, the Company agrees to furnish the services necessary to continue normal operations for a period of up to one hundred eighty (180) days after receiving notice of termination from the City. This one hundred eighty (180) day period will commence only at the City's request and shall be for the purpose of training and assisting new employees of the City or its new contractor in the management and operation of the Facility. In such event, the City agrees to pay to the Company a pro rata portion of the then current Service Fee for such one hundred eighty (180) day period. Upon termination by the City or the Company, the City or the City's new operations firm may employ all personnel in the employ of the Company, excluding the project director and project manager, for the management and operation of the Facility. If another contractor succeeds the Company, the new contractor may employ all personnel in the employ of the Company for the management and operation of the Facility. The Company is not entitled to any claim for compensation or damages on account of such employment of the Company's employees upon or after termination. This Section 11.5 shall survive the termination of this Service Agreement.

#### 11.6 End of Term Obligations

11.6.1 Books and Records. Upon Termination of this Service Agreement by the City or the Company, the Company shall provide the City with a copy of all books and records in its possession relating to (a) reports and notices required by the NPDES Permit, (b) records of maintenance and repairs for the Managed Assets, (c) copies of plans and specifications for Capital Items and (d) information regarding the quantity of Influent, Effluent and Biosolids processed at the Facility.

11.6.2 Upon expiration or termination of this Service Agreement the Company shall: (1) take all action as necessary to protect and preserve all materials, equipment, tools, facilities and other property; (2) promptly remove from the Managed Assets all equipment, implements, machinery, tools, temporary facilities of any kind and other property owned or leased by the Company (including sheds, trailers, workshops and toilets), and repair any damage caused by such removal; (3) with respect to Capital Items, promptly deliver to the City a list of all supplies, materials, machinery, equipment, property and special order items previously delivered or fabricated by the Company or any Subcontractor but not yet

incorporated in the Managed Assets; (4) deliver to the City the Operation and Maintenance Manual and all database files used at the Managed Assets in the performance of Company's obligations, including all revisions and updates thereto; (5) promptly deliver to the City copies of all Subcontracts, together with a statement of:

- (a) the items ordered and not yet delivered pursuant to each agreement;
- (b) the expected delivery date of all such items;
- (c) the total cost of each agreement and the terms of payment; and
- (d) the estimated cost of canceling each agreement;

(6) as directed by the City, transfer to the City by appropriate instruments of title, and deliver to the Managed Assets (or such other place as the City may specify), all special order items pursuant to this Service Agreement for which the City has made or is obligated to make payment; (7) provide the City with keys associated with the Managed Assets with identification of what each key is used for; and (8) take such other actions, and execute such other documents as may be necessary to effectuate and confirm the foregoing matters, or as may be otherwise necessary or desirable to minimize the City's costs, and take no action which shall increase any amount payable by the City under this Service Agreement.

11.6.3 Within thirty (30) days after the Commencement Date, Company shall conduct an audit of the existing inventory of spare parts and consumables at the Managed Assets and provide report of inventory levels to the City. Upon expiration or termination of this Agreement, Company shall replenish consumable and spare parts inventories to the initial levels established by the Company's report.

11.6.4 The foregoing provisions of this Section 11.6 shall survive the expiration or termination of this Service Agreement.

#### 11.7 Method of Payment by the City

11.7.1 All amounts payable by the City under Article XI shall be paid by cashiers' check or by electronic transfer within thirty (30) days of the date of termination.

11.7.2 The foregoing provisions of this Section 11.7 shall survive the termination of this Service Agreement.



## ARTICLE XII – LIABILITY AND INDEMNIFICATION; LIMITATION ON DAMAGES

### 12.1 Indemnification of the City by the Company

The Company shall defend, indemnify, and save harmless the City, its elected and appointed officials, officers, members, employees, directors, subcontractors and agents from and against any and all claims, actions, suits, notices of violation, liabilities, losses, expenses, fines, penalties, and costs, including, without limitation, reasonable attorney's fees and the cost and expense of defending against any of the aforesaid (collectively, "Damages"), arising from or in connection with (or alleged to arise from or in connection with) injuries to persons (including death), damage to property (including the loss of use), or the breach of any Applicable Law, including, but not limited to the discharge of Effluent from the Managed Assets in the violation of any Applicable Law, to the proportionate extent resulting from (a) the negligence or willful misconduct of the Company, its employees, agents, or Subcontractors in connection with this Service Agreement or (b) the breach by the Company of this Service Agreement.

### 12.2 Indemnification of the Company by the City

The City shall defend, indemnify, and save harmless the Company, its officers, directors, employees, agents, and subcontractors from and against any and all Damages, arising from or in connection with (or alleged to arise from or in connection with) injuries to persons (including death), damage to property (including loss of use) or the breach of any Applicable Law, including, but not limited to the discharge of Effluent from the Managed Assets in violation of any Applicable Law to the proportionate extent resulting from (a) the negligence or willful misconduct of the City, its officials, employees, other contractors, and agents in connection with this Service Agreement, (b) the breach by the City of this Service Agreement (c) the receipt by the Facility of Non-Specification Influent, including (without limitation) violations of the NPDES Permit due to the Facility exceeding its permitted average flow capacity; (d) the failure of the City to enforce the MIPP or its Sewer Use Ordinance; or (e) the ownership, operation, maintenance or use of the Facility, or the Site prior to the Commencement Date (including, without limitation, (i) any Pre-Existing Environmental Condition, (ii) any actions or omissions to act on the part of the City, the City's employees, agents and subcontractors).

Notwithstanding the foregoing, in no event shall either party be obligated to defend, indemnify or save harmless the other for the non-indemnifying party's negligence, willful misconduct or breach of its obligations as set forth in this Service Agreement.

Nothing in this Section 12.2 shall be construed as relieving Company of its' obligations with respect to Non-Specification Influent as they are set forth in Section 3.3.2.

### 12.3 Authority to Contest

In the event of the imposition of fines or penalties against any party for violations of any Permit or Applicable Law, the party on which such fines or penalties are imposed shall be given full authority to contest such violations and the other party shall reasonably assist such party in all such proceedings. Provided, however, neither party shall be required to assist the other party, if the circumstances involved regarding the violation of any Permit, or Applicable Law also constitutes an Event of Default, or other violation of this Service Agreement.

### 12.4 Limitation on Scope of Liability

In the event of a breach by either party of an obligation under this Service Agreement, the other party shall, in addition to any other remedies provided in this Service Agreement, have the right to recover damages or to be reimbursed; provided, however, that except as provided in Articles V and XI of this Service Agreement and except in connection with indemnification provided under Article XII of this Service Agreement, neither the City nor the Company shall be liable for any special, consequential, indirect, punitive, incidental, or similar damages, loss of actual or anticipated profits or revenue, cost of temporary or substitute equipment or costs of claims of customers relating in any way to this Service Agreement.

### 12.5 General Indemnification Procedures

During the term of this Service Agreement, a party seeking indemnification pursuant to Article XII (an "Indemnified Party") shall give prompt written notice (a "Claim Notice") to the party from whom such indemnification is sought (the "Indemnifying Party") of the assertion of any claim, the incurrence or potential incurrence of any Damages, or the commencement of any action, suit or proceeding, of which the Indemnified Party has knowledge in respect of which indemnity may be sought hereunder, and will give the Indemnifying Party such information with respect thereto as the Indemnifying Party may reasonably request; provided, that the failure of the Indemnified Party to give promptly such required notice shall relieve the Indemnifying Party of any liability hereunder only to the extent that the Indemnifying Party has suffered actual prejudice due to such failure to promptly give such written notice.

## ARTICLE XIII – UNCONTROLLABLE CIRCUMSTANCES

### 13.1 Uncontrollable Circumstances

13.1.1 Notwithstanding anything to the contrary contained in this Service Agreement, the Company shall not be liable for its failure to perform or for delay in performance of its obligations hereunder (other than any payment obligation) when due to Company Uncontrollable Circumstances. The Company shall provide prompt notice to the City of the commencement and the cessation of such Company Uncontrollable Circumstances as provided in Section 13.1.2 below. At the conclusion of any Company Uncontrollable Circumstance, the obligations of the Company shall resume in full force and effect. In the event of a Company Uncontrollable Circumstance, the Company shall use reasonable efforts to eliminate the cause thereof, reduce costs resulting therefrom and resume performance under this Service Agreement. The City shall pay the Service Fee, including any Extraordinary Items Component, during the continuance of any Company Uncontrollable Circumstances.

13.1.2 The Company shall immediately notify the City informally (including, without limitation, by telephone), after the date the Company first knew of the commencement of a Company Uncontrollable Circumstance, followed within ten (10) days by a written description of (a) the beginning of such Company Uncontrollable Circumstance, (b) its estimated duration and the requirement for, and the amount of, any adjustment to the Service Fee or any Capital Item necessitated thereby and (c) its estimated impact on the obligations of the Company under this Service Agreement.

13.1.3 Notwithstanding anything to the contrary in this Section 13.1, no Capital Item shall be implemented by the Company so long as: (i) the Company Uncontrollable Circumstance is a Change in Law relating to such Capital Item, (ii) the City gives the Company notice of its intention to contest the validity or applicability of such Change in Law prior to the date on which the Company determines that it is necessary for the Company to take action to comply with such Change in Law, (iii) the City diligently prosecutes such contest at its sole expense in good faith and by appropriate proceedings, (iv) Applicable Law permits continued operation of the Managed Assets pending resolution of the contest, so that the Company shall have no liability as a result of its failure during such period to comply with such Change in Law. If the Company determines that it is necessary to take action to comply with such Change in Law, the Company shall give the City at least forty-five (45) days' notice of such determination prior to taking any such action so the City may seek an injunction or other stay hereunder. Notwithstanding anything to the contrary set forth herein,

the Service Fee shall be adjusted (through the Extraordinary Item Component) as provided in Section 5.4.8 of Article V to the extent that the Company reasonably expends any funds in order to comply with a Change in Law described in this Section 13.1.3.

## ARTICLE XIV – DISPUTE RESOLUTION

### 14.1 Scope

To facilitate quick and efficient resolution of disputes that may arise under this Service Agreement, all claims, controversies and disputes arising out of or relating to this Service Agreement, or the breach thereof (“Dispute”), shall be decided by the dispute resolution procedure contained in this Article XIV and Exhibit 6.

### 14.2 Covenant to Continue Work

During the resolution of any Dispute, the Company and the City shall each continue to perform all of their respective obligations under this Service Agreement without interruption or delay. If the City disputes any invoice of the Company with respect to the Service Fee, the disputed portion of such invoice shall be effective immediately and until resolution of the Dispute. Accordingly, notwithstanding any other provision of this Service Agreement or, any Dispute with respect to an invoice, the City shall pay the entire amount of the Service Fee billed in such invoice when due. If the Company does not prevail in the Dispute resolution, the Company shall reimburse the City immediately after such resolution for the aggregate amount of the overpayment, plus interest at the Prime Rate calculated from the date on which the City paid such invoice.

### 14.3 Remedies

Notwithstanding any other term of this Service Agreement, the parties agree and understand that the remedy at law for any breach by the other party of this Service Agreement will be inadequate and that damages flowing from such breach are not readily susceptible to being measured in monetary terms. Accordingly, it is acknowledged that upon adequate proof of such breach, the non-breaching party shall be entitled to immediate injunctive relief and may obtain an order for specific performance or restraining any threatened or further breach. The rights and remedies available to a party at law and in equity under the terms and conditions of this Service Agreement are cumulative and not exclusive rights and remedies available to that party.

## ARTICLE XV – INSURANCE

### 15.1 Company Insurance Coverage

The Company shall provide insurance coverage for itself and all of its employees used in connection with this Service Agreement, and for property connected to this Agreement as provided below. Such policies shall be issued by financially sound carriers with A.M. Best ratings of at least “A” and “stable” and licensed to do business in the State of Delaware and shall be subject to approval by the City. Such insurance shall be as follows:

- (a) Workers’ Compensation – Workers’ Compensation Insurance with statutory limits as required by Delaware Law for all employees. Employer’s Liability or “Stop Gap” insurance with limits of \$500,000.00 each accident, disease, and policy limit.
- (b) Commercial General Liability –Commercial General Liability Insurance covering claims for bodily injury, death, personal injury, or property damage occurring or arising out of the performance of this Service Agreement, including coverage for independent contractor’s protection, premises-operations, products/completed operations, and contractual liability with respect to the liability assumed by the Company hereunder. The limits of this insurance shall be:

Each Occurrence:	\$5,000,000.00
General Aggregate Limit:	\$10,000,000.00
Products-Completed Operations Limit:	\$5,000,000.00
Personal and Advertising Injury Limit –	\$2,000,000.00 each occurrence and aggregate
- (c) Automobile Liability Insurance – Automobile Liability Insurance covering the ownership, operation and maintenance of all owned, non-owned and hired motor vehicles used in connection with the performance of this Service Agreement, with limits of \$1,000,000.00 combined single limit each accident for bodily injury and property damage.
- (d) Professional Liability Insurance—A limit of \$5,000,000 per claim and aggregate.
- (e) Contractor’s Pollution Liability Insurance—A limit of \$5,000,000 per claim and aggregate.
- (f) Excess/Umbrella Liability Insurance limit of \$5,000,000.00 per occurrence and aggregate.
- (g) Builders’ risk shall be negotiated and provided on a case by case basis through a CAM.

- (h) Insurance Limits and Certificates – The insurance limits required herein may be obtained through any combination of primary and excess or umbrella liability insurance. The Company will provide to the City certificate(s) of such insurance upon execution of this Service Agreement and on any renewal of such insurance while this Service Agreement is in effect. The certificate(s) shall provide that:
- a. The City, its elected and appointed officials, officers, members, employees, and directors are named as additional insured with respect to all liabilities as their interest may appear with respect to this Service Agreement except Workers' Compensation/Employer's Liability and Professional Liability;
  - b. With the exception of Workers' Compensation/Employer's Liability and Professional Liability, coverage is primary and not excess of, or contributory with, any other valid and collectible insurance purchased or maintained by the Company;
  - c. Waiver of Subrogation shall be provided for all coverages except Workers' Compensation and Professional Liability; and
  - d. Thirty (30) days' prior written notice of cancellation, material change or exclusions to the policy shall be given to the City.
- (i) Endorsements reflecting above coverage components shall be provided and attached to the Certificate(s) of Insurance.

## ARTICLE XVI – PERFORMANCE BOND

### 16.1 Performance Bond

The Company shall provide to the City and keep in force during each Fiscal Year of the Term a performance bond in an amount equal to the amount of the Service Fee for each such Fiscal Year as estimated by the Company in accordance with Section 5.2. For the first Fiscal Year ending June 30, 2021 the bond shall be for an amount equal to the Service Fee for the First Contract Year. For each subsequent Fiscal Year, the bond shall be equal to the estimated Service Fee for that current Fiscal Year as determined in accordance with Section 5.2. The bond shall guarantee the Company's faithful performance of its duties and obligations to the City, under this Service Agreement and shall be in such form as has been approved by the City Solicitor. The City shall have the authority to approve or disapprove the surety company, which approval shall not be unreasonably withheld.



## ARTICLE XVII– GUARANTY

### 17.1 Guaranty

The Company shall provide the Guaranty Agreement from Jacobs Engineering Group, Inc., the Guarantor which shall be mutually agreeable and in substantially the same form as that in Exhibit 7, which shall guarantee the performance of the Company's obligations under the terms of this Service Agreement.

If a guarantor under the Guaranty Agreement no longer directly or indirectly controls the Company, the Company shall be permitted to provide a successor guarantor, by assignment or otherwise, under the Guaranty Agreement, provided (i) such guarantor directly or indirectly controls the Company and (ii) such successor guarantor is consented to by the City, which consent shall not be unreasonably withheld.

If the Company provides a successor guarantor in accordance with this Section 17.1, the rights and obligations of the previous guarantor under the Guaranty Agreement shall be of no further force and effect, and the City shall execute such releases or further assurances in this regard as shall be reasonably requested by the Company.

## ARTICLE XVIII – REPRESENTATIONS

### 18.1 Company Representations

The Company represents and warrants to the City as follows:

(a) The Company is duly organized validly existing and in good standing under the laws of the State of Delaware with full legal right, power, and authority to enter into and perform its obligations under this Service Agreement.

(b) This Service Agreement has been duly authorized, executed, and delivered by Company and constitutes a legal, valid, and binding obligation of the Company, enforceable against the Company in accordance with its terms (except as the enforcement thereof may be limited by applicable bankruptcy, reorganization, insolvency, moratorium and similar laws affecting creditors' rights generally and by equitable principles of general application).

(c) To the best of its knowledge, neither the execution or delivery by the Company of this Service Agreement, nor the performance by the Company of its obligations in connection with the transactions contemplated hereby or thereby, or the fulfillment by the Company of the terms or conditions hereof or thereof (a) conflicts with, violates, or results in a breach of any constitution, law, or governmental regulation applicable to the Company, or (b) conflicts with, violates, or results in a breach of any term or condition of any order, judgment, or decree, or any agreement or instrument, to which the Company is a party, or by which the Company or any of its properties or assets are bound, or constitutes a default thereunder.

(d) No approval, authorization, order or consent of, or declaration, registration or filing with any Governmental Authority is required for the valid execution and delivery of this Service Agreement by the Company, except as such as have been duly obtained or made.

(e) Except as disclosed in writing to the City prior to the Effective Date, there is no action, suit, or proceeding, at law or in equity, before or by any court or Governmental Authority pending or to the best of its knowledge threatened against the Company, which might materially adversely affect the performance by the Company of its obligations hereunder or under the other transactions contemplated hereby, or which, in any way, questions the validity, legality, or enforceability of this Service Agreement.

(f) The Company has not made, nor caused any other Person to make any payment to any City employee or official to obtain this Service Agreement.

(g) None of the representations or warranties made by the Company in this Service Agreement contains or will contain any knowingly untrue statement of a material fact, or knowingly omits or will omit to state a material fact necessary to make any statement or fact contained herein or therein not misleading.

## 18.2 City Representations

The City represents and warrants to the Company as follows:

(a) The City is a municipal corporation duly organized and validly existing under the laws of the State of Delaware, with full legal right, power, and authority to enter into and perform its obligations under this Service Agreement.

(b) This Service Agreement has been duly authorized, executed, and delivered by City and constitutes a legal, valid, and binding obligation of the City, enforceable against the City in accordance with its terms (except as the enforcement thereof may be limited by applicable bankruptcy, reorganization, insolvency, moratorium and similar laws affecting creditors' rights generally and by equitable principles of general application).

(c) To the best of its knowledge, neither the execution or delivery by the City of this Service Agreement, nor the performance by the City of its obligations in connection with the transactions contemplated hereby or thereby, or the fulfillment by the City of the terms or conditions hereof or thereof (a) conflicts with, violates, or results in a breach of any constitution, law, or governmental regulation applicable to the City, or (b) conflicts with, violates, or results in a breach of any term or condition of any order, judgment, or decree, or any agreement or instrument, to which the City is a party, or by which the City or any of its properties or assets are bound, or constitutes a default thereunder.

(d) No approval, authorization, order or consent of, or declaration, registration or filing with any Governmental Authority is required for the valid execution and delivery of this Service Agreement by the City, except as such as have been duly obtained or made.

(e) Except as disclosed in writing to the Company prior to the Effective Date, there is no action, suit, or proceeding, at law or in equity, before or by any court or Governmental Authority pending or to the best of its knowledge threatened against the City, which might materially adversely affect the performance by the City of its obligations hereunder or under the other transactions contemplated hereby, or which, in any way, questions the validity, legality, or enforceability of this Service Agreement.

(f) Except as disclosed in writing to the Company prior to the Effective Date, to the best of its knowledge, there are no Environmental Claims pending or threatened against the City with respect to the Facility, Managed Assets or the Site.

(g) None of the representations or warranties made by the City in this Service Agreement contains or will contain any knowingly untrue statement of a material fact, or knowingly omits or will omit to state a material fact necessary to make any statement or fact contained herein or therein not misleading.

### 18.3 Knowledge Representations

(a) Wherever a representation or warranty is made to the knowledge of the City (whether modified by "to the best of its" or in some other manner), such representation or warranty shall be deemed to be made to the knowledge (however modified) of the City Solicitor, the Director of Water Division and the Commissioner of Public Works of the City, or any official of the City who succeeds to their responsibilities.

(b) Whenever a representation or warranty is made to the knowledge of the Company (whether modified by "to the best of its", or in some other manner) such representation or warranty shall be deemed to be made to the knowledge (however modified) of the Company's chief operating officer; and the chief legal officer and Vice President of Jacobs Engineering Group Inc. (or their equivalent).

## ARTICLE XIX – MISCELLANEOUS

### 19.1 Records

The Company shall maintain accounts and records, including personnel, property, and financial records, adequate to identify and account for all costs pertaining to this Service Agreement and such other records as may be deemed reasonably necessary by the City to assure proper accounting for all funds paid to the Company by the City. Such records shall be kept separate from other records maintained by the Company. Such records shall be made available for audit and inspection purposes to the City or its Designated Representative upon request during normal business hours. The City shall not disclose and shall keep confidential such records to the extent permitted by Applicable Law.

### 19.2 Business License

The Company shall obtain and maintain an appropriate business license from the City of Wilmington Department of Finance.

### 19.3 Taxes

The Company shall withhold, if applicable, City of Wilmington wage taxes from the compensation of its officers, agents and employees as required by the City of Wilmington wage tax law. The Company will not be required to pay any real or personal property taxes with respect to the Managed Assets or any real property upon which the Managed Assets are located. The Company shall be responsible for paying City of Wilmington Head Tax and Net Profit Tax as applicable.

### 19.4 Use of Subcontractors

The Company shall not use any subcontractors to perform any of the services required under this Service Agreement, other than subcontractors for the design or construction of Capital Items, without the prior written approval of the City, which approval will not be unreasonably withheld; provided, however, that the Company may enter into a Subcontract with any Affiliate of the Company to perform any of the services required under this Service Agreement to be performed by the Company.

### 19.5 Discrimination

In the performance of this Service Agreement, the parties agree that they shall not discriminate or harass, or permit discrimination or harassment, against any person because of age, sex, marital status, race, religion, color, national origin or sexual orientation.

#### 19.6 Disadvantaged Business Enterprises

The Company shall use its good faith efforts to achieve a ten percent (10%) disadvantaged enterprises goal of the City. It is acknowledged and agreed that if the Company customarily performs the work required under this Service Agreement by workers regularly employed by the Company, the Company shall not be required to subcontract such work in order to comply with this Section.

#### 19.7 Severability

This Service Agreement is intended to be performed in accordance with and only to the extent permitted by Applicable Law. If any provisions of this Service Agreement or the application thereof to any Person or circumstance, shall for any reason and to any extent be invalid or unenforceable, the remainder of this Service Agreement and the application of such provision to other Persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by Applicable Law. If a court of competent jurisdiction determines that any provision of this Service Agreement is invalid or unenforceable, the parties will negotiate in good faith to amend this Service Agreement so that to the maximum extent practicable the Service Agreement will give effect to the intentions of the parties.

#### 19.8 Independent Contractor

The Company shall at all times and for all purposes be an independent contractor and its employees, agents, and subcontractors shall not be employees or agents of the City.

#### 19.9 No Third-Party Beneficiaries

Except as provided in Sections 19.14 and 19.17 hereof, no Persons other than the parties hereto shall derive any right, title, interest, or benefit in or from this Service Agreement.

#### 19.10 Modification and Waiver

This Service Agreement may be modified only by written instrument executed by the City and by the Company. Any of the terms, covenants, and conditions of this Service Agreement may be waived at any time by the party entitled to the benefit of such term, covenant, or condition, provided however, such waiver must be in writing and executed by the party against whom such waiver is asserted.

#### 19.11 Notice

All notices shall be in writing and (i) delivered in person, (ii) transmitted by certified mail, return receipt, postage prepaid, (iii) transmitted by nationally recognized overnight courier or (iv) transmitted by electronic mail; provided, however, that a hard copy of such electronic mail transmission shall be sent by one of the other means of transmission

described in the preceding clauses (i) through (iii). Notices delivered in person addressed as specified will be effective upon the date of delivery. Notices delivered by certified mail or overnight courier will be effective one (1) calendar day after being deposited in the US Mail or with the overnight courier addressed as specified. Notices delivered by electronic mail will be effective on the date sent, if sent during normal business hours of the recipient during a Business Day, or otherwise the next Business Day.

Notices required to be given to City shall be addressed as follows:

Department of Public Works  
City of Wilmington  
Louis L. Redding Building  
800 French Street, 6<sup>th</sup> Floor  
Wilmington, DE 19801  
Attention: Commissioner  
Telephone: (302) 576-3069  
Email: [kwilliams@wilmingtonde.gov](mailto:kwilliams@wilmingtonde.gov)

Department of Public Works  
City of Wilmington  
Louis L. Redding Building  
800 French Street, 6th Floor  
Wilmington, DE 19801  
Attention: Deputy Commissioner  
Telephone: (302) 576-3081  
Email: [vcarroccia@wilmingtonde.gov](mailto:vcarroccia@wilmingtonde.gov)

With a copy to:

Law Department  
City of Wilmington  
Louis L. Redding Building  
800 French Street, 9<sup>th</sup> Floor  
Wilmington, DE 19801  
Attention: City Solicitor  
Email: [rmgoff@wilmingtonde.gov](mailto:rmgoff@wilmingtonde.gov)

Notices required to be given to the Company shall be addressed at the following address:

Company: Jacobs Engineering Group Inc  
Attn: Joseph Nattress, P.E.  
2301 Chestnut Street  
Philadelphia, PA 19103

Telephone: (215) 845-6908  
Email: joe.nattress@jacobs.com

Jacobs Engineering Group, Inc.  
Attn.: Caroline Cryer  
9191 S Jamaica Street  
Englewood, CO 80112  
Telephone: (720) 286-4034  
Email: Caroline.Cryer@jacobs.com

With a copy to:  
Jacobs Engineering Group Inc.  
Attn.: Lead Counsel, Americas  
9191 S Jamaica Street, Suite 400  
Englewood, CO 80112  
Telephone: (720) 286 1278  
Email: Jason.Adkisson@jacobs.com

Any of such addresses may be changed at any time upon notice of such change given in accordance with this Section to the other party by the party effecting the change.

#### 19.12 Interpretation and Construction

This Service Agreement has been negotiated between the parties and their respective counsel, and the parties agree that no provision shall be construed against the drafter. As used herein, any gender includes the other gender; the singular includes the plural, and vice versa. Captions are for the convenience of the parties and do not affect the substance of this Service Agreement.

#### 19.13 Entire Agreement

This Service Agreement, together with the Exhibits attached hereto and made a part of this Service Agreement, constitutes the entire agreement and understanding between the parties hereto, and, supersedes all prior agreements and understandings of the parties, with respect to the matters contemplated hereby or contemporaneous understandings, arrangements, commitments and representations, all or which, whether written or oral, are merged into this Service Agreement.

#### 19.14 Assignment

This Service Agreement and all of the of the provisions hereof shall be binding upon and inure to the benefit of the parties and their respective permitted successors and assigns, but neither this Service Agreement, nor any portion thereof, nor any of the rights,



interests, or obligations hereunder shall be assigned, sublet, or transferred by either party without the prior written consent of the other party hereto, except as provided in the following sentence. Notwithstanding anything to the contrary contained herein, the Company may, without the City's consent, assign this Service Agreement or any right, obligation or interest of the Company herein (including, without limitation, the right of the Company to receive the Service Fee and other payments hereunder) to any Affiliate of the Company, provided that in such event the Company shall remain liable hereunder, unless the City shall otherwise consent. Notwithstanding anything to the contrary contained herein, the City may, without the Company's consent, assign this Service Agreement to any municipal authority created by the City.

#### 19.15 Reserved

#### 19.16 Choice of Law

This Service Agreement shall be interpreted, governed and enforced under the laws of the State of Delaware. Subject to the dispute resolution procedures in Article XIV and Exhibit 6 of this Service Agreement, any and all suits for any claims or for any breach or dispute arising out of this Service Agreement shall be brought and maintained in a court of competent jurisdiction in New Castle County, Delaware.

#### 19.17 City's Obligations

19.17.1 The City shall make all budgetary and other provisions or appropriations necessary to provide for and to authorize the payment of all amounts due to the Company from the City under this Service Agreement as the same become due and payable.

19.17.2 The City hereby pledges its full faith and credit for the payment of all amounts to be paid by it to the Company pursuant to this Service Agreement. It is understood and agreed that the obligation of the City to make payments in the amounts and at times specified in this Service Agreement shall be absolute and unconditional, shall not be subject to delay or diminution by reason of set-off, abatement, counterclaim, recoupment, defense (including, without limitation, (i) impossibility or impracticability of performance, (ii) existence, non-existence, occurrence or nonoccurrence of any foreseen or unforeseen fact, event or contingency that may be a basic assumption of the City, (iii) commercial frustration of purpose or (iv) contract of adhesion) or other right which the City may have against the Company or any other Person for any reason whatsoever, shall not be affected by any defect in the condition, design, fitness for use of or any damage or loss or destruction of the Managed Assets, the Collection System or any part thereof, shall not be affected by any interruption or cessation in the possession, use or operation of the Managed Assets, the Collection System or any

part thereof by the Company or the City, respectively, for any reason whatsoever, and shall not be affected for any other reason, including but not limited to, the failure or refusal, in whole or in part, by New Castle County to continue to deliver wastewater to the Facility or to pay for the provision of wastewater services of the Facility; provided, however, that the City may set off against amounts otherwise due and payable to the Company under this Service Agreement (i) any amount owed by the Company to the City as reflected in the annual statement provided by the Company in accordance with Section 5.3.3 and not paid within the period provided by such Section, (ii) any amount which upon conclusion of the dispute resolution procedures set forth in Article XIV and Exhibit 6, has been determined by the arbitrators in their decision to be owed by the Company to the City and which has not been paid by the Company within thirty (30) Business Days of receipt by the Company of such decision and (iii) any amount which the Company otherwise agrees in writing is due and payable by the Company to the City.

#### 19.18 Payment

Except as expressly provided herein, all payments due under this Service Agreement shall be due and payable within thirty (30) days after receipt of statement therefor.

#### 19.19 Counterparts

This Service Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

#### 19.20 Negotiation of Electricity Rates

The City shall have sole and exclusive right to negotiate electricity rate with the Person who supplies electricity for use at the Managed Assets.

#### 19.21 Immunity

This Service Agreement shall not be deemed to waive the City's statutory or common law immunity.

**IN WITNESS WHEREOF**, the City and the Company have, each and separately, caused this Service Agreement to be executed in each's respective behalf by their respective duly authorized officers indicated below, as of the day and year first above written in the City of Wilmington, Delaware.

[Remainder of this page intentionally left blank. Signature Pages Follow]

**OPERATIONS MANAGEMENT  
INTERNATIONAL, INC.**

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

STATE OF DELAWARE

) SS:

On this, the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged \_\_\_self to be the \_\_\_\_\_ of **OPERATIONS MANAGEMENT INTERNATIONAL, INC.**, and that as such \_\_\_\_\_, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing on behalf of and in the name of **OPERATIONS MANAGEMENT INTERNATIONAL, INC.**

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Commission Expires:

[signatures continue on following page]

CITY OF WILMINGTON

STATE OF DELAWARE )  
 ) ss:  
COUNTY OF NEW CASTLE )

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Commission Expires:

## EXHIBIT 1 – MANAGED ASSETS AND SITE DESCRIPTION

### Exhibit 1- Managed Assets and Site Description

#### Section 1.0- Operation and Maintenance Scope of Work

##### *1.1- Description of Managed Assets*

The Managed Assets consist of multiple sites that the Company shall be responsible for the operation and maintenance, including:

- 1) Wastewater treatment plant, located at the intersection of 12<sup>th</sup> Street and Hay Road
- 2) Renewable Energy and Biosolids Facility (REBF), located on Hay Road,
- 3) Tertiary pump station, tertiary ponds, disinfection basins, outfall, and associated equipment between Hay Road and the Delaware River
- 4) Dewatered sludge storage pad/building along with piping, supports, and other mechanical items transporting dewatered solids to the storage pad area.
- 5) Wastewater pumping stations, consisting of:
  - a. 11<sup>th</sup> Street Pump Station
  - b. 12<sup>th</sup> Street Pump Station
  - c. 7<sup>th</sup> Street Pump Station
  - d. Justison Street Pump station
- 6) Wastewater force main from 11<sup>th</sup> Street pump station to the influent bar screens at the WWTP
- 7) Combined sewer overflow (CSO) mitigation facilities as listed in Table 1A.
- 8) Combined sewer overflow (CSO) site locations as listed in Table 1B.
- 9) Communication, monitoring, and control systems currently installed between remote facilities under the operational control of the Company and the main WWTP
- 10) Communication, monitoring, and control systems currently installed within the WWTP, REBF, and Tertiary treatment system boundaries.
- 11) Two (2) flow meters located at the WWTP to monitor flows from New Castle County force mains
- 12) New physical and electronic assets added to the wastewater assets as initial capital improvements (ICI), as further described in Exhibits 3 and 8.

### *1.2- Facilities excluded from Company Managed Assets*

Facilities associated with the wastewater treatment systems that are excluded from the Company's scope of work include;

- 1) Collection system assets, with exception of those listed in Section 1.1.
- 2) Stormwater system assets in separate sewer areas of the City.
- 3) Gas treatment system, inclusive of all components. The system is owned, operated, and maintained by the current vendor for landfill gas, Cherry Island Renewable Energy (CIRE).
- 4) Public roads or right of ways outside of the property boundaries listed in Section 1.1.
- 5) Landfill gas pipeline from CIRE to the REBF.
- 6) Operation and maintenance of areas outside the general vicinity of the dewatered sludge storage pad/building.
- 7) Facilities associated with the New Castle County force main(s) into the WWTP, unless included in Section 1.1.

### *1.3 – Operation and Maintenance Requirements*

- a) Company shall manage the operation and maintenance of all Managed Assets identified in this Service Agreement to meet the NPDES permit requirements and all other requirements of the Clean Water Act (CWA) and associated applicable regulations current at the time of contract execution.
- b) Company shall maintain adequate staff to provide oversight of all facilities 24 hours a day, 7 days per week, unless otherwise agreed to by the City and Company.
- c) Company shall maintain a Grade IV licensed operator in the State of Delaware who is responsible for the day to day operation and maintenance of the Managed Assets.
- d) At all times, the Company shall maintain appropriately licensed operations staff on-site for operation of the Managed Assets.
- d) For any capital projects, the Company shall employ a professional Engineer licensed in the State of Delaware who is responsible in charge from the design through the final commissioning of the project.
- e) Company shall be responsible for all laboratory testing and sampling presently required by permits and/or any federal, state, or local laws in effect at the time of this Service Agreement. Company may use outside laboratories for analysis, provided they are properly certified for such analyses by any national certification organization, acceptable to DNREC, such as NELAP.

- f) Company shall maintain a site-based lab at the WWTP responsible at a minimum for daily process and operational sampling to maintain performance.
- g) Company shall maintain a sufficient inventory as determined by Company standards of critical spare parts and materials required for operation of the Managed Assets.
- h) Company shall maintain an adequate amount of rolling stock as determined by Company standards to maintain and operate all Managed Assets
- i) Company shall maintain a comprehensive safety program for all Managed Assets, employees, and subcontractors in accordance with all applicable laws and regulations.
- j) Company shall be responsible for the generation of proposals to the City for Capital Projects, EIC, or other out of scope work, at its own expense, unless otherwise negotiated with the City.
- k) Company shall implement and maintain a maintenance management program and electronic system. Such data shall be available to the City upon request. An annual report shall be provided to detail each fiscal year spend and data on actual repairs and replacement.
- l) Company shall treat and dispose of biosolids in conformance with applicable law and permits.
- m) Company shall assist in the City's implementation of the MIPP in accordance with the Requirements of Articles VIII and IX of this Service Agreement.

#### *1.4 Management of Contract*

- a) The Company shall be responsible for meeting with the City on a periodic basis as requested, no less than monthly, to review the status of all capital projects and operational performance of the Managed Assets.
- b) The Company shall be responsible for attending meetings at the City request for Capital projects related to the Managed Assets or other non-managed wastewater system assets being performed by others, such as sewer interceptor rehabilitations.

### **Section 2.0 – Repair/Replacement of Equipment and Facilities**

#### *2.1 – Managed Assets Under Asset Management Fee*

The Company is responsible for the rehabilitation and replacement of the following Managed Assets, up to a limit of \$250,000 per event. Such per event threshold shall be escalated annually in accordance with the methodology set forth in Sections 5.4.2 (b) and Section 5.5. However, the per event threshold shall be adjusted in increments of \$25,000



once the cumulative effect of such annual escalations is equal or greater than the respective increment (e.g., \$275,000, \$300,000).:

- a) All mechanical, electrical, and instrumentation equipment at the WWTP, REBF, and Tertiary Systems
- b) All control systems (software and hardware) at the WWTP, REBF, and Tertiary Systems
- c) All mechanical, electrical, and instrumentation equipment at the four (4) City-owned pump stations described in Section 1.1.
- d) All control systems (hardware and software) at the four (4) City-owned pump stations described in Section 1.1
- e) All communication systems between remote Managed Assets and the WWTP
- f) Mechanical, electrical, and control systems associated with the CSO mitigation facilities listed in Table 1A.

Exhibit 16 provides a preliminary list of all critical/major assets within the WWTP, REBF, and Pump Station Managed Assets that are included under the Asset Management Fee, subject to the \$250,000 per event limit as described in Article III. Such per event threshold shall be escalated annually in accordance with the methodology set forth in Sections 5.4.2 (b) and Section 5.5. However, the per event threshold shall be adjusted in increments of \$25,000 once the cumulative effect of such annual escalations is equal or greater than the respective increment (e.g., \$275,000, \$300,000). This list will be updated and agreed upon between the City and Company within 90 days of project commencement date and restated 60 days after the start of the new contract year.

## *2.2 – Managed Assets Excluded from the Asset Management Fee*

The Company is not responsible for funding repair and replacement of the following Managed Assets which may be provided by the Major Maintenance Account described in Section III or by other means as directed by the City. The Company shall provide oversight and management of the rehabilitation and replacement of the excluded Managed Assets if funded by the MMA.

- a) All structures located at the WWTP, REBF, tertiary systems, and Dewatered Solids Storage facility
- b) All tanks and concrete pads located at the WWTP, REBF, tertiary systems, and dewatered solids storage facility.
- c) All buildings, tanks, and concrete pads located at the CSO mitigation facilities
- d) All roofs, roadways, and utility poles.
- e) All buried piping located at the WWTP, REBF, and tertiary system.

- f) All buried piping from the 11<sup>th</sup> Street Pump station to the WWTP
- g) All buried piping from the 12<sup>th</sup> Street Pump station to the WWTP
- h) All buried piping from the 7<sup>th</sup> Street Pump station into the City Collection System
- i) All buried piping from the Justison Street Pump station into the City Collection System.
- j) All buildings, tanks, and concrete pads at the four (4) City-Owned pump stations.
- k) All CSO regulator and tide gate structures.
- l) 8-inch potable water meter owned and maintained by the City.

### *2.3 Predictive and Preventative Maintenance*

The Company is responsible for providing predictive and preventative maintenance services for all Managed Assets in accordance with Company standards.

**Table 1A- CSO Mitigation Facilities Inventory**

<b>Name</b>	<b>Location</b>	<b>Description of Assets</b>
Brandywine Siphon (upstream and downstream)		Control gates (9); level float switches (3); ultrasonic (3); Flowmeter (1)
Christina Siphon (upstream and downstream)		Control gates (6); level float switches (2); ultrasonic (5)
Rattlesnake Siphon (upstream and downstream)		Control gates (4); modulating gate (1); level float switches (1); level sensors (1)
Louis L Redding Building	800 French St	Rain gauge and communications relay
Fire Station #2		Rain gauge and telemetry
Fire Station #3		Rain gauge and telemetry
Fire Station #4		Rain gauge and telemetry
CSO 4a		Flowmeter (1); modulating gates (4); control gates (4); level sensors (3); float switches (2); overflow weir
F1618		Flowmeter in manhole
F2322c		Flowmeter in manhole
F4e4d		Flowmeter in manhole
Canby Park		Flowmeter in manhole; rain gauge with telemetry; control gate 2.7 MGal storage tank with internal piping, valves, flowmeters and controls
CSO-25		Control gates (2); flowmeter (1); level float switches (2); ultrasonic (1); overflow weir
CSO-30		Control gates (2); flowmeter (1); level float switches (2); modulating gate (4); emergency generator 1 MGal storage tank

**Table 1B – CSO Inventory/Locations**

<b>CSO ID</b>	<b>CSO Outfall Location</b>	<b>Structure Type</b>
2	12 St. Pump Station	Diversion Gate
3	11th St. Pump Station N. Side River	Regulator
4a	Foot of Locust	Regulator
4b	Foot of Church (DM @ Pine & 26th)	Diversion Structure
4c	Jessup near 16th St. Bridge	Diversion Manhole
4d	Race & Hutton St.	Regulator
4e	17th & Glen Ave.	Regulator
4f	Foot Wash. St. Bridge	Diversion Manhole
5	Foot of Orange	Regulator
6	Foot of Shipley	Diversion Manhole
7	Foot of Market	Diversion Manhole
9a	E. Side 4th Street Bridge	Diversion Manhole
9c	Lobdell & Bradford	Diversion Manhole
10	A Street at Locust	Regulator
11	Foot King & Water	Diversion Manhole
12	Foot French & Water	Diversion Manhole
13	Foot Lombard & Front	Regulator
14	Front & Church	Diversion Gate
15	Foot Front & Church N. side of river	Regulator
16	City Fire Boat Dock	Regulator
18	Foot of 9th S. Side River	Regulator
20	Kirkwood Park	Regulator
21a	Kirkwood Park 2	Regulator
21b	Foot of Pine	Regulator
21c	Foot of 14th S. Side of River	Regulator
22b	Foot of Walnut	Diversion Manhole
22c	Foot of King (DM @ King and Race)	Diversion Manhole
23	Foot of West & Park Dr.	Diversion Manhole
23a	Foot of Adams St.	Diversion Manhole
24	Foot of Jackson & Park Dr.	Diversion Manhole
25	Rattlesnake Run	Regulator
26	Elliot Run	Regulator
27	Lancaster & Webb	Regulator
28	Grant & Rodman	Regulator
29	Canby Park	Regulator
30	Madison St. Conectiv Yard	Regulator/Diversion Dam
31	35th & Bowers (DM @ Eastlawn & GP Blvd.)	Diversion Manhole

<b>CSO ID</b>	<b>CSO Outfall Location</b>	<b>Structure Type</b>
32	Kentmere and Union	Diversion Manhole
33	Foot of Rockford Rd.	Diversion Manhole
U01	N. Side E. 8th E. Side Wilm. Ind. Park	Tide gate
U03	A St. between Poplar & Lombard	Tide gate
U04	W. Market St. Brdg. S. Side of River	Outfall only
U05	C St. W. of Market @ River	Tide gate
U06	F St. W. of Market @ River	Tide gate
U09	E. of RR Bridge S. Side River	Tide gate
U10	N. Side E. 8th W. Side Wilm. Ind. Park	Tide gate
U15	Shellpot	Tide gate
U20	W. of RR Bridge S. Side River	Tide gate

## EXHIBIT 2 – REQUIRED PERMITS AND APPROVALS

Required Permits are as follows:

- 1) WWTP and CSO: Permits: National Pollutant Discharge Elimination System (NPDES) Permit – State Permit No. WPCC3074E/74; NPDES Permit Number DE0020320, Effective October 1, 2014, Expires December 30, 2019.
- 2) REBF Title V Air Permit, 7 DE Admin Code 1130 (Title V) Operating Permit, Facility ID Number 1000300899, Permit Number: AQM-003/00899, dated September 24, 2018, Expires September 24, 2022.
- 3) WWTP Title V Air Permit, 7 DE Admin Code 1130 (Title V) Operating Permit, Facility ID 10003003389, Permit Number: AQM-003/00389- Renewal (4), dated August 7, 2019
- 4) Stormwater Permit: National Pollutant Discharge Elimination System (NPDES) Permit – State Permit No. WPCC 3063A/96; NPDES Permit Number DE0051071, Effective May 7, 2013, Expires May 6, 2018; Administratively extended by DNREC
- 5) Long Term CSO control plan incorporated by reference in NPDES Permit Number DE0020320.
- 6) City of Wilmington Municipal Industrial Pretreatment Program (MIPP) approval, incorporated by reference in NPDES Permit Number DE0020320.
- 7) Underground Storage Tank Registration, Facility 3-000596, Issued March 2006 for three heating oil tanks on-site.
- 8) General Permit (PAG-079611) issued by the Pennsylvania DEP for the beneficial reuse of “Exceptional Quality” (Class A) biosolids generated at the Wilmington WWTP issued May 20, 2019.
- 9) Delaware Solid Waste Transporter Permit, No. DE-SW-1280, Effective April 1, 2018, Expires March 31, 2023.

## EXHIBIT 3 – INITIAL COMPANY INVESTMENTS

The Company commits to make certain one-time expenditures, not all of a capital nature, in the first 3 contract years:

- a) **Upgrade the existing SCADA systems** for the wastewater treatment plant and REBF as further described in Exhibit 8
- b) **Improve the CSO monitoring system** and integrate into the new SCADA improvements as further described in Exhibit 8
- c) **REBF and Cogeneration improvements**, including improvements to the gas transmission system, spare parts inventory, dried solids conveyance system, and other components as further described in Exhibit 9.
- d) **REBF Energy Study** in contract year 1 to examine improvements to the power side of the REBF to provide additional reliability and redundancy. The energy study will include:
  - Grid study by PJM Interconnect to determine ability to implement net metering or other grid-based options to move towards net zero energy.
  - Evaluation of alternate approaches to maximize cogeneration capacity that may or may not be implemented in conjunction with PJM Interconnect recommendations
  - Preliminary engineering and engineers' opinion of probable cost for capital improvements recommended from the energy study.
- e) **A dynamic hydraulic model (Replica®)** to create a fully integrated system across pump stations, CSO control/mitigation system and the WWTP. The goal of the model is to optimize overall control strategy of the Managed Assets to increase the CSO capture rate and prepare for future capture requirements for CSO. The modeling effort will include:
  - Development of baseline hydraulic model based on existing conditions
  - Scenario development for options to increase capture/maximize flow to the WWTP.
  - Utilization of model to confirm optimal locations for additional flow and level monitoring under the improvements to the CSO monitoring system
  - Development of a new operational approach for system operations.
  - Review of new operational approach with City for concurrence
  - Integration of new operational approach to SCADA systems
  - Utilization of model for training of operators
  - Model continuous improvement/optimization with additional system operation.
- f) **Interim FOG receiving station and digester mixing**, utilizing existing digester infrastructure. This will include:
  - Rehabilitation/replacement of existing digester mixing equipment as needed

- Design and installation of an interim FOG receiving station to feed FOG from haulers into one cleaned digester
  - If the City decides to implement a permanent FOG receiving station within the first 3 years of this contract as a new capital project, the interim FOG receiving station project will not be completed.
- g) **Cleaning of a target of two (2) digesters** during the first three years
- h) **Base Scope III initial Study and Report** to look forward at the potential for value-added improvements to the WWTP and associated infrastructure to minimize energy use and maximize plant solids capacity. This study will include:
- Workshop with key subject matter experts to analyze the opportunities for implementing new approaches or technologies
  - Preliminary engineering for the options selected for further evaluation
  - Engineer's opinion of probable cost and payback period for selected options
  - Review with City after preliminary engineering and costs are developed
  - Final report to document outcomes and selection of any items identified for further development/implementation.
- i) **Annual Innovation Workshop each year** to look for opportunities for continuous improvement, industry trends and apply lessons learned/advancements from other project sites to Wilmington. This will include:
- One to two-day workshop with key project team members, selected subject matter experts, and the City to evaluate the past year's performance and concepts to improve performance or reduce costs
  - Order of magnitude estimates of cost or performance impacts from ideas generated and selected to pursue further at workshop
  - Memorandum documenting outcomes from workshop and items selected for further investigation
  - Items identified as feasible and beneficial will be pursued with a schedule for implementation.

## EXHIBIT 4 – SAMPLE SERVICE FEE CALCULATIONS

The total Service Fee for each contract year shall be calculated in accordance with the following formula:

$$SF_x = BF_x + AMF_x + SDF_x + PW_x + SWU_x + EC_x + MMA_x + EIC_x$$

where,

x	=	Contract Year
AF	-	Adjustment Factor
SF	=	Total Service Fee
BF	=	Base Fee
AMF	=	Asset Management Fee
SDF	=	Sludge Disposal Fee
PW	=	Potable Water Component – Established mutually prior to the new contract year
SWU	=	Stormwater User Component - Established mutually prior to the new contract year
EC	=	Electricity Component - Established mutually prior to the new contract
MMA	=	Major Maintenance Account – Established mutually prior to the new contract year
EIC	=	Extraordinary Items Component

### Base Fee Annual Adjustment:

The Base Fee for each subsequent Contract Year shall be determined by multiplying (1) the Base Fee for the current Contract Year and (2) the Base Fee Adjustment Factor.

$$\text{Base Fee Adjustment Factor} = (1 + [((\text{CPI-WS}).40 + (\text{ECI}).50 + (\text{CPI-U}).10)])$$

Twelve-month percent change for CPI-WS shall be calculated by:

CPI-WSp	=	Prior year November CPI-WS
CPI-WSc	=	Current year November CPI-WS
% Change	=	$(\text{CPI-WSc} - \text{CPI-WSp}) / \text{CPI-WSp}$

If:

CPI-WSp	=	557.447
CPI-WSc	=	574.961
% Change	=	$(574.961 - 557.447) / 557.447$



$$\text{CPI-WS} = 0.0314$$

The twelve-month percent change for ECI Q3 is as published by U.S. Department of Labor, Bureau of Labor Statistics.

Twelve-month percent change CPI-U shall be calculated by:

$$\begin{aligned}\text{CPI-Up} &= \text{Prior year November CPI} \\ \text{CPI-Uc} &= \text{Current year November CPI} \\ \% \text{ Change} &= (\text{CPI-Uc} - \text{CPI-Up})/\text{CPI-Up}\end{aligned}$$

If:

$$\begin{aligned}\text{CPI-Up} &= 252.038 \\ \text{CPI-Uc} &= 257.208 \\ \% \text{ Change} &= (257.208 - 252.038)/252.038 \\ \text{CPI-U} &= 0.0205\end{aligned}$$

Base Fee Adjustment Example as specified in Section 5.4.1.

$$\begin{aligned}\text{BF}_x &= \text{New Base Fee} \\ &= \text{BF}_c \times \text{AF} \\ \text{BF}_c &= \text{Current Base Fee} \\ \text{AF} &= (1 + [((\text{CPI-WS}) \cdot 0.40 + (\text{ECI}) \cdot 0.50 + (\text{CPI-U}) \cdot 0.10)]) \\ \text{If:} \\ \text{CPI-WS} &= 0.0314 \\ \text{ECI} &= 0.0281 \\ \text{CPI-U} &= 0.0205 \\ \text{AF} &= (1 + [(0.0314 \cdot 0.40) + (0.0281 \cdot 0.50) + (0.0205 \cdot 0.10)]) \\ &= (1 + [0.0126 + 0.0141 + 0.0021]) \\ &= 1.0288 \\ \text{BF}_c &= \$1,000,000.00 \\ \text{BF}_x &= \$1,000,000.00 \times 1.0288 \\ \text{BF}_2 &= \$1,028,800.00\end{aligned}$$

**Asset Management Fee Annual Adjustment:**

Example as specified in Section 5.4.2.

$$\begin{aligned}\text{AMF}_x &= \text{New Asset Management Fee} \\ &= \text{AMF}_c \times \text{WSAF} \\ \text{AMF}_c &= \text{Current Asset Management Fee} \\ \text{WSAF} &= \text{Water Sewer Adjustment Factor} \\ &= (1 + \text{CPI-WS})\end{aligned}$$

If:

$$\begin{aligned}\text{CPI-WS} &= 0.0314 \\ \text{AMF}_c &= \$500,000.00 \\ \text{AMF}_x &= \$500,000.00 \times (1 + 0.0314) \\ &= \$515,700.00\end{aligned}$$

**Sludge Disposal Fee Annual Adjustment:**

Example as specified in Section 5.4.3.

$$\begin{aligned}\text{SDF}_x &= \text{SDF}_c \times \text{WSAF} \\ \text{SDF}_c &= \text{Current Sludge Disposal Fee} \\ \text{SDF}_x &= \text{New Sludge Disposal Fee} \\ \text{WSAF} &= \text{Water Sewer Adjustment Factor} \\ &= (1 + \text{CPI-WS})\end{aligned}$$

If:

$$\begin{aligned}\text{CPI-WS} &= 0.0314 \\ \text{SDF}_1 &= \$800,000.00 \\ \text{SDF}_2 &= \$800,000.00 \times (1 + 0.0314) \\ &= \$825,120.00\end{aligned}$$

**Electrical Component Fee Calculation and Annual Reconciliation**

*The electrical component fee is a rebateable account that is reconciled at the end of each contract year. The contract year fee is an estimate based on the electrical component fee equation detailed below.*

*Electrical Component Fee:*

$$EC = PS + DC + WWEC$$

Where,

PS = The projected electricity usage cost for the Main Pump Stations for the Contract Year

DC = The projected costs for Demand Charges for all Managed Assets

WWEC= The projected cost for the Guaranteed Maximum Net Usage at the WWTP

WWEC = GMU x RU

GMU = Guaranteed Maximum Net Usage at the WWTP (kWhr)

RU = Base Electrical Usage Rate for the Contract Year (\$/kWhr)

If:

PS = \$100,000.00

DC = \$200,000.00

GMU = 5,000,000 kWhr

RU = \$0.061/kWhr

WWEC = 5,000,000 kWhr \* \$0.061/kWhr  
= \$305,000.00

EC = PS + DC + WWEC

EC = \$100,000.00 + \$200,000.00 + \$305,000.00  
= \$605,000.00

*Electrical Component Annual Reconciliation*

At the end of each contract year, the various components of the electricity component shall be reconciled as follows:

**Pump Station (PS)**

PS<sub>actual</sub> – PS<sub>projected</sub> = Payment to Jacobs (or credit to City)

**Demand Charges (DC)**

DC<sub>actual</sub>- DC<sub>projected</sub> = Payment to Jacobs (or credit to City)

**Guaranteed Maximum Net Usage (GMU)**

WWEC actual – WWEC projected = payment to Jacobs (or credit to the City)

If:

PSactual	=	\$110,000.00	
PSprojected	=	\$100,000.00	
DCactual	=	\$190,000.00	
DCprojected	=	\$200,000.00	
WWECactual	=	\$300,000.00	
WWECprojected	=	\$305,000.00	
PS Recon	=	\$110,000.00 - \$100,000.00	
	=	<b>\$10,000.00</b>	<b>Payment to Jacobs</b>
DC Recon	=	\$190,000.00 - \$200,000.00	
	=	<b>(\$10,000.00)</b>	<b>Credit to the City</b>
WWEC Recon	=	\$300,000.00 - \$305,000.00	
	=	<b>(\$5,000.00)</b>	<b>Credit to the City</b>

## EXHIBIT 5 – SCHEDULED TERMINATION COSTS

The Scheduled Termination Costs as of any date of termination of this Service Agreement shall be as set forth below:

The Scheduled Termination Costs for Initial Capital Improvements (ICIs) as of any date of termination of this Service Agreement shall be as set forth in the tables below. Table 1 reflects the projected spending for the ICI through the first three contract years. If termination is executed in the first three contract years, values estimated in Table 1 will be cost substantiated to the City based on actual spending to the date of termination. Table 2 reflects the depreciation of the ICI through the course of the 20-year contract. Values shown in both tables are based on the end of the applicable contract year. As noted in Sections 11.4.2 and 11.4.3, if the termination falls within the contract year, the values in the tables below will be pro-rated.

**Table 1. ICI Initial Spending Reimbursement**

<b>Contract Year</b>	<b>CSO</b>	<b>SCADA</b>	<b>REBF</b>	<b>Total</b>
<b>1</b>	\$321,545	\$685,745	\$396,682	\$1,403,972
<b>2</b>	\$643,090	\$1,371,491	\$793,364	\$2,807,945
<b>3</b>	\$964,635	\$2,057,236	\$1,190,046	\$4,211,917

**Table 2. ICI Termination Costs**

<b>Contract Year</b>	<b>CSO</b>	<b>SCADA</b>	<b>REBF</b>	<b>Total</b>
<b>4</b>	\$907,892	\$1,936,222	\$1,120,043	\$3,964,158
<b>5</b>	\$851,149	\$1,815,209	\$1,050,041	\$3,716,398
<b>6</b>	\$794,406	\$1,694,195	\$980,038	\$3,468,638
<b>7</b>	\$737,662	\$1,573,181	\$910,035	\$3,220,878
<b>8</b>	\$680,919	\$1,452,167	\$840,032	\$2,973,118
<b>9</b>	\$624,176	\$1,331,153	\$770,030	\$2,725,358
<b>10</b>	\$567,433	\$1,210,139	\$700,027	\$2,477,599

<b>Contract Year</b>	<b>CSO</b>	<b>SCADA</b>	<b>REBF</b>	<b>Total</b>
<b>11</b>	\$510,689	\$1,089,125	\$630,024	\$2,229,839
<b>12</b>	\$453,946	\$968,111	\$560,022	\$1,982,079
<b>13</b>	\$397,203	\$847,097	\$490,019	\$1,734,319
<b>14</b>	\$340,460	\$726,083	\$420,016	\$1,486,559
<b>15</b>	\$283,716	\$605,070	\$350,014	\$1,238,799
<b>16</b>	\$226,973	\$484,056	\$280,011	\$991,039
<b>17</b>	\$170,230	\$363,042	\$210,008	\$743,280
<b>18</b>	\$113,487	\$242,028	\$140,005	\$495,520
<b>19</b>	\$56,743	\$121,014	\$70,003	\$247,760
<b>20</b>	\$0	\$0	\$0	\$0

City will also pay any agreed upon EIC reimbursements upon termination. Future projects with Capital Spending by the Company will include termination schedules as negotiated at that time within the CAM.

## EXHIBIT 6 – DISPUTE RESOLUTION

- (a) Subject to Applicable Law and exhaustion of pre-dispute remedies set forth in this Service Agreement, any Disputes under this Service Agreement which are not resolved by direct discussions among senior representatives of the City and the Company shall be submitted to binding arbitration upon 10 days notice to the other party (the tenth day after such notice being herein called the "Original Submission Date"). Any such arbitration shall be conducted by a committee of three arbitrators (one appointed by the City, one appointed by the Company and one appointed by the other two so appointed), which shall be appointed within 30 days after the Original Submission Date. If the City and the Company-appointed arbitrators are unable to agree on the appointment of the other arbitrator within 30 days, then the other arbitrator shall be appointed by the American Arbitration Association. The arbitrators shall meet in Wilmington, Delaware, shall abide by the commercial arbitration rules of the American Arbitration Association and their decision shall be made within 45 days and shall be final and binding on all parties.
- (b) The City and the Company shall produce such records as the arbitrators shall request.
- (c) The decision of the arbitrators shall be in writing and shall include written findings of fact.
- (d) The City and the Company shall each bear their own costs and expenses (including attorneys' fees) in connection with any arbitration and the resolution of any dispute and shall each bear 50% of the costs and expenses of the third arbitrator.

## EXHIBIT 7 – FORM OF CORPORATE GUARANTY

### GUARANTY AGREEMENT

This **GUARANTY AGREEMENT** (this “**Guaranty**”) is made as of the \_\_\_ day of \_\_\_\_\_ 2020, by **Jacobs Engineering Group, Inc.**, (“**Guarantor**”), for the benefit of the City of Wilmington, Delaware (“**Owner**”). Guarantor and Owner are individually referred to herein as a “**Party**” and collectively as the “**Parties**.”

### RECITALS

**WHEREAS**, Operations Management International, Inc., a California corporation (“**Company**”) is a wholly owned subsidiary of Guarantor;

**WHEREAS**, Owner and Company have entered into a Professional Services Agreement for the Operation, Maintenance and Management of the Owner’s Wastewater Treatment Facility dated the date hereof (the “**Contract**”);

**WHEREAS**, pursuant to Section 17.1 of the Contract, Company is obligated to provide Owner with this Guaranty; and

**WHEREAS**, Guarantor as ultimate parent company of Company, is willing to enter into this Guaranty in consideration of and to satisfy the terms of the Contract.

### AGREEMENT

**NOW, THEREFORE**, in consideration of the premises and mutual covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. In consideration of the award of the Contract by Owner to Company, Guarantor hereby guarantees to and for the benefit of Owner the full and timely performance of the obligations of the Company under the Contract when and if such obligations becomes due according to the terms of the Contract (“**Obligations**”). Guarantor shall not be required to cause such Obligations to be performed unless and until it receives Owner’s written demand for performance hereunder following the occurrence of an Event of Default, as such term is defined in the Contract. Guarantor shall have ten (10) days after notice of an Event of Default to commence its performance of such Obligations. Guarantor shall be entitled to assert any and all rights, remedies and defenses which would otherwise be available to Company under the Contract.

2. Any modification or amendment of any of the Obligations in accordance with the terms of the Contract shall not affect the liability of Guarantor hereunder.

3. Notwithstanding anything to the contrary herein, Guarantor's liability under this Guaranty shall not exceed Company’s liability under the Contract.

4. This Guaranty shall continue in full force and effect until all of the Obligations have been discharged.



5. This Guaranty shall be governed by the law of the State of Delaware governing the Contract, and any dispute under this Guaranty shall be finally settled under the dispute resolution provisions of the Contract.

6. The Guarantor expressly reserves the right to effectuate its obligations under this Guaranty through a properly licensed and registered corporate affiliate, as such licensure and registrations are required by applicable law.

7. There are no third-party beneficiaries of this Guaranty.

8. This Guaranty may not be assigned by Owner without Guarantor's prior written consent, provided however, prior written consent shall not be required in the event that the Guaranty is assigned to a municipal authority created by the Owner.

9. This Guaranty represents the final agreement between the Parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the Parties. This Guaranty may not be modified, amended or waived, except in writing signed by the Parties.

10. All notices, requests, demands, and other communications under this Guaranty shall be deemed to have been duly given (i) to Guarantor, if delivered in accordance with the requirements set forth in Section 19.11 of the Contract to the address below and (ii) to Owner, if delivered in accordance with the requirements set forth in Section 19.11 of the Contract to the address set forth therein.

To Guarantor:

Jacobs Engineering Group, Inc.  
9191 South Jamaica Street  
Englewood, CO 80112  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Attn: Treasurer

This Guaranty Agreement has been duly executed by authorized representatives of each of the Parties as follows:

**GUARANTOR:**

**Jacobs Engineering Group, Inc.**

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

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

**OWNER:**

\_\_\_\_\_

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

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

## EXHIBIT 8 – SCADA AND CSO IMPROVEMENTS

### Improvements to the SCADA system:

1. Engineering analysis, standards development, and design of improvements.
2. Initial patches of software needed for security.
3. Integrate the REBF Control system and Pump Station Control systems into the main WWTP SCADA
4. Replace current plant SCADA servers with three (3) new servers for SCADA including redundancy to host:
  - a. First server: primary Wonderware SCADA Galaxy Repository (GR); Wonderware SCADA Archestra Object Server (AOS); I/O server(s) talking to the plant and remote hardware; backup iFIX server; the primary terminal servers or Web hosting servers for the above; primary Historians for the SCADA servers; domain controller backup to distribute the Active Directory functions.
  - b. Second server: backup Wonderware SCADA Galaxy Repository (GR); Wonderware SCADA Archestra Object Server (AOS); I/O server(s) talking to the plant and remote hardware; primary iFIX server; backup terminal servers or Web hosting servers for the above; backup Historians for the SCADA servers; domain controller backup to distribute the Active Directory functions.
  - c. Third server: DMZ host jump box (Bomgar or similar) to act as an isolated, single function workstation for inside-the-perimeter development, diagnostics, and troubleshooting); backup server (likely running Veeam) to back up the other two servers as well as itself to a SAN (storage area network) or NAS (network attached storage); domain controller primary to handle user logons, authentication, and user/group management; Virtual Machine management console (vSphere) to handle the management and monitoring of all the hosts and their instances.
5. Provide a fourth server for the DMZ area for functions outside of SCADA:
6. Provide a fifth server for a SCADA development workstation to allow SCADA work to be completed without interrupting the actual Control systems;
7. Minimum of ten (10) wireless switches and telemetry to connect various on-site control subsystems to the plant-wide SCADA;
8. Nine (9) new cellular modems to connect the existing Real Time Control (RTC) and the three (3) current pump station sites to the main plant SCADA;
9. Six (6) new SCADA radios to connect the three current pump stations, two repeater sites, and a main radio at the WWTP;

10. Up to fifteen (15) redundant modems or radios for all remote sites depending on location and reliability needs;
11. On-site backup NAS drives for all server data/functions;
12. Up to twelve (12) thin client/operator workstations dispersed throughout the WWTP for connectivity to the plant wide SCADA and new clients for Administration Building main control room.
13. Add visibility to all CSO system monitoring, including newly installed equipment, to SCADA.

Improvements to the CSO system:

1. Engineering analysis and design of monitoring improvements
2. Level monitoring at all 35 unmonitored CSO sites;
3. Level monitoring at 9 additional tide gates and outfalls identified on the City's CSO inspection list that are used to determine if the river(s) are backing up into the collection system.
4. Three (3) new flowmeters in City-owned and operated interceptors.
5. Two (2) new level monitors in City-owned and operated trunk sewers.
6. Control equipment, panels, and telemetry from each site returning to the WWTP SCADA system and RTC system.

## EXHIBIT 9 – REBF/COGEN IMPROVEMENTS

### Improvements to the REBF systems:

1. Non-destructive testing, condition assessment and report of:
  - a. Feed hoppers, conveyors, pumps
  - b. Thermal fluid heater, blower, heat exchanger
  - c. SCADA, PLC and HMI control systems
  - d. Condenser, exhaust, and odor scrubber
  - e. Product conveyors, valves
  - f. Hot water backup boiler
  - g. Chemical feed skid for non-potable water
  - h. Potable water feasibility assessment and testing for REBF building sprinkler system
2. Design engineering and implementation of capital improvements:
  - a. Dryer cooling screw replacement(s)
  - b. Conveyor modifications
  - c. HVAC access for lubrication
  - d. Drain water pump replacement
  - e. Existing silo baghouse replacement
  - f. Existing dried solids conveyor (cup and chain) replaced
3. Critical spare parts to minimize downtime:
  - a. Conveyor splice kits, belt sections, scraper blades, v-belts, Dodge spares, motion and speed sensors, idler belt scale, and bearings
  - b. Dryer gearbox, motor, pump and RV VFDs, rotary joint gaskets and repair items, bearings and shims, solenoid valves, thermal sensors, oxygen analyzer
  - c. Hopper gearbox and motor
  - d. Cooling screw shrink disk, motor, and gearbox
  - e. Seepex feed pump stator, rotor, packing, and motor
  - f. Product silo thermocouples, filter bag cartridges, solenoid valves, discharge and transfer screw VFDs, chain assembly and spare links, feed screw gearbox and motor
  - g. Hot oil boiler pressure controller, pump strainers, recirculation pump and motor

- h. Lift station level detection and pumps
- i. Nonpotable water pump, motor, strainers

Improvements to Digester Gas Delivery:

1. Design engineering of improvements
2. Procurement, installation and startup of digester gas booster blowers:
  - a. Two blowers in a duty/standby arrangement with discharge pressure adequate to meet gas cleaning skid and cogeneration unit pressure requirements.
  - b. Booster blower pad and enclosure
  - c. Digester gas piping reroute, 6-inch diameter 316 SST, Schedule 5, estimated at 300 linear feet
  - d. Power, control wiring, and skid controls integrated as needed to the gas cleaning skid and cogeneration system.

Cogen Improvements

1. Generator spare parts (vendor recommended)
2. PJM Interconnection and Delmarva power study (to determine requirements that could allow feed of excess generator capacity to grid) and report of recommendations

## EXHIBIT 10 – ADDITIONAL SCOPE AND ALLOWANCES FOR BASE FEE

At the request of the City, Jacobs has added the following scope items to the Base Fee reflected in this contract with allowances (where noted) for the work to be utilized each year. The allowances include Jacobs' cost-plus ten percent (10%). If the City-desired scope of work exceeds the provided allowances, then the additional costs plus Company's Discounted Rate will be treated as an Extraordinary Item for that Contract Year. Jacobs will cost-substantiate any of the allowance line items as requested by the City and rebate or reallocate any unspent funds at the City's direction.

### **Groundwater Monitoring**

This scope of work includes collecting and analyzing up to five (5) samples once per year at the former HRI Biosolids Processing Facility. The sampling will be conducted in accordance with Duffield Associates May 2011 "Groundwater Monitoring Plan" prepared for the facility. An allowance of \$6,000 is included with Jacobs' base fee to cover this annual work.

### **Polychlorinated Biphenyls (PCB) Track Down Program**

As part of the current NPDES surface water discharge permit, the City is required to perform an annual PCB Track down program that includes investigations, sampling at the WWTP, sampling/investigations in the collection system, and annual reporting. The City has historically used subcontractors for this work, including Synergistic Environmental Solutions for management and reporting, Environmental Standards for PCB sampling, along with Test America and Eurofins for laboratory analysis. Jacobs will continue to utilize this same set of subcontractors for Contract Year 1 (Fiscal year 2021) and evaluate the partners/subcontractors for this work for future contract years.

Based on historical costs, Jacobs has provided an allowance of \$250,000 in the base fee to cover this annual work. The final scope each year will be negotiated between the City, Jacobs, and any subcontractors to be within this allowance.

### **Title V Air Permit Annual Fees**

The annual permit fees for the two (2) Title V air permits for the WWTP and the REBF will be paid for by Jacobs from an allowance of \$25,000. Any significant increase the current schedule of air permit annual fees published by the State of Delaware may necessitate an increase in this allowance.

EXHIBIT 11 -TRANSFERRED INVENTORY, OFFICE EQUIPMENT, AND  
ROLLING STOCK



## EXHIBIT 12 – SLUDGE AND CHEMICAL INVENTORIES AT COMMENCEMENT OF OPERATIONS

At the turnover of the project on July 1, 2020, a minimum inventory of chemicals shall be in place to effectively operate the WWTP. A maximum inventory of no more than 1 week of dewatered and/or dried solids under average conditions will be present on-site at the time of the turnover. In addition, the sludge inventory as defined by the MLSS and blanket levels in various tanks shall be within normal process targets to minimize compliance risk of stockpiling solids for cost avoidance. See Tables 1 and 2 for actual quantities.

In addition to treatment process chemicals, any/all lubricants remaining for existing equipment purchased by the current Operator shall remain at site.

**Table 1. Chemicals**

<b>Chemical</b>	<b>Location</b>	<b>Quantity</b>
Neat Polymer Solution	Thickening Building	Minimum two weeks storage
Dry Polymer	Dewatering Building	20,000 pounds
12% Sodium Hypochlorite	Chlorine Contact Chamber	Full storage tanks
Urea	REBF Building	700 gallons

**Table 2. Solids**

<b>Solids Type</b>	<b>Location</b>	<b>Quantity (dry tons)</b>
Dewatered Solids	Sludge Pad at adjacent property and storage silo at REBF	No more than 200 dry tons
Solids Holding Tanks (2)	Adjacent to dewatering building	50% capacity
Process Sludge Inventory	Primary Clarifiers, Aeration Tanks, Secondary Clarifiers, Gravity Thickeners	Within normal process targets (not to be used for excess sludge stockpiling)

EXHIBIT 13

MULTIJURISDICTIONAL AGREEMENT

# EXHIBIT 14 – ANNUAL LABOR RATE TABLE

<b>Staff Category</b>	<b>Raw Rate (low)</b>	<b>Raw rate (high)</b>	<b>Billing rate (low)</b>	<b>Billing Rate (high)</b>	<i>Market rate (low)</i>	<i>Market rate (high)</i>
<b>Program/Project Manager</b>	\$70	\$110	<b>\$182</b>	<b>\$286</b>	<i>\$196</i>	<i>\$308</i>
<b>Subject Matter Expert</b>	\$80	\$115	<b>\$208</b>	<b>\$299</b>	<i>\$224</i>	<i>\$332</i>
<b>Principal Engineer</b>	\$65	\$90	<b>\$169</b>	<b>\$234</b>	<i>\$182</i>	<i>\$252</i>
<b>Senior Engineer</b>	\$60	\$80	<b>\$156</b>	<b>\$208</b>	<i>\$168</i>	<i>\$224</i>
<b>Project Engineer</b>	\$45	\$60	<b>\$117</b>	<b>\$156</b>	<i>\$126</i>	<i>\$168</i>
<b>Staff Engineer</b>	\$30	\$45	<b>\$78</b>	<b>\$117</b>	<i>\$84</i>	<i>\$126</i>
<b>Senior Technician</b>	\$45	\$55	<b>\$117</b>	<b>\$143</b>	<i>\$126</i>	<i>\$154</i>
<b>Intermediate Technician</b>	\$30	\$45	<b>\$78</b>	<b>\$117</b>	<i>\$84</i>	<i>\$126</i>
<b>Staff Technician</b>	\$20	\$30	<b>\$52</b>	<b>\$78</b>	<i>\$56</i>	<i>\$84</i>
<b>Senior O&amp;M Professional</b>	\$50	\$80	<b>\$130</b>	<b>\$208</b>	<i>\$140</i>	<i>\$224</i>
<b>Project O&amp;M Professional</b>	\$35	\$55	<b>\$91</b>	<b>\$143</b>	<i>\$98</i>	<i>\$154</i>
<b>Staff O&amp;M Professional</b>	\$20	\$35	<b>\$52</b>	<b>\$91</b>	<i>\$56</i>	<i>\$98</i>
<b>Administrative Professional</b>	\$30	\$55	<b>\$78</b>	<b>\$143</b>	<i>\$84</i>	<i>\$154</i>
<b>Administrative Staff</b>	\$15	\$35	<b>\$39</b>	<b>\$91</b>	<i>\$56</i>	<i>\$98</i>
<b>Notes:</b>						
<b>1) Billing rate based on discounted labor multiplier of 2.6, as compared to market labor multipliers of 2.8 to 3.0.</b>						
<b>2) Billing rate range valid through June 30, 2021 or by mutual agreement of City and Jacobs to extend current rate ranges.</b>						

## EXHIBIT 15 – INTERIM OPERATIONAL CONDITIONS

In the event that the REBF facility has not been turned over to the City by the Commencement Date, the obligations of the parties shall be modified as follows with respect to the Service Agreement until the REBF operations are assumed by Company and referred to as the “Interim Operating Period.” During the Interim Operating Period all contract obligations related to the operation and maintenance of the REBF, including obligations related to environmental permits shall not be applicable until the Company assumes the operation of the REBF.

1. Section 1.55 - The REBF and all associated systems are excluded from the definition of “Managed Assets” during the Interim Operating Period.
2. Section 2.2 – The term of the service contract is not modified by the Interim Operating Period.
3. Section 3.10- During the Interim Operating Period, the Company shall not be responsible for the Operation and Maintenance of the REBF.
4. Section 3.11.5, 3.11.6- Full implementation of the improvements set forth in Section 3.11.5, Exhibit 9, and the study set forth in Section 3.13 shall be completed upon the assumption of the REBF operations and maintenance. Additionally, the PJM study set forth in Exhibit 3 shall be performed, the results of which shall be considered proprietary and confidential between the City and Company.
5. Section 4.7- In the event that the Company does not assume the REBF operations on the Commencement date, the timeline for the completion of the improvements contemplated in Section 4.7 and Exhibit 9 shall be extended by the duration of the Interim Operating Period.
6. Section 5.4 Service Fee- for the Interim Operating Period, the Service Fee shall be implemented as set forth below.

$$SF = BF + AMF + SDF + PW + SWU + EC + MMA$$

where,

SF = Service Fee

BF = Base Fee

AMF = Asset Management Fee

SDF = Sludge Disposal Fee

PW = Potable Water Component

SWU = Stormwater User Component

EC = Electricity Component

MMA = Major Maintenance Account

Each component of the Service Fee shall be determined as set forth below

- a. Base Fee- The Base Fee for the Interim Operating Period shall be \$10,406,610, as calculated on a 12-month basis.
- b. Asset Management Fee – the Asset Management Fee for the Interim Operating Period shall be \$1,421,509, as calculated on a 12-month basis.
- c. The Company shall pay for Sludge Disposal during the Interim Operating Period. The Sludge Disposal Fee for the Interim Operating Period shall be \$2,928,782, as calculated on a 12-month basis. The Sludge Disposal Fee shall be based on Company's estimated expenditures for the 12-month period plus ten percent (10%). Upon conclusion of the Interim Operating Period, the City shall issue payment to the Company for expenditures in excess of the budgeted amount plus ten percent (10%) or the Company will issue a credit to the City for budgeted amounts billed (inclusive of 10% markup) in excess of actual expenditures.
- d. The Company shall pay for Potable Water for the operation of the Managed Assets during the Interim Operating Period. The Potable Water Component for the Interim Operating Period shall be \$481,305, as calculated on a 12-month basis. The Potable Water Component shall be based on Company's estimated expenditures for the 12-month period. Upon conclusion of the Interim Operating Period, the City shall issue payment to the Company for expenditures in excess of the budgeted amount or the Company will issue a credit to the City for budgeted amounts billed in excess of actual expenditures.
- e. The Company shall pay for Stormwater User Fees incurred during the Interim Operating Period for the Managed Assets. The Stormwater User Component for the Interim Operating Period shall be \$162,641, as calculated on a 12-month basis. The Stormwater User Fee Component shall be based on Company's estimated expenditures for the 12-month period. Upon conclusion of the Interim Operating Period, the City shall issue payment to the Company for expenditures in excess of the budgeted amount or the Company will issue a credit to the City for budgeted amounts billed in excess of actual expenditures.
- f. The Company shall pay for Electricity incurred during the Interim Operating Period for the Managed Assets. The Electricity Component for the Interim Operating Period shall be \$648,219, as calculated on a 12-month basis. The Electricity Component shall be based on Company's estimated expenditures for the 12-month period. Upon conclusion of the Interim Operating Period, the City shall issue payment to the Company for expenditures in excess of the budgeted amount or the Company will issue a credit to the City for budgeted amounts billed in excess of actual expenditures. Any guarantees relating to electricity usage shall not be applicable in the Interim Operating Period.
- g. The Major Maintenance Component will be reduced to \$1,500,000.

The Interim Operating Period Service Fee shall be billed in equal 1/12<sup>th</sup> installments, based on the annual amounts set forth above (irrespective of the duration of the Interim Operating Period), as set forth in Section 5.3.1. Upon assumption of the REBF, the obligations of the parties will be

governed as agreed to in the Service Agreement. In the event that the Interim Operating Period continues for the full 12-month period, the Service Fee for the Second Contract Year shall be adjusted from the amounts set forth in Section 5.4 in accordance with the methodology for each component of the Service Fee.

In the event that Company has to remobilize to the REBF site after the Interim Operating Period, due to the termination of Company's operating agreement with Honeywell for the REBF site, there will be a one-time cost of Fifty Thousand Dollars (\$50,000).

Exhibit 16 – Major Assets Included in Asset Management Fee

Wilmington, Delaware  
February 20, 2020

**WHEREAS**, pursuant to Wilm. C. (Charter) § 1-101, the City may acquire, hold, manage, and dispose of property on such terms as it deems proper for any municipal purpose; and

#4775

**Sponsors:**

**Council  
Members  
Freel  
Walsh**

**WHEREAS**, Wilm. C. § 2-621(a) authorizes the Department of Real Estate and Housing to conduct disposition proceedings of real property owned by the City; and

**WHEREAS**, Wilm. C. § 2-622(1) provides that the Council shall by resolution declare a property to be approved for disposition and authorize the conduct of disposition proceedings by the Department of Real Estate and Housing; and

**WHEREAS**, Wilm. C. § 2-622(2) provides that the Department of Real Estate and Housing shall cause public notice of the request for proposals for the disposition of a property to be given by publication in a newspaper having general circulation in the City and make available all pertinent information to persons interested in submitting a bid on the property that has been approved for disposition; and

**WHEREAS**, Wilm. C. § 2-622(5) provides that the bids for a property, together with the recommendations of certain City departments, including the Department of Real Estate and Housing, shall be submitted to Council which, by resolution, shall approve the bid of the best bidder; and

**WHEREAS**, the City currently owns the parcel of real estate located at 1814 Gilpin Avenue, Wilmington, Delaware 19806, being New Castle County Tax Parcel ID No. 26-013.10-205 (the "Property"); and

**WHEREAS**, on December 12, 2019, the Council passed Resolution No. 19-084 declaring the Property to be surplus, approving the Property for disposition, and authorizing



the Department of Real Estate and Housing to conduct disposition proceedings; and

**WHEREAS**, the Department of Real Estate and Housing thereafter caused public notice of the request for proposals (the "RFP") for disposition of the Property to occur in accordance with Wilm. C. § 2-622(2); and

**WHEREAS**, two proposals were submitted in response to the RFP; and

**WHEREAS**, the Department of Real Estate and Housing, the Department of Planning, and the Office of Economic Development evaluated both proposals based upon the criteria contained in the RFP and ranked the proposal submitted by J. Douglas Patterson, M.D. as the best bidder; and

**WHEREAS**, the Council wishes to approve the bid of J. Douglas Patterson, M.D. as the best bidder.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WILMINGTON** that Council hereby approves the bid of J. Douglas Patterson, M.D. for the Property as the best bidder.

**BE IT FURTHER RESOLVED** that Council hereby authorizes the Mayor or his designee to execute any and all documents necessary to effectuate disposition of the Property, including any and all further undertakings and assurances that may be appropriate.

Passed by City Council,

Attest: \_\_\_\_\_  
City Clerk

**SYNOPSIS:** This Resolution approves the bid of J. Douglas Patterson, M.D. for 1814 Gilpin Avenue, Wilmington, DE 19806 (Tax Parcel ID No. 26-013.10-025) (the "Property") as the best bidder and authorizes the Mayor or his designee to execute any and all documents necessary to effectuate the disposition of the Property to Dr. Patterson.

Wilmington, Delaware  
February 20, 2020

**#4776**

**Sponsor:**

**Council  
President  
Shabazz**

**Co-Sponsor:**

**Council  
Member  
Freel**

**WHEREAS**, the average size of a home in the United States is 2,687 square feet (the highest it has ever been) which is an increase of 1,000 square feet over the last four decades.

The size of homes is growing fast, along with the cost of a home; and

**WHEREAS**, a residence is deemed “affordable” if the members of the household spend no more than 30% of their income in meeting the mortgage or rent of that residence.

Based on this definition, in order to afford a two-bedroom home in New Castle County the household needs to make on average at least \$48,000 annually. The average price of a house in New Castle County based on research in 2019 was \$300,000. The median household income in Wilmington in 2017 was \$40,221. The median sales price for a single-family home in Wilmington that year was \$62,730, which is not affordable for households that earn the median household income. There are strong indicators that the cost of housing in a number of Wilmington neighborhoods will experience a sizeable increase in price due to expected new housing and real estate developments; and

**WHEREAS**, the “Tiny House Movement” is becoming very popular in the United States. Tiny Houses now range anywhere from 150 square feet to 1,000 square feet. Tiny Houses are no longer primarily On Wheels, nor are they the sole interest or focus of DIY (Do It Yourself) individuals. Tiny Houses/Tiny Homes are attracting and being marketed to millennials, retirees, veterans, and seniors as they are looking to downsize, reduce their carbon footprint, and/or live in an affordable home; and

**WHEREAS**, several City governments and Non-Profits have begun taking this affordable housing concept and implementing it to address homelessness, increasing the

growth of starter homes, and combating rising housing costs. As far back as 2014, and as recently as May 2019, communities have been developing various types of “Tiny Houses/Tiny Homes” in response to housing affordability issues for various constituent groups which also positively impacts neighborhood stabilization; and

**WHEREAS**, there have been many initial reports of success in the incorporation of “Tiny Houses/Tiny Homes” in the Housing Codes of several cities, such as Austin and Dallas, Texas; Eugene and Portland, Oregon; Fresno, California; Nashville, Tennessee, Seattle and Olympia WA, and Syracuse NY, to name a few. Tiny Houses/Tiny Homes in these Cities are serving a range of constituents who are seeking affordable housing. By taking best practices from existing approaches in other Cities, the inclusion of “Tiny Houses/Tiny Homes” has great potential to become equally successful (if not more so) in the City of Wilmington; and

**WHEREAS**, the inclusion of Tiny Houses/Tiny Homes in Wilmington will not only create an answer for various constituent groups who need and will benefit from being able to access affordable housing through the availability of Tiny Houses/Tiny Homes in our City of Wilmington, Delaware, the economic impact of creating a new business in the City will bring new employment opportunities for Wilmingtonians through the creation of a new industry thereby benefiting the City as a whole.; and

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WILMINGTON** that the City Council supports the inclusion of Tiny Homes/Tiny Houses without wheels in the Wilmington Housing Code at a minimum of 400 square feet to a maximum of 1,000 square feet of permanent housing that is congruent with the existing Wilmington and State of Delaware Housing Codes, that is not on wheels, and is located in areas designated as residential. Tiny Homes/Tiny Houses will substantially address the

dwindling supply of affordable housing in Wilmington while also adding a new economic engine in the City of Wilmington that will create potentially hundreds of new jobs in the building of Tiny Homes/Tiny Houses in the City.

Passed by City Council,

ATTEST: \_\_\_\_\_  
City Clerk

**SYNOPSIS:** This Resolution strongly encourages the City of Wilmington, Delaware to support the inclusion of Tiny Houses/Tiny Homes in our City's housing stock to address the growing problems associated with the scarcity of Affordable Housing, issues regarding Neighborhood Stabilization, Millennials needing Starter Homes, Homelessness, Seniors Seeking to Downsize, Veterans needing affordable housing, and those seeking to lower their Carbon Footprint.

Wilmington, Delaware  
~~February 6, 2020~~  
February 20, 2020

#4771

**Sponsor:**

**Council  
Member  
Adams**

**Co-Sponsors:**

**Council  
President  
Shabazz**

**Council  
Members  
Oliver  
Walsh  
Johnson  
Freel**

**WHEREAS**, to give members of the public more opportunity to attend and participate in public meetings, City Council would like to add the public comment period to the order of business at regular Council meetings, extend the sign-up deadline for the public comment period from 5:45 p.m. to 6:25 p.m., provide each member of the public up to three minutes to speak in the public comment period, and place no limit on the number of speakers allowed to speak during the public comment period and the overall time period for public comment; and

**WHEREAS**, City Council would like to afford all Council Members until 6:30 p.m. to arrive at and participate in regular Council meetings and hear public comment; and

**WHEREAS**, City Council previously amended its Rules to provide for: (1) a second round of public comment after the close of debate on each legislative item at regular Council meetings and (2) a second round of debate by Council Members after the second round of public comment; and

**WHEREAS**, the second rounds of public comment and debate may be duplicative and can lead to excessively long and inefficient regular Council meetings; and

**WHEREAS**, in light of the foregoing, City Council deems it necessary and appropriate to amend City Council Rules 2 and 3 to: (1) add public comment to the order of business at regular meetings of City Council; (2) move the start time of the public comment period from the 6:00 p.m. Committee of the Whole meetings to immediately prior to legislative business at regular Council meetings; (3) change the sign-up deadline for members of the public who would like to speak during the public comment period from 5:45 p.m. to 6:25 p.m.; (4) allow any person who has signed up with the City Clerk by 6:25 p.m. to speak for up to three

minutes during the public comment period; (5) provide for no limit on the number of speakers allowed to speak during the public comment period; (6) eliminate the duplicative public comment period after the close of debate on each legislative item; and (7) eliminate the duplicative second round of debate by Council Members.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WILMINGTON** that Rule 2 of the City Council Rules is hereby amended by deleting the stricken language and adding the underlined language to read as follows:

**RULE 2 - ORDER OF BUSINESS**

The order of business at ~~official~~ regular meetings of the City Council shall be as follows:

A) Convening of the City Council.

B) Prayer.

C) Pledge of Allegiance to the Flag.

D) Roll Call: At the scheduled time for the meeting and before the Council proceeds to the consideration of any business, the Clerk shall call the name of each Council Member in the order of the district each represents beginning with the First Council District and ending with the at-large Councilmembers in alphabetical order.

E) Reading of the Minutes of the Previous Meeting: The minutes of the previous meeting shall be read and include a statement as to members that were present, absent with leave and absent without leave by the Clerk and adopted and approved or corrected on motion by the President Pro Tempore or in the President Pro Tempore's absence, the Chairman of the Finance Committee. In the absence of such motion, the minutes shall be deemed approved.

F) Committee Reports: Reports from standing committees shall be signed by a majority of committee members, read by the Clerk, and filed, on motion and voice vote. The reading of the minutes shall include a statement as to committee members that were present, absent with leave and absent without leave. Non committee members present need not be mentioned.

G) City Treasurer's Report.

H) Non-Legislative Business: Unless a separate vote is requested by the sponsor of any resolution, all items of non-legislative effect shall be adopted by a single motion to receive and adopt by voice vote the agenda measures listed under Non-Legislative Business. While the motion is pending, a Council Member may speak to any measure under the agenda heading "Non-Legislative Business" for which separate consideration has not been requested by the sponsor. Unless otherwise authorized by the President, there shall be a limit of five (5) non-legislative resolutions that may be presented at each Council Meeting, which shall be done on a first come, first served basis by request to the Legislative & Policy Director.

I) Public Comment.

I J) Legislative Business: This portion of the meeting shall be for the consideration of resolutions with legislative effect and ordinances only.

Each member is entitled to speak twice to any matter subject to debate for periods not to exceed five minutes each time, including any time yielded to other members. No member shall exceed these limits except by leave granted by a two-thirds vote of the members present, without debate. No member shall speak twice to a matter until every other member choosing to speak has been recognized. The member on whose motion the matter was brought before Council is first entitled to the floor, and also to close the debate, but not until every other member has had an opportunity to speak for a second time.

~~After the close of debate on an item of legislative business, but before a vote is started, there shall be an opportunity for public comment in three minute increments.~~

~~After the close of public comment each member is entitled to speak twice to any matter subject to debate for periods not to exceed five minutes each time, including any time yielded to other members. No member shall exceed these limits except by leave granted by a two-thirds vote of the members present, without debate. No member shall speak twice to a matter until every other member choosing to speak has been recognized. The member on whose motion the matter was brought before Council is first entitled to the floor, and also to close the debate, but not until every other member has had an opportunity to speak for a second time.~~

J K) Presentation of Petitions and Communications: Any petition or communication, written or oral, from Council Members, the Mayor, city departments, or from the public, or any communication or comment relating to city business, other than a matter on the agenda for action, is presented at this time. Each member shall be limited to five minutes for presentation of petitions and communications, to include any time yielded to other members. Any

debatable motion made shall not be subject to this limit, but instead to the debate limits in Paragraph I J), Legislative Business.

~~K~~ L) Public Hearings (if needed).

~~L~~ M) Adjournment.

The above order of business may be changed at any time by the Council President, or on motion duly seconded and passed by a majority of Council.

Pursuant to FOIA, an agenda as determined by the President shall be prepared for each meeting in a sufficient number of copies, for distribution to members of the public. Council Members and the administration shall be provided an agenda in an electronic format. The agenda shall list all legislative and non-legislative matters proposed by their sponsors for consideration at the meeting, and once copies of the agenda have been reproduced, a sponsoring member of Council may not remove a matter from the agenda, although the sponsor may hold it for consideration at a subsequent meeting, subject to the provisions of Rules 8 and 9.

**BE IT FURTHER RESOLVED** that Rule 3 of the City Council Rules is hereby amended by deleting the stricken language and adding the underlined language to read as follows:

#### RULE 3 - CONVENING OF CITY COUNCIL

~~Thirty minutes before the time appointed for each regular meeting of Council (6:00 p.m. to 6:30 p.m.), the President may convene the Committee of the Whole to meet in open public forum in Council Chambers, at which time comments not to exceed three (3) minutes in length by each person may be heard from members of the public. This constitutes the convening of the whole for (Date). Thereafter, the President shall call the first person to offer comments. This thirty minute public comment period shall be televised in its entirety.~~ Prior to the start of legislative business at each regular meeting of City Council, a public comment period shall occur during which members of the public may make comments not to exceed three (3) minutes in length by each person. There shall be no limit on the number of speakers allowed to speak during the public comment period. The President shall establish and enforce rules for speakers to ensure proper decorum is maintained including, but not limited to, enforcing the three-minute time-limit for each speaker and/or



prohibiting the use of obscene or profane language. Any person desiring to exercise this privilege shall register with the City Clerk no later than ~~5:45~~ 6:25 p.m. prior to the convening of the ~~Committee of the Whole~~ City Council meeting, and the person's signature on the City Clerk's register will acknowledge agreement to observe the time limit and the prohibition of obscene or profane language.

At the scheduled time for the meeting, the President of City Council shall call the City Council to order.

When Council convenes, each Council Member shall be in the seat assigned to that Member.

No Council Member shall be absent from the service of City Council without leave.

The attendance of at least seven (7) Council Members is required to establish quorum for official meetings of City Council.

When a quorum is not present on the initial roll call, Council shall consider only the following motions: to fix a time to which to adjourn; to adjourn; to recess; to secure attendance of absent members; or to proceed as if in Committee of the Whole for the purpose of considering informally and reporting to the Council upon any matter on the agenda.

Passed by City Council,

ATTEST: \_\_\_\_\_  
City Clerk

**SYNOPSIS:** This Resolution amends City Council Rules 2 and 3 to provide for the following: (1) public comment will be part of the order of business at regular meetings of City Council; (2) the public comment period, which had occurred from 6:00 p.m. to 6:30 p.m. before regular Council meetings, will now take place immediately prior to legislative business at regular Council meetings; (3) the sign-up deadline for members of the public who would like to speak during the public comment period will be changed from 5:45 p.m. to 6:25 p.m.; (4) any person who has signed up with the City Clerk by 6:25 p.m. will be allowed to speak for up to three minutes during the public comment period; (5) there will be no limit on the number of speakers allowed to speak during public comment period; (6) the duplicative public comment

period after the close of debate on each legislative item at regular City Council meetings is eliminated; and (7) the duplicative second round of debate by Council Members at regular City Council meetings is eliminated. In addition, as housekeeping matters, certain sections of Rule 2 are relettered and the word “official” in the first sentence of Rule 2 is replaced with the word “regular”.

W0109435

**ORDINANCE AUTHORIZING THE ISSUANCE OF THE CITY'S GENERAL OBLIGATION BONDS, IN ONE OR MORE SERIES ON A TAX-EXEMPT AND/OR TAXABLE BASIS, IN ORDER TO PROVIDE THE FUNDS NECESSARY TO REFUND CERTAIN OUTSTANDING GENERAL OBLIGATION BONDS OF THE CITY; PROVIDING FOR THE SALE OF THE BONDS; AND AUTHORIZING OTHER NECESSARY ACTION**

#4760

**Sponsors:**

**Council  
Members**

**Guy  
Turner  
Dixon  
Congo  
McCoy**

**WHEREAS**, the City of Wilmington (the "City") has determined to refund certain of the City's outstanding General Obligation Bonds (the "Refunded Bonds"), and in order to finance such refunding the City has determined to issue its General Obligation Bonds, Series 2020 (the "Refunding Bonds"), in an aggregate principal amount not to exceed \$50,000,000 (the "Refunding Project"); and

**WHEREAS**, the City has received a payment from the Diamond State Port Corporation, a Delaware corporation created in the Department of the State of the State of Delaware ("Diamond State"), in the approximate amount of \$2,600,000 (the "City Payment") in order to fully discharge Diamond State's obligation to the City associated with a certain portion of the Refunded Bonds; and

**WHEREAS**, the City has determined to reduce the amount of Refunding Bonds by applying the remaining of the City Payment to defease a portion of the Refunded Bonds by transferring the City Payment into an escrow fund (the "Escrow Fund") held by Wilmington Trust, National Association, as escrow agent (the "Escrow Agent") pursuant to a Pledge and Escrow Agreement (the "Escrow Agreement") between the City and the Escrow Agent; and

**WHEREAS**, the City has heretofore adopted the General Obligation Bond Ordinance, No. 83-019, Division 4 of Article VI of Chapter 2 of the Wilmington City Code (the "General Ordinance"), authorizing the City to issue General Obligation Bonds secured by a pledge of the City's full faith, credit and taxing power, for the purpose of, among other things, paying the costs of the refunding of outstanding indebtedness; and

**WHEREAS**, this Ordinance is a Supplemental Ordinance adopted pursuant to the General Ordinance and provides for the issuance and sale of the Refunding Bonds.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON  
HEREBY ORDAINS:**

**SECTION 1. Defined Terms.** Terms used in this Ordinance and not otherwise defined shall have the meaning specified in the General Ordinance.

**SECTION 2. Authorization of General Obligation Bonds.** The City hereby authorizes the issuance of its General Obligation Bonds, Series of 2020, or such other designation as the City shall determine, in an aggregate principal amount not to exceed \$50,000,000 in one or more series on a tax-exempt and/or taxable basis, pursuant to and in accordance with the General Ordinance, as supplemented by this Ordinance and the Bond Committee Resolution (as defined herein) for the purpose of financing the Refunding Project, including the costs and expenses associated with issuing and providing for on-going continuing legal compliance of the Refunding Bonds and/or prior series of bonds. The Refunding Bonds shall be sold at private negotiated sale or competitive sale as determined by such Resolution of the Bond Committee.

The Refunding Bonds shall be awarded and sold by the Bond Committee to an underwriter or group of underwriters to be selected by the Bond Committee (the "Underwriter") at a purchase price and in accordance with such terms and conditions as will be set forth: (i) in the case of a negotiated sale, in a Bond Purchase Agreement to be entered into by the Underwriter and the City, or (ii) in the case of a competitive sale, in a Bid Form submitted to the Bond Committee in response to an Invitation to Bid prepared and distributed by the Bond Committee. In the case of clause (ii) above, the Bond Committee will accept the

Bid Form which represents the lowest true interest cost to the City. The City Treasurer is hereby authorized to enter into such Bond Purchase Agreement and to execute the Bond Purchase Agreement on behalf of the City, or to accept the most favorable Bid Form.

The Bonds shall bear such rate or rates of interest provided that the true interest cost of the Bonds does not exceed 7.0%, shall mature in such principal amounts and on such dates, shall be subject to redemption, shall bear such series designation, shall be sold at such price and in such manner, and shall be in such form and contain or be subject to such other terms and conditions, as shall be determined in the Resolution adopted by the Bond Committee (the "Bond Committee Resolution"). The Bond Committee Resolution shall set forth the prior general obligation bonds which will be funded or refunded as part of the Refunding Project.

**SECTION 3.** Authorization of Paying Agent's Agreement. A fiscal agent, paying agent and registrar for the Refunding Bonds (the "Paying Agent") may be selected and appointed by the Bond Committee. In the event that it is determined that it is advantageous to use a Paying Agent, the City Treasurer is hereby authorized to contract with the Paying Agent in connection with the performance of duties as paying agent and registrar on the usual and customary terms. The Paying Agent Agreement shall be in such form as shall be approved by the Bond Committee.

**SECTION 4.** Authorization of Transfer and Escrow Agent. The City hereby authorizes the City Treasurer to transfer the City Payment from the City's General Fund, and proceeds from the Refunding Bonds, to the Escrow Agent for deposit in the Escrow Fund, and to take other necessary actions, for the purpose of defeasing a portion of the Refunded Bonds; and for the same purpose, to enter into the Escrow Agreement in form and substance

as determined by the City's Treasurer and the City Solicitor, pursuant to which the City Payment will be held and invested by the Escrow Agent until it is applied to pay certain of the Refunded Bonds.

**SECTION 5. Preparation of Preliminary Official Statement.** The Bond Committee is authorized and directed to prepare, approve and "deem final" a Preliminary Official Statement and an Official Statement with respect to the Refunding Bonds to be used in connection with the public sale of the Refunding Bonds. The final Official Statement shall contain the final terms of the Refunding Bonds and shall be prepared for use in the public offering and sale of the Refunding Bonds.

**SECTION 6. Execution of Bonds.** The Refunding Bonds shall be executed by the manual or facsimile signatures of the Mayor, the City Treasurer and the City Auditor, and by the actual or facsimile impression of the seal of the City, both attested by the manual or facsimile signatures of the City Clerk or Deputy City Clerk.

**SECTION 7. Security for the Bonds.** The full faith, credit and taxing power of the City is hereby pledged to the prompt payment of the principal of, premium, if any, and the interest on the Refunding Bonds. The Refunding Bonds shall be the direct and unlimited obligations of the City, and unless paid from other sources, the City shall levy ad valorem taxes upon all taxable property in the City for the payment of the Refunding Bonds without limitation as to rate or amount.

**SECTION 8. Federal Tax Covenants.** In the event that part or all of the Refunding Bonds are issued on a tax-exempt basis, the City hereby covenants not to take or omit to take any action so as to cause interest on the Refunding Bonds to be no longer excluded from gross income for purposes of federal income taxation and to otherwise comply with the

requirements of Sections 103 and 141 through 150 of the Internal Revenue Code of 1986, as amended (the "Code"), and all applicable regulations promulgated with respect thereto, throughout the term of the Refunding Bonds. The City further covenants with the registered owners of the Refunding Bonds that it will make no investments or other use of the proceeds of the Refunding Bonds which would cause such Refunding Bonds to be "arbitrage bonds" as defined in Section 148 of the Code. The City further covenants to comply with the rebate requirements (including the prohibited payment provisions) contained in Section 148(f) of the Code in any regulations promulgated thereunder, to the extent applicable, and to pay any interest or penalty imposed by the United States for failure to comply with rebate requirements, to the extent applicable. In the event the Refunding Bonds could be issued on a bank-eligible basis, the Bond Committee is hereby delegated the authority to designate the Refunding Bonds pursuant to Section 265 of the Code.

**SECTION 9. Further Action.** The appropriate officers of the City are hereby authorized and directed to take all such action, execute, deliver, file and record all such documents, publish all notices and otherwise carry out the intent of the General Ordinance and this Ordinance in the name of and on behalf of the City.

**SECTION 10. Inconsistent Provisions.** In the event that any provision of the Refunding Bonds, or any term or condition contained in any agreement relating to the Refunding Bonds or in this Supplemental Ordinance, shall be inconsistent with any of the provisions of the General Ordinance, the provision of the Refunding Bonds, such agreements and this Supplemental Ordinance shall be controlling with respect to the Refunding Bonds, such agreements and this Supplemental Ordinance.

**SECTION 11. Relation to General Ordinance.** This Ordinance is supplemental to the General Ordinance and all sections of the General Ordinance, except as modified herein in accordance therewith, are applicable to the Refunding Bonds authorized hereunder. This Ordinance shall take effect immediately upon its passage.

**SECTION 12. Effective Date.** This Ordinance shall become effective upon its passage by Council and approval by the Mayor.

First Reading..... January 16, 2020  
Second Reading..... January 16, 2020  
Third Reading.....

Passed by City Council,

\_\_\_\_\_  
President of City Council

ATTEST: \_\_\_\_\_  
City Clerk

Approved this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Mayor

**SYNOPSIS:** This Ordinance is presented by the City Treasurer for City Council's consideration and approval and authorizes the issuance of up to \$50,000,000 aggregate principal amount of the City's General Obligation Bonds in order to finance certain outstanding debt of the City for possible, present value savings up to \$7,000,000.

W0109046



Wilmington, Delaware  
February 20, 2020

#4777

**Sponsor:**  
  
**Council  
Member  
Guy**

**WHEREAS**, City Council member Samuel L. Guy seeks to award a grant of \$1,000 to Culture Restoration Project, Inc., from his portion of Council's Discretionary Funds and this grant must be approved by Council since it will cause the grant total for this budget year to exceed a threshold amount; and

**WHEREAS**, Section 2-369 of the City Code requires grants awarded by City Council in the amount of \$5,000 or more to be approved by resolution of City Council; and

**WHEREAS**, the mission of the Culture Restoration Project, Inc. is "to provide supplemental educational programming that will inspire our future leaders to excel in school and beyond."

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WILMINGTON** that authorization for City Council member Samuel L. Guy to award a grant of \$1,000 to Culture Restoration Project, Inc., from his portion of Council's Discretionary Funds is approved.

Passed by City Council,

Attest: \_\_\_\_\_  
City Clerk

**SYNOPSIS:** This Resolution provides authorization for City Council member Samuel L. Guy to award a grant of \$1,000 to Culture Restoration Project, Inc., from his portion of Council's Discretionary Funds. As stated in Section 2-369 of the City Code, in order to provide such a grant, this resolution must be passed by City Council.

Wilmington, Delaware  
February 20, 2020

**#4780**

**WHEREAS**, a Confidence & Puberty Survey done by Always, a well-known brand of

**Sponsor:**

feminine hygiene products, found that almost 1 in 4 teenage girls in the United States have not

**President  
Hanifa  
Shabazz**

attended school because they didn't have feminine products, and 1 in 5 teenage girls in the United States do not have the means to consistently afford feminine products; and

**Co-Sponsors:**

**WHEREAS**, the Free the Tampons Foundation found that 86% of women who

**Council  
Members  
Walsh  
Gray  
Oliver  
Harlee  
McCoy  
Dixon  
Congo  
Turner**

menstruate will have their periods start unexpectedly in public without the necessary feminine products on hand. While 48% of these women will attempt to use tampon or pad dispensers in public restrooms, only 8% say that those dispensers worked or were stocked; and

**WHEREAS**, Delaware Senate Bill 166, which provides feminine products for free for those in custody at facilities operated by the Department of Corrections, and facilities operated by the Department of Services for Children, Youth and Their Families, was passed and signed by the Governor on September 13, 2018; and

**WHEREAS**, Delaware does not have a sales tax, therefore feminine products don't have additional taxes when purchased. However, feminine products are not covered by the government Supplemental Nutrition Assistance Program (SNAP). 50% of Wilmington households with children under 18 years old receive SNAP benefits, therefore a significant population of girls in our city may not have reliable access to feminine products in their homes; and

**WHEREAS**, Illinois, New Hampshire, California, and New York schools with students from 6<sup>th</sup> grade to 12<sup>th</sup> grade are now required to provide free feminine products in the restrooms themselves due to recent state legislation; and

**WHEREAS**, House Bill 285 sponsored by Representative Valerie Longhurst, and co-sponsored by Representative Dorsey-Walker, Senator Darius Brown, and Senator Elizabeth Lockman, who all represent Wilmington was passed by the House of Representatives on January 30, 2020. House Bill 285 requires schools with students “grades 6-12 to provide free feminine hygiene products in 50% of the bathrooms used by students who can have a menstrual cycle”; and

**WHEREAS**, feminine products are bathroom necessities just as much as toilet paper, paper towels, soap, and water. The over 4,000 girls in Wilmington middle Schools and high Schools need to have reliable and affordable access to feminine products as this will remove barriers for them to receive the quality education they deserve.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WILMINGTON** that the City Council strongly supports House Bill 285 pertaining to providing free menstrual products in Delaware public and private middle and high schools. In addition, the City Council strongly encourages the Honorable Senators of the Delaware General Assembly to vote in favor of House Bill 285 as it provides positive support for our students.

Passed by City Council,

Attest: \_\_\_\_\_  
City Clerk

**SYNOPSIS:** This Resolution expresses strong support from the Wilmington City Council for House Bill 285, and strongly encourages the Honorable Senators of the Delaware General Assembly to pass House Bill 285.