

City of Oak Harbor
City Council
Workshop Agenda Bill

Date: July 25, 2018
Subject: Funding Options for
Windjammer Park - Pavilion and
West Kitchen

FROM: Patricia Soule, Finance Director

SUMMARY STATEMENT

Continued on next page

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

- Robert Severns, Mayor
- Patricia Soule, Acting City Administrator
- Nikki Esparza, City Attorney, as to form

RECOMMENDED ACTION

Approve the use of REET 1 and REET 2 to fund the additional improvements to Windjammer Park Phase 1 for the Pavilion and the West Kitchen

FISCAL IMPACT DESCRIPTION

Funds Required: \$1,867,724

Appropriation Source: REET 1 and REET 2

BACKGROUND/SUMMARY INFORMATION

On April 17, 2018 Council approved improvements to the park to include the Hardscape, Landscape, Electrical, Landscape Maintenance and the Splash Park. Council removed the Pavilion and the West Kitchen from the approved activities unless Island County would fund them with .09 Grant Funds. Island County did not fund our grant request.

At the direction of the Mayor we looked at our potential funding sources that included; Stability Fund \$3,089,623, Park Impact Fees \$190,000, REET 1 \$2,681,479 and/or REET 2 \$2,083,099. We feel REET would be the best use of funds as what is happening at the park fits with the purpose of REET funding. We were able to work with MRSC staff to clarify the use of REET funds after the 2015 legislation limiting the use of REET 1 and REET 2. After extensive conversation and clarification it was determined that we can use REET 1 and 2 for the Park Improvements without invoking the "limited circumstances" legislation passed in 2015.

If council chooses to add back in the West Kitchen and the Pavilion to the Park Improvements for a total of \$1,867,724 we can use REET 1 for the West Kitchen \$1,168,094 and REET 2 for the Pavilion \$698,820. The contractor is adding an escalation clause to the buildings for the increased costs for supplies in the amount of \$36,243 that will be adjusted through the contingency fund and not added to the overall budget.

The other option Council could choose would be to not fund these features to the park improvements in GMP #13.

PREVIOUS COUNCIL ACTIONS

On April 17, 2018 Council Approved GMP #13 to include everything except the Pavilion and the West Kitchen.

ATTACHMENTS

None.

City of Oak Harbor
City Council
Workshop Agenda Bill

Date: July 25, 2018

Subject: Clean Water Facility -
Consultant Contract
Amendments

FROM: Cathy Rosen, Public Works Director

SUMMARY STATEMENT

Discussion regarding consultant contract amendments to complete the Clean Water Facility and Windjammer Park Phase 1 projects.

ATTACHMENTS

None.

City of Oak Harbor
City Council
Workshop Agenda Bill

Date: July 25, 2018

Subject: Windmill - The next steps

FROM: Cathy Rosen, Public Works Director

SUMMARY STATEMENT

In late May of 2017, a windstorm highlighted some structural deficiencies in the windmill in Windjammer Park. Staff presented final solution options to City Council in September and October 2017. On October 17, 2017, City Council adopted Resolution 17-19 authorizing staff to remove the windmill and pursue a new location.

Since that time, the hazards have been removed from the exterior of the windmill and there has been increased community discussion about removing the windmill and constructing a new one in a different location.

Now that the construction of the Administration Building at the CWF is nearly complete, it is easier to see how the existing windmill sits in relation to the new improvements.

Because of the community discussion regarding the windmill, staff obtained some cost information to replace the blades and make the repairs suggested by Ashley and Vance Engineers and will present that information to City Council for consideration prior to scheduling demolition of the windmill.

ATTACHMENTS

1. [Resolution 17-19 Authorizing the Removal of the Windmill at Windjammer Park](#)

**RESOLUTION NO. 17-19
CITY OF OAK HARBOR**

**A RESOLUTION AUTHORIZING THE REMOVAL OF THE WINDMILL AT
WINDJAMMER PARK**

WHEREAS, in late May of 2017, a windstorm highlighted structural deficiencies in the windmill at Windjammer Park; and,

WHEREAS, as a result of falling debris from the windmill, the City Building Official and Parks Department representatives investigated the structure and found significant rot had occurred in the structure; and,

WHEREAS; City staff contracted Ashely and Vance Engineers to perform a structural inspection of the windmill resulting in recommendations to address safety concerns of the structure; and,

WHEREAS, final solutions recommended by Ashley and Vance Engineers included replacement of all exterior wood members and some interior members; and,

WHEREAS, final solution options were presented to City Council at the September 27, 2017 City Council Workshop Meeting, consisting of (1) removal of entire windmill and reconstructing at another location in the future, (2) removal of rotten members while leaving the building in place with the understanding that a new windmill will be constructed at another location in the future, (3) designing and making necessary structural repairs to the windmill in its current location, (4) leaving the windmill as is and providing sufficient fencing to protect the public from falling debris; and,

WHEREAS, care should be taken during demolition to salvage material for use in a new windmill; and,

WHEREAS, observing the significance of the windmill to Oak Harbor as it embodies the Dutch heritage of the area; and,

WHEREAS, the preferred alternative and various supporting materials shown in the Windjammer Park Integration Plan, dated June 2016, was adopted by City Council by Resolution 16-15 on June 7, 2016; and,

WHEREAS, Phase 2 of the Windjammer Park Integration Plan calls for the relocation of the windmill; and,

WHEREAS, the City Council expressed interest in removing the windmill in its entirety and salvage as much material as possible for construction at a new location;

WHEREAS, public safety is of the highest priority for City Council; and,

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Oak Harbor, Washington to:

- Authorize City staff remove the windmill at Windjammer Park; and,
- Authorize City staff to pursue a location for a new windmill.

Passed by the City Council of the City of Oak Harbor this 17th day of October, 2017

CITY OF OAK HARBOR


Bob Severns, Mayor

Approved as to Form:


Nikki Esparza, City Attorney

ATTEST:



Nicole Tesch, Deputy City Clerk

City of Oak Harbor
City Council
Workshop Agenda Bill

Date: July 25, 2018
Subject: Clean Water Facility - Navy
Connection

FROM: Cathy Rosen, Public Works Director

SUMMARY STATEMENT

In 2013, the City provided estimated costs for the Navy to connect to the City's new Clean Water Facility. The cost estimates included sizing the CWF to accommodate flows from the Navy, the cost to convey wastewater from the Seaplane Base to the new CWF, as well as treatment, operations and maintenance costs. At that time, the Navy could not commit to the cost sharing arrangement that was proposed. Recently, the City has received a "Request for Quotations" from the Navy asking for updated wastewater conveyance, treatment and operation cost projections if the Navy chooses to connect to the City's CWF.

In the "Request for Quotations", the Navy has asked the City to provide cost and rate information for four different alternatives:

- 1a. The City constructs, owns and maintains all necessary new conveyances on Navy property and also constructs all necessary modification to the City's existing collection system. The Navy pays a one-time connection charge, plus a rate for wastewater treatment;
- 1b. The City constructs, owns and maintains all necessary new conveyances on Navy property and also constructs, owns and maintains all necessary modifications to the City's existing collection system. The Navy pays the connection charge, amortized over a 20-year period, plus a rate for wastewater treatment;
- 2a. The Navy constructs, owns and maintains all necessary new conveyances on Navy property. The City constructs all necessary modifications to the City's collection system. The Navy pays a one-time connection charge, plus a rate for wastewater treatment;
- 2b. The Navy constructs, owns and maintains all necessary new conveyances on Navy property. The City constructs all necessary modifications to existing the City's collection system. The Navy pays the connection charge, amortized over a 20-year period, plus a rate for wastewater treatment.

City staff will need the assistance of outside consultants to prepare the requested information. We have received a proposal from HDR, with Carollo Engineers working as a sub-consultant to HDR, for assistance in preparing the City's response to the Navy's "Request for Quotations".

Staff is seeking Council input regarding the four alternatives the Navy is seeking information on.

ATTACHMENTS

1. [NAS Whidbey - Request for Quotations](#)

REQUEST FOR QUOTATIONS (THIS IS NOT AN ORDER)		THIS RFQ [] IS [X] IS NOT A SMALL BUSINESS SET-ASIDE		PAGE OF PAGES 1 18	
1. REQUEST NO. N4425518T7002	2. DATE ISSUED 13-Jun-2018	3. REQUISITION/PURCHASE REQUEST NO.	4. CERT. FOR NAT. DEF. UNDER BDSA REG. 2 AND/OR DMS REG. 1	RATING	
5a. ISSUED BY NAVFAC NORTHWEST PWO WHIDBEY ISLAND FACILITIES ENGINEERING AND ACQUISITION DIVISI 1115 W LEXINGTON DR. BLDG 103 OAK HARBOR VA 98278-3500			6. DELIVER BY (Date) SEE SCHEDULE		
5b. FOR INFORMATION CALL: (Name and Telephone no.) (No collect calls) REBECCA S. TANGEN 360-257-3849			7. DELIVERY [X] FOB DESTINATION [] OTHER (See Schedule)		
8. TO: NAME AND ADDRESS, INCLUDING ZIP CODE			9. DESTINATION (Consignee and address, including ZIP Code) SEE SCHEDULE		
10. PLEASE FURNISH QUOTATIONS TO THE ISSUING OFFICE IN BLOCK 5a ON OR BEFORE CLOSE OF BUSINESS. (Date) 29-Jun-2018					
IMPORTANT: This is a request for information, and quotations furnished are not offers. If you are unable to quote, please so indicate on this form and return it to the address in Block 5a. This request does not commit the Government to pay any costs incurred in the preparation of the submission of this quotation or to contract for supplies or services. Supplies are of domestic origin unless otherwise indicated by quoter. Any representations and/or certifications attached to this Request for Quotations must be completed by the quoter.					
11. SCHEDULE (Include applicable Federal, State, and local taxes)					
ITEM NO. (a)	SUPPLIES/ SERVICES (b)	QUANTITY (c)	UNIT (d)	UNIT PRICE (e)	AMOUNT (f)
SEE SCHEDULE					
12. DISCOUNT FOR PROMPT PAYMENT	a. 10 CALENDAR DAYS %	b. 20 CALENDAR DAYS %	c. 30 CALENDAR DAYS %	d. CALENDAR DAYS % No. %	
NOTE: Additional provisions and representations [] are [] are not attached.					
13. NAME AND ADDRESS OF QUOTER (Street, City, County, State, and ZIP Code)			14. SIGNATURE OF PERSON AUTHORIZED TO SIGN QUOTATION		15. DATE OF QUOTATION
			16. NAME AND TITLE OF SIGNER (Type or print)		TELEPHONE NO. (Include area code)

Section B - Supplies or Services and Prices

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0001	WWTP Connect & Treatment Rate Analysis FFP Rate analysis to provide costs for Navy to connect to the City of Oak Harbor's new wastewater treatment facility. Also include operation and maintenance costs. 4 scenarios requested. FOB: Destination				

NET AMT

Section C - Descriptions and Specifications

STATEMENT OF WORK

City of Oak Harbor Wastewater Connection and Treatment Rate Analysis

Attachment List:

- (1) – Seaplane Base Projected Flows and Loadings
- (2) – Estimated Bare Costs for Conveyance Systems on Navy Property

A. General Information:

A1. Contract Identification:

Contract No.: N44255-18-P-7001

Project Title: City of Oak Harbor Wastewater Connection and Treatment Rate Analysis

Project Location: Naval Air Station Whidbey Island

A2. Contract Scope:

Provide a Rate Analysis in accordance with the following:

Background:

In March 2013 the City of Oak Harbor provided estimated wastewater treatment plant, conveyance, outfall and operation and maintenance costs for the Navy to join their Clean Water Facility (CWF). Due to fiscal limitations and acquisition regulations, the Navy could not commit to the cost share proposal within the City's project development and construction timeframe. The Navy opted to resume operation and maintenance of the Navy owned lagoon treatment plant after the completion of the CWF in order to continue wastewater services for Navy customers on Seaplane Base.

In August 2016, the Navy initiated the Seaplane Base General Sewer Plan (Plan). The Plan identified short-term treatment upgrades and developed long-term treatment alternatives. The long-term alternatives included treating wastewater in the same location as the existing lagoons, the construction of a new Navy owned wastewater treatment plant on Navy property and the connection to the City's CWF.

In order to consider connecting Seaplane Base to the CWF as a viable alternative, the Navy is requesting that the City of Oak Harbor provide revised wastewater conveyance, treatment and operation and maintenance cost projections. These revised costs projections will allow the Navy to select a long-term alternative to the existing lagoon plant.

Navy Wastewater to Clean Water Facility:

The alternative under consideration involves eliminating the lagoon wastewater treatment plant within Seaplane Base and conveying all wastewater flows to the City of Oak Harbor for treatment at the City's Clean Water Facility. This alternative requires construction of new conveyances (lift stations and forcemains) on Navy property, as well as modifications to the City's existing collection system. Refer to Attachment 1 for a concept drawing showing potential system modifications.

The City shall provide a rate analysis which includes estimated connection charges for collection system modifications and new conveyances, as well as an estimated sewer rate for treatment of Navy wastewater flows. The estimated connection charge and sewer rate shall be provided for the following scenarios:

- 1a. The City constructs, owns and maintains all necessary new conveyances on Navy property and also constructs all necessary modifications to existing City collection system. The Navy pays a one-time connection charge, plus a rate for wastewater treatment;
- 1b. The City constructs, owns and maintains all necessary new conveyances on Navy property and also constructs all necessary modifications to existing City collection system. The Navy pays the connection charge, amortized over a 20-year period, plus a rate for wastewater treatment;

2a. The Navy constructs, owns and maintains all necessary new conveyances on Navy property.

Milestones	Duration	Government Review
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The City constructs all necessary modifications to existing City collection system. The Navy pays a one-time connection charge, plus a rate for wastewater treatment;

2b. The Navy constructs, owns and maintains all necessary new conveyances on Navy property. The City constructs all necessary modifications to existing City collection system. The Navy pays the connection charge, amortized over a 20-year period, plus a rate for wastewater treatment;

The rate analysis shall also include a line item pricing breakdown for the following components of wastewater collection and treatment:

1. Lift stations and force mains, located on Navy property, required to convey wastewater to the City's collection system.
2. Wastewater collection system modifications, within City property, that would be necessary to accommodate the Navy's flows to the Clean Water Facility.
3. Annual operation and maintenance cost of conveying and treating Navy's wastewater.

A3. Government Points of Contact:

Naval Facilities Engineering Command Northwest Contracting Officer:
Mrs. Rebecca Tangen, Contract Specialist
 (360-257-3849 rebecca.tangen@navy.mil)

Mrs. Annette Goodchild, Contracting Officer
 (360) 257-6500 annie.goodchild@navy.mil
 NAVFAC NW, Whidbey Island 1115 W. Lexington B-103 Oak Harbor, WA 98278

Naval Facilities Engineering Command Northwest Design Manager:
Mr. Trevor Lunceford, Senior Utilities Engineer
 (360) 315-3003 trevor.lunceford@navy.mil
 NAVFAC NW, 1101 Tautog Circle Building 1101 Silverdale, WA 98315

Note:

Only the Contracting Officer has authority to modify the terms and conditions of this Task Order.

B. Deliverables:

B1. Provide a Rate Analysis document, including the following:

- a. Estimated connection charge and estimated sewer rate, in accordance with Section A2.
- b. Methods used for the construction cost estimate and rate development.
 - State the method of cost estimates utilized in rate analysis (i.e. quantity take-off, other method(s), or combination thereof).
 - State whether the cost estimates are based on results of studies, and if not, state what assumptions have been made.
 - Provide data supporting conclusions and observations made for each of the components above.
 - Identify preferred rate structure.
- c. Assumptions and exclusions to the rate analysis –
 - List and explain the use of other markups such as design contingencies (including contingencies to address any assumptions made pertaining to any studies/reports), bonds, gross receipts tax, other taxes, etc.

C. Rate Analysis Submittal Schedule:

Note: Durations and Government review periods are shown in calendar days.

Kick-off Meeting	10 days after Task Order Award	N/A
35% - 50% Rate Analysis Submittal	30 days after Kick-off Meeting	7 days
35% - 50% Rate Analysis Review Meeting	10 days after 35% - 50% Rate Analysis Submittal	N/A
100% Pre-Final Rate Analysis Submittal	20 days after 35% - 50% Rate Analysis Review Meeting	7 days
100% Pre-Final Rate Analysis Presentation and Review Meeting	10 days after 100% Pre-Final Rate Analysis Submittal	N/A
Final Submittal	10 days after 100% Pre-Final Rate Analysis Review Meeting	N/A

C1. Submittal Requirements

For each submittal stage (35%-50%, 100% Pre-Final, and Final), provide 1 hard copy and 1 electronic copy (on DVD) to each of the Government Points of Contact indicated in Section A3.

D. Meetings, Conferences, and Conference Calls:

D1. Locations:

The following meetings are required. Organize, attend and participate in the required meetings at the designated locations specified below.

Meetings, Conferences, and Conference Calls	Location
Kick-off Meeting	Conference Call
35% - 50% Rate Analysis Development Review Meeting	City of Oak Harbor PWD
100% Pre-Final Rate Analysis Presentation & Review Meeting	City of Oak Harbor PWD

D2. Kick-off Meeting:

This meeting is required to verify the contract scope and expectations, discuss the rate analysis, highlight coordination issues, etc. with the government representatives.

D3. Review Meetings:

Review meetings will be held following each submittal as indicated below:

- a. **35% - 50% Rate Analysis Development Review Meeting:** This meeting is a progress review meeting to verify/confirm the requirements of the rate analysis. The intent of this meeting is to ascertain the status, and identify problems areas, if any, prior to the 100% Pre-Final submittal.
- b. **100% Pre-Final Rate Analysis Presentation and Review Meeting:** This meeting is a progress review meeting to discuss the requirements and technical features of the rate analysis. The intent of this meeting will be for the City to present to Navy staff their findings, calculations, assumptions and recommendations, and identify outstanding problems areas, if any, prior to the Final rate analysis submittal.

D4. Meeting Minutes:

Record all meetings, conferences and conference calls minutes and provide an electronic copy of these minutes in Adobe PDF format to each of the Government Points of Contact indicated in Section A3.

Attachment (1) – Seaplane Base Projected Flows and Loadings

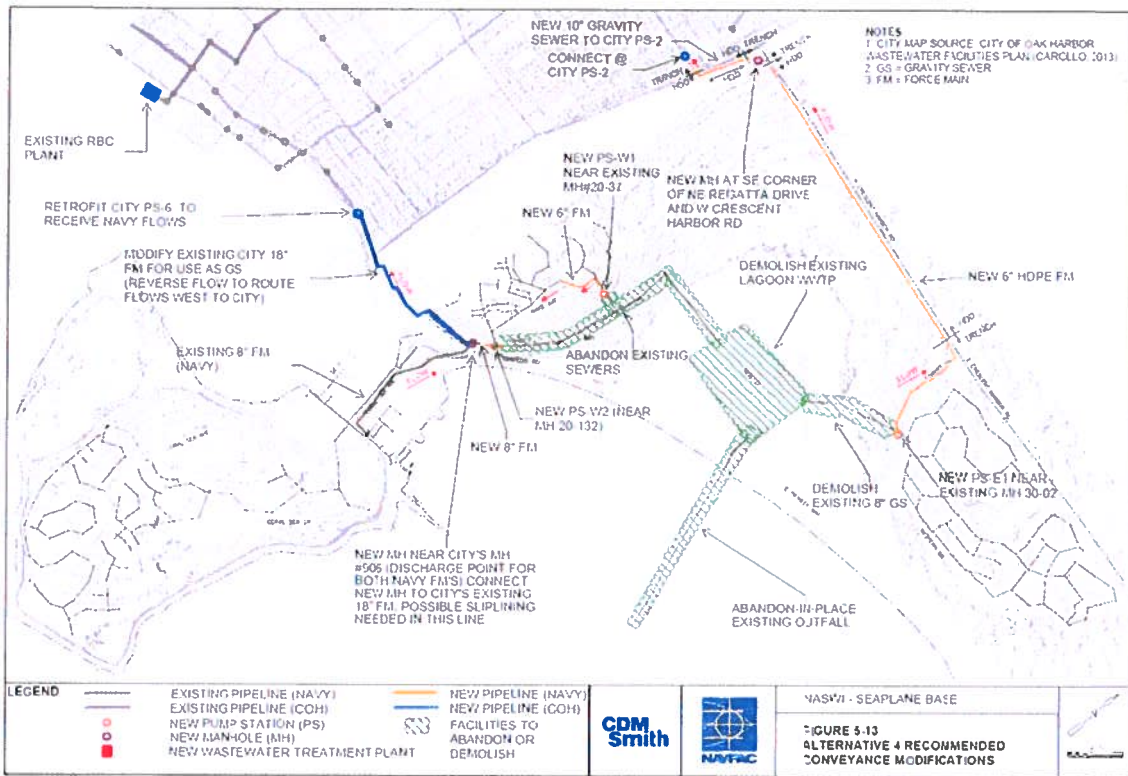


Table 1 Projected Flows from the West Seaplane Service Area	
Projected Flows	Estimated Flow (gpd)
ADWF	256,326
AAF	370,591
MMF	384,489
PDF	1,307,263
PHF	1,486,691

Table 2 Projected Loading from the West Seaplane Service Area	
Design Parameter	Loading, ppd
BOD ₅	
Average Annual	513

Maximum Month	577
TSS	
Average Annual	577
Maximum Month	641
Ammonia-Nitrogen	
Average Annual	80
Maximum Month	80

Table 3 Projected Flows from the East Seaplane Service Area	
Projected Flows	Estimated Flow (gpd)
ADWF	114,604
AAF	137,525
MMF	171,906
PDF	584,480
PHF	664,703

Table 4 Projected Loading from the East Seaplane Service Area	
Design Parameter	Loading, ppd
BOD₅	
Average Annual	229
Maximum Month	258
TSS	
Average Annual	258
Maximum Month	287
Ammonia-Nitrogen	
Average Annual	36
Maximum Month	36

Section E - Inspection and Acceptance

INSPECTION AND ACCEPTANCE TERMS

Supplies/services will be inspected/accepted at:

CLIN	INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
0001	N/A	N/A	N/A	Government

Section F - Deliveries or Performance

DELIVERY INFORMATION

CLIN	DELIVERY DATE	QUANTITY	SHIP TO ADDRESS	DODAAC / CAGE
0001	N/A	N/A	N/A	N/A

CLAUSES INCORPORATED BY REFERENCE

52.242-15	Stop-Work Order	AUG 1989
52.242-17	Government Delay Of Work	APR 1984

Section G - Contract Administration Data

CLAUSES INCORPORATED BY FULL TEXT

5252.201-9300 CONTRACTING OFFICER AUTHORITY (JUN 1994)

In no event shall any understanding or agreement between the Contractor and any Government employee other than the Contracting Officer on any contract, modification, change order, letter or verbal direction to the Contractor be effective or binding upon the Government. All such actions must be formalized by a proper contractual document executed by an appointed Contracting Officer. The Contractor is hereby put on notice that in the event a Government employee other than the Contracting Officer directs a change in the work to be performed or increases the scope of the work to be performed, it is the Contractor's responsibility to make inquiry of the Contracting Officer before making the deviation. Payments will not be made without being authorized by an appointed Contracting Officer with the legal authority to bind the Government. (End of clause)

Section I - Contract Clauses

CLAUSES INCORPORATED BY REFERENCE

52.204-7	System for Award Management	OCT 2016
52.215-8	Order of Precedence--Uniform Contract Format	OCT 1997
52.222-1	Notice To The Government Of Labor Disputes	FEB 1997
52.232-17	Interest	MAY 2014
52.232-23	Assignment Of Claims	MAY 2014
52.237-2	Protection Of Government Buildings, Equipment, And Vegetation	APR 1984
52.243-1 Alt I	Changes--Fixed Price (Aug 1987) - Alternate I	APR 1984
52.249-4	Termination For Convenience Of The Government (Services) (Short Form)	APR 1984
252.204-7003	Control Of Government Personnel Work Product	APR 1992
252.204-7004 Alt A	System for Award Management Alternate A	FEB 2014
252.232-7003	Electronic Submission of Payment Requests and Receiving Reports	JUN 2012
252.243-7001	Pricing Of Contract Modifications	DEC 1991

CLAUSES INCORPORATED BY FULL TEXT

52.213-4 TERMS AND CONDITIONS--SIMPLIFIED ACQUISITIONS (OTHER THAN COMMERCIAL ITEMS) (JAN 2018).

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses that are incorporated by reference:

(1) The clauses listed below implement provisions of law or Executive order:

(i) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (JAN 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).

(ii) 52.222-3, Convict Labor (JUN 2003) (E.O. 11755).

(iii) 52.222-21, Prohibition of Segregated Facilities (APR 2015).

(iv) 52.222-26, Equal Opportunity (SEPT 2016) (E.O. 11246).

(v) 52.225-13, Restrictions on Certain Foreign Purchases (JUN 2008) (E.O.s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

(vi) 52.233-3, Protest After Award (AUG 1996) (31 U.S.C. 3553).

(vii) 52.233-4, Applicable Law for Breach of Contract Claim (OCT 2004) (Pub. L. 108-77, 108-78 (19 U.S.C. 3805 note)).

(2) Listed below are additional clauses that apply:

(i) 52.232-1, Payments (APR 1984).

- (ii) 52.232-8, Discounts for Prompt Payment (FEB 2002).
- (iii) 52.232-11, Extras (APR 1984).
- (iv) 52.232-25, Prompt Payment (JAN 2017).
- (v) 52.232-39, Unenforceability of Unauthorized Obligations (JUN 2013).
- (vi) 52.232-40, Providing Accelerated Payments to Small Business Subcontractors (DEC 2013).
- (vii) 52.233-1, Disputes (MAY 2014).
- (viii) 52.244-6, Subcontracts for Commercial Items (NOV 2017).
- (ix) 52.222-55, Minimum Wages Under Executive Order 13658 (MAR 2016) (Applies when 52.222-6 or 52.222-41 are in the contract and performance in whole or in part is in the United States (the 50 States and the District of Columbia)).

(b) The Contractor shall comply with the following FAR clauses, incorporated by reference, unless the circumstances do not apply:

(1) The clauses listed below implement provisions of law or Executive order:

- (i) 52.204-10, Reporting Executive Compensation and First-Tier Subcontract Awards (Oct 2016) (Pub. L. 109-282) (31 U.S.C. 6101 note) (Applies to contracts valued at \$30,000 or more).
- (ii) 52.222-19, Child Labor--Cooperation with Authorities and Remedies (Jan 2018) (E.O. 13126). (Applies to contracts for supplies exceeding the micro-purchase threshold).
- (iii) 52.222-20, Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$15,000 (MAY 2014) (41 U.S.C. chapter 65) (Applies to supply contracts over \$15,000 in the United States, Puerto Rico, or the U.S. Virgin Islands).
- (iv) 52.222-35, Equal Opportunity for Veterans (Oct 2015) (38 U.S.C. 4212) (applies to contracts of \$150,000 or more).
- (v) 52.222-36, Equal Employment for Workers with Disabilities (JUL 2014) (29 U.S.C. 793) (Applies to contracts over \$15,000, unless the work is to be performed outside the United States by employees recruited outside the United States). (For purposes of this clause, "United States" includes the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.)
- (vi) 52.222-37, Employment Reports on Veterans (Feb 2016) (38 U.S.C. 4212) (Applies to contracts of \$150,000 or more).
- (vii) 52.222-41, Service Contract Labor Standards (MAY 2014) (41 U.S.C. chapter 67) (Applies to service contracts over \$2,500 that are subject to the Service Contract Labor Standards statute and will be performed in the United States, District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, or the outer Continental Shelf).
- (viii)(A) 52.222-50, Combating Trafficking in Persons (MAR 2015) (22 U.S.C. chapter 78 and E.O 13627) (Applies to all solicitations and contracts).

(B) Alternate I (MAR 2015) (Applies if the Contracting Officer has filled in the following information with regard to applicable directives or notices: Document title(s), source for obtaining document(s), and contract performance location outside the United States to which the document applies).

- (ix) 52.222-55, Minimum Wages Under Executive Order 13658 (DEC 2015) (Executive Order 13658) (Applies when 52.222-6 or 52.222-41 are in the contract and performance in whole or in part is in the United States (the 50 States and the District of Columbia)).
- (x) 52.222-62, Paid Sick Leave Under Executive Order 13706 (JAN 2017) (E.O. 13706) (Applies when 52.222-6 or 52.222-41 are in the contract and performance in whole or in part is in the United States (the 50 States and the District of Columbia.))
- (xi) 52.223-5, Pollution Prevention and Right-to-Know Information (MAY 2011) (E.O. 13423) (Applies to services performed on Federal facilities).
- (xii) 52.223-11, Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (June, 2016) (E.O. 13693)(applies to contracts for products as prescribed at FAR 23.804(a)(1)).
- (xiii) 52.223-12, Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (June, 2016) (E.O. 13693) (Applies to maintenance, service, repair, or disposal of refrigeration equipment and air conditioners).
- (xiv) 52.223-15, Energy Efficiency in Energy-Consuming Products (DEC 2007) (42 U.S.C. 8259b) (Unless exempt pursuant to 23.204, applies to contracts when energy-consuming products listed in the ENERGY STAR[supreg] Program or Federal Energy Management Program (FEMP) will be--
- (A) Delivered;
- (B) Acquired by the Contractor for use in performing services at a Federally-controlled facility;
- (C) Furnished by the Contractor for use by the Government; or
- (D) Specified in the design of a building or work, or incorporated during its construction, renovation, or maintenance).
- (xv) 52.223-20, Aerosols (June, 2016) (E.O. 13693) (Applies to contracts for products that may contain high global warming potential hydrofluorocarbons as a propellant or as a solvent; or contracts for maintenance or repair of electronic or mechanical devices).
- (xvi) 52.223-21, Foams (June, 2016) (E.O. 13693) (Applies to contracts for products that may contain high global warming potential hydrofluorocarbons or refrigerant blends containing hydrofluorocarbons as a foam blowing agent; or contracts for construction of buildings or facilities.
- (xvii) 52.225-1, Buy American--Supplies (MAY 2014) (41 U.S.C. chapter 67) (Applies to contracts for supplies, and to contracts for services involving the furnishing of supplies, for use in the United States or its outlying areas, if the value of the supply contract or supply portion of a service contract exceeds the micro-purchase threshold and the acquisition--
- (A) Is set aside for small business concerns; or
- (B) Cannot be set aside for small business concerns (see 19.502-2), and does not exceed \$25,000).
- (xviii) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations (MAY 2014) (42 U.S.C. 1792) (Applies to contracts greater than \$25,000 that provide for the provision, the service, or the sale of food in the United States).

(xix) 52.232-33, Payment by Electronic Funds Transfer--System for Award Management (JUL 2013) (Applies when the payment will be made by electronic funds transfer (EFT) and the payment office uses the System for Award Management (SAM) database as its source of EFT information.)

(xx) 52.232-34, Payment by Electronic Funds Transfer--Other than System for Award Management (JUL 2013) (Applies when the payment will be made by EFT and the payment office does not use the SAM database as its source of EFT information.)

(xxi) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) (46 U.S.C. App. 1241) (Applies to supplies transported by ocean vessels (except for the types of subcontracts listed at 47.504(d).)

(2) Listed below are additional clauses that may apply:

(i) 52.204-21, Basic Safeguarding of Covered Contractor Information Systems (June, 2016) (Applies to contracts when the contractor or a subcontractor at any tier may have Federal contract information residing in or transiting through its information system.

(ii) 52.209-6, Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (Oct 2015) (Applies to contracts over \$35,000).

(iii) 52.211-17, Delivery of Excess Quantities (SEP 1989) (Applies to fixed-price supplies).

(iv) 52.247-29, F.o.b. Origin (FEB 2006) (Applies to supplies if delivery is f.o.b. origin).

(v) 52.247-34, F.o.b. Destination (NOV 1991) (Applies to supplies if delivery is f.o.b. destination).

(c) FAR 52.252-2, Clauses Incorporated by Reference (FEB 1998). This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

(Insert one or more Internet addresses)

(d) Inspection/Acceptance. The Contractor shall tender for acceptance only those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. The Government must exercise its postacceptance rights--

(1) Within a reasonable period of time after the defect was discovered or should have been discovered; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(e) Excusable delays. The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence, such as acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(f) Termination for the Government's convenience. The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all

work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges that the Contractor can demonstrate to the satisfaction of the Government, using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

(g) Termination for cause. The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(h) Warranty. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(End of clause)

52.222-42 STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES (MAY 2014)

In compliance with the Service Contract Labor Standards statute and the regulations of the Secretary of Labor (29 CFR part 4), this clause identifies the classes of service employees expected to be employed under the contract and states the wages and fringe benefits payable to each if they were employed by the contracting agency subject to the provisions of 5 U.S.C. 5341 or 5332.

THIS STATEMENT IS FOR INFORMATION ONLY: IT IS NOT A WAGE DETERMINATION
Employee Class Monetary Wage-Fringe Benefits

(End of clause)

52.223-18 ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING (AUG 2011)

(a) Definitions. As used in this clause--

Driving—

(1) Means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.

(2) Does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary.

Text messaging means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or

engaging in any other form of electronic data retrieval or electronic data communication. The term does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to park.

(b) This clause implements Executive Order 13513, Federal Leadership on Reducing Text Messaging while Driving, dated October 1, 2009.

(c) The Contractor is encouraged to--

(1) Adopt and enforce policies that ban text messaging while driving--

(i) Company-owned or -rented vehicles or Government-owned vehicles; or

(ii) Privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government.

(2) Conduct initiatives in a manner commensurate with the size of the business, such as--

(i) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

(ii) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

(d) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts that exceed the micro-purchase threshold.

(End of clause)

52.225-25 PROHIBITION ON CONTRACTING WITH ENTITIES ENGAGING IN CERTAIN ACTIVITIES OR TRANSACTIONS RELATING TO IRAN--REPRESENTATION AND CERTIFICATIONS. (OCT 2015)

(a) Definitions. As used in this provision--

Person--

(1) Means--

(i) A natural person;

(ii) A corporation, business association, partnership, society, trust, financial institution, insurer, underwriter, guarantor, and any other business organization, any other nongovernmental entity, organization, or group, and any governmental entity operating as a business enterprise; and

(iii) Any successor to any entity described in paragraph (1)(ii) of this definition; and

(2) Does not include a government or governmental entity that is not operating as a business enterprise.

Sensitive technology--

(1) Means hardware, software, telecommunications equipment, or any other technology that is to be used specifically--

(i) To restrict the free flow of unbiased information in Iran; or

(ii) To disrupt, monitor, or otherwise restrict speech of the people of Iran; and

(2) Does not include information or informational materials the export of which the President does not have the authority to regulate or prohibit pursuant to section 203(b)(3) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)(3)).

(b) The offeror shall email questions concerning sensitive technology to the Department of State at CISADA106@state.gov.

(c) Except as provided in paragraph (d) of this provision or if a waiver has been granted in accordance with 25.703-4, by submission of its offer, the offeror—

(1) Represents, to the best of its knowledge and belief, that the offeror does not export any sensitive technology to the government of Iran or any entities or individuals owned or controlled by, or acting on behalf or at the direction of, the government of Iran;

(2) Certifies that the offeror, or any person owned or controlled by the offeror, does not engage in any activities for which sanctions may be imposed under section 5 of the Iran Sanctions Act. These sanctioned activities are in the areas of development of the petroleum resources of Iran, production of refined petroleum products in Iran, sale and provision of refined petroleum products to Iran, and contributing to Iran's ability to acquire or develop certain weapons or technologies; and

(3) Certifies that the offeror, and any person owned or controlled by the offeror, does not knowingly engage in any transaction that exceeds \$3,500 with Iran's Revolutionary Guard Corps or any of its officials, agents, or affiliates, the property and interests in property of which are blocked pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) (see OFAC's Specially Designated Nationals and Blocked Persons List at <http://www.treasury.gov/ofac/downloads/t11sdn.pdf>).

(d) Exception for trade agreements. The representation requirement of paragraph (c)(1) and the certification requirements of paragraphs (c)(2) and (c)(3) of this provision do not apply if—

(1) This solicitation includes a trade agreements notice or certification (e.g., 52.225-4, 52.225-6, 52.225-12, 52.225-24, or comparable agency provision); and

(2) The offeror has certified that all the offered products to be supplied are designated country end products or designated country construction material.

(End of provision)

52.232-39 UNENFORCEABILITY OF UNAUTHORIZED OBLIGATIONS (JUN 2013)

(a) Except as stated in paragraph (b) of this clause, when any supply or service acquired under this contract is subject to any End User License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring the Government to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:

(1) Any such clause is unenforceable against the Government.

(2) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an "I agree" click box or other comparable mechanism (e.g., "click-wrap" or "browse-wrap" agreements), execution does not bind the Government or any Government authorized end user to such clause.

(3) Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.

(b) Paragraph (a) of this clause does not apply to indemnification by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

(End of clause)

252.204-7003 CONTROL OF GOVERNMENT PERSONNEL WORK PRODUCT (APR 1992)

The Contractor's procedures for protecting against unauthorized disclosure of information shall not require Department of Defense employees or members of the Armed Forces to relinquish control of their work products, whether classified or not, to the contractor.

(End of clause)