



Frankfort Plant Board
151 Flynn Avenue
Frankfort, KY 40601

REQUEST FOR PROPOSAL 2023-4

In Service Wood Pole Inspection

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1. Project Overview

1.1. Introduction

The Frankfort Plant Board (hereby referred to as “FPB” or “Board”) is soliciting proposals from qualified providers to perform in-service wood pole inspections and targeted treatment. The term of this agreement is for the fiscal year ending June 30th, 2024, with an option to renew an additional two years at the agreement of the Board and Contractor.

The Frankfort Plant Board serves approximately 21,500 electric customers and is governed by a five member Board of Directors. FPB’s service territory includes the City of Frankfort and portions of Franklin, Woodford and Shelby Counties.

General Utility Statistics

Service Area: ~60 square miles

69kV Sub-transmission: 33 miles (almost all overhead)

13.8kV Distribution: 462 miles (350 OVH, 112 URD)

Wood poles: ~10,000 owned + ~2,500 attached to others.

1.2. Requirements of Bidder

CONTRACTOR shall furnish all supervision, labor, tools, equipment, report forms, field adaptable handheld data collection devices, transportation, and material necessary for the inspection and treatment of FPB’s poles as identified. FPB will furnish copies of this specification and necessary maps showing locations of poles which are the subjects for inspection and/or treatment. FPB shall provide CONTRACTOR the legal right to access the work site.

CONTRACTOR is required to have a minimum of 20 years in the in-service pole inspection and treatment business. CONTRACTOR must have documented programs/policies conforming to the Environmental Protection Agency (“EPA”), the Occupational Safety and Health Administration (“OSHA”), the Department of Transportation (“DOT”), along with all federal and state pesticide regulations. These policies must include a safety manual, pesticide training manual and test, standards for safe storage of preservatives on vehicles, operating policies for CONTRACTOR’s personnel to handle preservatives and procedures for disposing of empty containers used for pole treatment in compliance with label requirements, and OSHA regulations involving Personal Protective Equipment (“PPE”).

CONTRACTOR shall maintain throughout the term of the applicable agreement, in full force and effect, in amounts reasonably satisfactory to the Board and otherwise in compliance with applicable law, the following insurance coverages: Workers’ Compensation, Commercial General Liability (including Public Liability, Personal Injury, Property Damage, and Contractual Liability) and Automobile Liability. Prior to the commencement of the work, CONTRACTOR shall furnish FPB with a certificate evidencing said coverages.

CONTRACTOR shall be a certified commercial pesticide applicator for the preservative applications specified in this specification, and each crew shall be supervised by a full time Supervisor who is licensed and certified by the state where the work is to be performed. CONTRACTOR shall be

responsible for the accurate recording and submittal of all pesticide usage forms required at the time of application by the various pesticide regulatory agencies and for meeting all applicable federal and state rules and regulations.

Each pole inspector and/or Foreman shall be required to pass a pesticide training program which addresses the biology of wood destroying insects and fungi, the proper and safe handling, storage, disposal, and transport of pesticides, product labels, SDS, and emergency procedures for accidental releases. CONTRACTOR's pesticide training program is to be in addition to state requirements for applicator licensing.

CONTRACTOR shall provide to its employees with a hazard communication program which addresses the purpose of using pesticides, SDS and product labels, protective safety equipment, and clothing and product information. A safety manual and program will be utilized by CONTRACTOR and its employees.

CONTRACTOR is required to have in its possession copies of the preservative labels and Safety Data Sheets ("SDS") for all pesticides being used. Upon request, the SDS and labels will be shown to anyone desiring this information. Properly completed shipping papers will also be carried on each vehicle which is transporting pesticides.

CONTRACTOR shall provide each crew with all required PPE as specified by the label, such as goggles, sleeves, non-permeable gloves, and aprons. In addition, hard hats and a change of clothing will be provided. All field employees are required to wear work boots and hard hats.

CONTRACTOR shall provide a truck that has covers and locks adequate to satisfy applicable federal and state DOT regulations in which to store and transport the preservatives.

All preservatives shall be handled and applied in accordance with the product label, and in a manner to prevent damage to vegetation and property. Only preservatives registered by the EPA and the appropriate State Department of Agriculture for the intended use of remedial pole treatments will be considered for approval by OWNER. Preservatives not labeled for use as remedial pole treatments shall not be used.

No preservatives shall be applied by CONTRACTOR where a pole is readily identifiable as: (i) located on any school property (Day care(s) and Grades K-12); (ii) in a vegetable garden; (iii) in organic farm fields (iv) within 10' of a stream or standing water body; or (v) within 50' of a private well. OWNER acknowledges that all vegetable gardens, organic farm fields and wells may not be identifiable by CONTRACTOR.

1.3 Workmanship and Damages

All work shall be performed in a workmanlike manner and shall be in accordance with this specification and all applicable federal and state regulations. OWNER considers work not in accordance with this specification or work not in accordance with state and federal regulations, or unskilled or careless work, to be sufficient reason to order CONTRACTOR to stop work. Work will not be allowed to resume until deficiencies are corrected to the reasonable satisfaction of OWNER. Further, OWNER reserves the right to require CONTRACTOR to replace any worker before work is allowed to continue. If not satisfied, OWNER will consider this to be just cause for termination of the contract.

Any damages, real or personal, off the right of way arising solely from the negligent performance of the work specified herein, or any damages on the right of way arising solely as a result of negligent operations, shall be settled promptly by CONTRACTOR.

OWNER recognizes that linemen must inspect all poles to their satisfaction prior to climbing, whether or not such poles have been inspected by a third-party contractor. An inspection and/or treatment tag on a pole is not a guarantee the pole is safe to climb. OWNER should inform linemen that the inspection tag only means the pole was inspected in the stated year in accordance with the contract specifications. An inspection tag is neither an expressed nor implied warranty that the pole meets the National Electric Safety Code ("NESC"), the General Order No. 95 ("GO 95"), nor any other applicable standard. Linemen must also practice all other safety procedures when climbing poles and changing out or adding equipment or lines or cutting lines, all of which may create an unbalanced load. An unbalanced load may cause sound poles to fail.

2. Scope of Work

This specification is intended as a basis for the inspection and supplemental treatment of wood poles. Poles less than ten years old will only be visually inspected and reported if the visual inspection warrants no further action. All other poles are to be inspected both above and below the groundline area.

2.1 Visual Inspection

Before any other inspection, a visual inspection shall be conducted from the top of the pole to ground level to determine if any maintenance is needed for the pole or attached electrical equipment. Such items may include but are not limited to broken cross-arms, broken cross-arm braces, split pole top, leaning pole, broken insulator or lighting arrestor, blown fuse on capacitor banks, broken ground wire, loose ground wire connection, leaking transformer, missing guy wire marker, stub poles, etc. Items listed by the Contractor as requiring maintenance shall be noted on the appropriate report sheet. If the pole is obviously not suited for continued service due to serious defects, it shall not be tested further but simply be reported and marked on the inspection form as a reported reject.

2.2 Partial Excavation

All poles that pass the above ground visual inspection (other than poles defined in Attachment A: 1.1) shall be partially excavated on one side of the pole to a depth of 6" (exceptions include poles in pavement, or poles that are otherwise inaccessible; if accessible, these poles will be sound and bore inspected. The pole will be sounded and bored and the pole surface will be checked for signs of external decay.

No Surface Decay: If no surface decay is suspected and the borings indicate no internal decay, no further action is required. The partial excavation will be back-filled.

Surface Decay: If surface decay is suspected, the pole will be fully excavated and decay will be removed. Evaluation and treating will be performed as described below.

Extensive Decay: If extensive decay is present and it is obvious that the pole is a reject, and does not require treatment, no further action is required and the pole will be back-filled.

Internal Decay: If internal decay is suspected or present and the pole is not a Southern Pine Species, the pole will be treated with a fumigant according to the specifications contained herein and the partial excavation will be back-filled. If the pole is a Southern Pine Species, it will be fully excavated and evaluated further.

Internal Void: If an internal void is present and the pole is not a Southern Pine Species, the pole will be treated with a fumigant and an internal treatment and the partial excavation will be back-filled. If the pole is a Southern Pine Species, it will be fully excavated and evaluated further.

2.3 Full Excavation

All poles exhibiting Surface Decay, Internal Decay or Internal Voids shall be excavated around the entire circumference to a depth of 18" below groundline (exceptions include poles with underground power risers and poles excluded from remedial treatment application. These poles will be partial excavate inspected.

Poles which cannot be excavated to the proper depth around the entire circumference for legitimate reasons (such as large rocks, large roots, or other obstructions) will have the obstruction and the extent of excavation noted in either the remarks or notes section of the pole report. The excavation will be approximately 10" from the pole at ground level and 4" from the pole at the 18" depth. For excavation in lawns, sod grass areas, or flower gardens, care will be taken to keep the surrounding area as clean as possible. The sod around pole shall be carefully cut and neatly stacked. Poles installed on slopes shall be excavated to a minimum depth of 18" on the down slope side and 18" on the high side. Tarpaulins or ground cloths shall be used whenever possible to minimize the possibility of any property damage and to aide in the tracking of excavated holes (exceptions should be rare, and would include situations where the slope is too steep or the ground surface too uneven to allow for effective use).

3.0 Inspection:

3.1 Preparation:

When work is to be done in close proximity to a home, if possible, the property owner should be notified that a pole inspection is being performed by OWNER. Light brush will be removed from around the pole to allow for proper excavation, inspection, and/or treatment unless permission for removal is denied by property owner (excessive brush removal may require an additional charge). Property owner's denial will be indicated in the remarks column on the pole report. If permission for excavation is denied, the pole will be sounded and bored and fumigant treated, providing the pole is serviceable. CONTRACTOR will not inspect or perform work on poles inaccessible by Acts of God or by any causes beyond the control of CONTRACTOR. Reason for the lack of inspection will be noted in the remarks column of the pole report.

3.2 Sounding

Poles shall be sounded from as high as the inspector can reach to the exposed groundline area in order to locate interior pockets of decay. Hammer marks should be visible to indicate that the area was sounded.

3.3 Boring

Inspector shall bore the pole with a 3/8" bit at a 45° angle to a depth of the center line of the pole. Bore hole(s) shall be located approximately 6"-8" below ground on excavated poles, and at groundline for non-excavated poles. A shell thickness indicator shall be used to detect the existence and estimated extent of any interior decay. If enclosed decay pockets are evident in a pole, a minimum of four borings will be taken to determine the size and extent of decay. Bored holes shall be plugged with tight fitting treated wood dowels or plastic plugs.

Shell Borings are made at an angle of approximately 60°. These shall be bored in a manner so the boring stays within the outer 2-3" of shell. Therefore, the hole is intentionally bored off-center from the pole. Shell borings shall be made at the discretion of the inspector based on field/pole conditions and pole species. Refer to DRAWING 1 for a visual example of shell boring. Non-excavated poles will receive 1 shell boring in addition to the 45° boring. Excavated poles not excavated around the entire circumference, shall receive 1 shell boring in the non-excavated area.

3.4 Chipping

All poles that will be externally treated will have all loose and decayed wood removed from 18" below groundline to 6" above groundline. A quality chipping tool will be used for this procedure to obtain a smooth, clean removal of wood. External decay pockets will be shaved or chipped to remove decayed wood from the pole. Removed wood shall be removed from the hole and surrounding ground and disposed of properly. Care should be taken not to remove good wood as this will reduce the strength of the pole. The pole will be scraped using a check scraper or wire brush to remove dirt from treatment zone.

4.0 Evaluation:

4.1 Determining Remaining Groundline Strength or Minimum Groundline Circumference

Measurements of the following decay and damage conditions shall be collected and input into a strength calculating program which will calculate the remaining strength of the pole: shell rot, exposed pockets, enclosed pockets, and mechanical damage.

Decay measurements shall be entered with consideration for the orientation to the line of lead and the program models the resulting cross section. Multiple types of damage are combined within the calculations and the center of gravity of the pole cross section is adjusted accordingly.

The output is shown as estimated Percent Remaining Strength. The traditional Groundline Effective Circumference will be reported as well. This is the circumference of a smaller, sound pole that approximates the bending capacity equivalent to the decayed pole's remaining strength. The strength calculating program will only display percentages of remaining strength for excavated poles and poles

that are sound and bore inspected. An estimated Groundline Effective Circumference is the only reported value for poles which are not excavated or sound and bore inspected.

A "Reject Pole" is:

- Any excavated pole with a remaining strength of less than 67%.
- Any pole which does not receive a partial or full excavate inspection with decay that results in a reduction of remaining strength, regardless of the estimated remaining strength. Groundline remaining strength for non-excavated poles is estimated based on the limitations of the inspection method.

A "Priority Pole" is:

- A pole with an effective circumference of less than 50% of its original circumference and/or 13% or less remaining original strength and shall be reported to OWNER's representative as specified by OWNER in writing.

4.2 Previously Restored Poles

- Poles previously restored with reinforcement trusses shall be evaluated just above the second lowest band and at the top of the truss.
- Poles that do not meet the minimum shell requirements will be classified as rejects.
- Poles that meet the minimum shell requirements will be classified as serviceable poles and internally treated above ground according.
- Loose, missing or severely corroded bands and seals will be noted.
- Bands and seals showing signs of minor rust or corrosion will be repainted with a cold zinc galvanizing compound.

4.3 Determining Reinforceable Candidates

When the initial inspection results in the rejection of a pole, the pole shall be marked for replacement or reinforcement. The following inspections shall be performed to determine if the pole is reinforceable.

4.3.1 Inspection Point 1: Groundline Pole Condition

Poles exhibiting shell rot at or below groundline shall have a minimum remaining sound wood circumference of 33% or greater than the original groundline circumference and/or 4% remaining strength.

Hollow poles and poles with internal decay shall maintain one-half inch (1/2") of average sound shell at or below groundline for single or double truss applications.

Note: All shell thickness requirements listed in Sections 4.3.2 and 4.3.3 are for poles up to and including 65' in length. For poles 70' and longer, all shell requirements shall be increased by 1" (3" at the lower band position for a single truss, or 2" for a double truss, and 5" at the top of the truss):

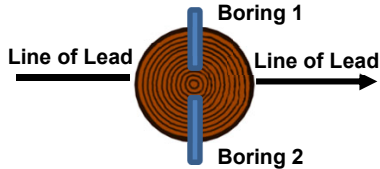
4.3.2 Inspection Point 2: Lower Band Pole Condition

A single truss application requires two inches (2") or greater of average sound shell at fifteen inches (15") from groundline.

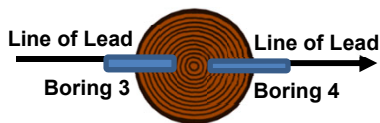
A double truss application may have less than two inches (2") but requires greater than or equal to one inch (1") of average sound shell at fifteen inches (15") from groundline.

Procedure to determine lower band average sound shell:

- A. Drill two (2) 3/8" diameter holes at fifteen inches above groundline perpendicular to the line of lead. Refer to Figure 3 for line of lead orientations for common line construction types.



- B. If the average sound shell from these 2 borings is two inches (2") or greater, proceed to Inspection Point 3 below.
- C. If the average sound shell is less than two inches (2"), bore 2 additional holes in the line of lead. If the average of all 4 borings is two inches (2") or greater, proceed to Inspection Point 3.



- D. If the average is still less than two inches (2") but greater than one inch (1"), the pole can be reinforced with double trusses, which combined, provide the desired strength. Proceed to Inspection Point 3 below to determine double truss required height above groundline.
- E. If the average sound shell is less than one inch (1"), the pole may be deemed non-restorable or require further consultation between FPB and Contractor.

4.3.3 Inspection Point 3: Top of Truss Pole Condition

A standard truss requires an average sound shell of four inches (4") or greater at the installed height of the standard truss required, typically five feet (5').

A tall truss requires four inches (4") or greater of average sound shell anywhere from six to eight feet (6'-8') above groundline.

Procedure to determine top of truss average sound shell:

- A. Drill two (2) 3/8" diameter holes at five feet (5') above groundline perpendicular to the line of lead.
- B. If the average sound shell from these two (2) borings is four inches (4") or greater, reinforce the pole with the appropriate truss or trusses as shown in Figure 4 or 5.
- C. If the average sound shell is less than four inches (4"), Drill two (2) 3/8" diameter holes at six or eight feet (6' or 8') above groundline perpendicular to the line of lead in order to find four inches (4") or greater of average sound shell
- D. If the average sound shell from these two (2) borings is four inches (4") or greater, reinforce the pole with a truss with an installed height above groundline at least as tall as where 4" or greater of average sound shell is found.

Note: In the instance where a pole would require double trussing due to average sound shell thickness at 15", but obstructions on the pole or a customer request would limit a restoration to only 1 truss, the pole can be checked for 2" of average sound shell at 26" and a single tall truss can be installed with lower banding installed at 26".

4.3.4 All inspection holes shall be plugged with tight-fitting treated wood dowels or plastic plugs.

5.0 Treatment:

5.1 General:

All fully excavated poles (as specified herein) which are serviceable shall be treated as specified below. All non-excavated poles and certain excavated poles shall be treated with a fumigant treatment as specified in Section 5.3 (note reinforceable candidates cannot be treated with a fumigant treatment until after the pole has been reinforced). If internal decay is indicated, an appropriate solution shall be selected and applied (as specified in Section 5.4).

5.2 External Groundline Treatment:

All poles which are fully excavated and serviceable are to be groundline treated with a preservative paste which shall be applied to the pole (a minimum of 1/16" thick) from 18" below groundline to 3" above groundline. Reinforceable candidates will not be externally treated.

CONTRACTOR shall treat all exposed pockets and checks using a brush or trowel. Where obstructions occur (such as fences, curbs, and walls) the preservative shall be applied up to obstruction to insure complete coverage.

5.2.1 Wrapping of External Treatment

A polyethylene-backed kraft paper moisture barrier is to be applied over the wood preservative. The moisture barrier shall cover preservative to a depth of 18" and extend 1" above the top of treatment zone, for a total of 22". It shall be of sufficient length to go around the pole with an overlap of approximately 4" and shall be stapled to the pole at the top and side seams of the barrier.

Pasture wrap shall also be used in areas of livestock; it will be stapled around the top edge of the moisture barrier to act as an additional protective barrier.

5.3 Fumigant Treatment:

Serviceable poles will receive a fumigant treatment(s) based on the following criteria:

- Poles that were identified for full excavation which cannot be 75% excavated due to obstructions (i.e. curbs, pole keys, large roots, fences, etc.), and all poles where internal decay is present or suspected and/or where voids of less than ½” are present.
- Non-Southern Pine Species Poles that were partial excavate inspected.
- Poles that were sound and bore inspected where external decay is present or suspected and/or where internal decay is present or suspected and/or where voids of less than ½” are present.

CONTRACTOR shall apply the fumigant treatment(s) to poles using the following treatment(s)/application method(s):

OsmoFume or Approved Equal (Contains 91.14% Tetrahydro-3, 5-Dimethyl-2H-1, 3, 5-Thiadiazine-2-Thione)	
Pole Circumference (Inches)	Number of Holes Drilled/Amount Applied *
> 16"	Two holes 6" – 7" deep spaced 120° apart with 12" vertical spacing. Apply one stick per hole.
16" to 28"	Two holes 8" – 10" deep spaced 120° apart with 12" vertical spacing. Apply up to 2 sticks per hole.
29" to 40"	Three holes 14" deep spaced 120° apart and 6" to 8" higher than the previously bored hole. Apply up to 3 sticks per hole.
41 to 49	Four holes 14" deep spaced 90° apart and 6" to 8" higher than the previously bored hole. Apply up to 3 sticks per hole.
50 to 59	Five holes 14" deep spaced 70° apart and 6" to 8" higher than the previously bored hole. Apply up to 3 sticks per hole.
60 to 69	Six holes 14" deep spaced 60° apart and 4" to 6" higher than the previously bored hole. Apply up to 3 sticks per hole.
70 to 79	Seven holes 14" deep. The first two at groundline 180° apart, and the remaining five spaced 60° apart and 4" to 6" higher than the previously bored hole. Apply up to 3 sticks per hole.
80 to 90	Eight holes 14" deep. The first two at groundline 180° apart, and the remaining six spaced 50°

	apart and 4" to 6" higher than the previously bored hole. Apply up to 3 sticks per hole.
Greater than 90	Nine holes 14" deep. The first two at groundline 180° apart, and the remaining seven spaced 45° apart and 4" to 6" higher than the previously bored hole. Apply up to 3 sticks per hole.

CONTRACTOR's inspector shall bore 7/8" slanting holes to the specified depth. Use impermeable gloves to install the specified treatment into each hole. Approximately 3 ounces (1 ounce for poles less than 29") of a liquid solution containing 5.84% Copper Ethanolamine Complex (Equivalent to 2% Copper Metal) and 5% Disodium Octaborate Tetrahydrate (copper-boron) will be added to each hole after the fumigant is applied. Holes shall be plugged using tight-fitting treated wooden dowels or plastic plugs. For non-excavated poles, the first hole(s) are generally bored at groundline. For excavated poles, the first hole(s) may be bored below groundline.

* When treating poles that have been previously treated with granular dazomet based fumigants, residual material may remain in some holes preventing the application of the specified number of sticks and/or the specified amount of copper-boron solution. The same can apply to existing application holes that were drilled at shallow angles. In those cases, treatment sticks and/or copper-boron solution shall be applied to refusal, up to the specified amount.

5.4 Internal Treatment

Internal treatment will be with Hollow Heart CB Dilute Solution or approved equal.

Poles containing decay pockets of 1/2" or larger shall be treated by pumping the preservative into the cavity through a series of 3/8" diameter holes. If wood destroying insects are encountered in the pole, the pole will be sounded to locate the top of the insect gallery and enough holes drilled to thoroughly treat the wood and flood the galleries. The solution will be applied as a liquid at a minimum pressure of 40 PSI, or as a foam at a reduced pressure. Beginning with the lowest hole, the preservative will be pumped into the cavity until the material flows out of the next highest hole. This hole will then be plugged and additional preservative pumped into the cavity until the cavity is filled or a maximum of one gallon is used. Sufficient holes will be bored and preservative used to assure coverage of the decayed area.

All holes will be plugged with tight-fitting treated wood dowels or plastic plugs.

At FPB's option, poles containing signs of wood destroying insects shall be treated with Hollow Heart CB Plus Dilute Solution or approved equal.

Poles containing signs of wood destroying insects shall be treated by pumping the preservative(s) into the cavity through a series of 3/8" diameter holes. The solution will be applied as a liquid at a minimum pressure of 40 PSI, or as a foam at a reduced pressure. Beginning with the lowest hole, the preservative will be pumped into the cavity until the material flows out of the next highest hole. This hole will then be plugged and additional preservative pumped into the cavity until the cavity is filled or a maximum of one gallon is used. Sufficient holes will be bored and preservative used to assure coverage of the decayed area. All holes will be plugged with tight-fitting treated wood dowels or plastic plugs. The pole will be sounded to locate the top of the insect gallery and enough holes drilled to thoroughly treat the wood and flood the galleries.

6.0 Restoration of Work Site:

After excavation and/or treatment, all poles will be solidly back-filled. The first half of the excavation will be back-filled and tamped completely around the pole by walking on the replaced excavation; the second half will be back-filled and tamped completely around the pole. The excess earth should be banked up to a maximum of 3" above normal ground level to allow for settlement. In grass areas, the sod shall be carefully placed around the pole. Rocks or stones should not be laid against the pole except where they serve to key the pole or where no other fill is available. Extreme care should be taken not to tear the moisture barrier while back-filling.

No debris, loose dirt, etc. is to be left in the pole area. Private property turf, including that between the curb and the sidewalk, bushes, plants, and shrubbery are to be replaced with care. If any preservative is released on the ground, it shall be immediately cleaned-up. All containers shall be disposed of in accordance with the product label.

7.0 Pole Marking (Tagging):

The work performed shall be marked with a weatherproof tag containing CONTRACTOR's name and the year of inspection in a fashion similar to the designations shown in the following drawings. The tagging scheme used by CONTRACTOR must be shown to OWNER's representative and approved before it is used. Tags shall be supplied by CONTRACTOR and placed 5' to 6' above groundline on the road side of the pole, below the utility pole identification marker. If inspecting or treating a pole that has previously been inspected or treated, the tag will be attached directly below the existing tag(s).



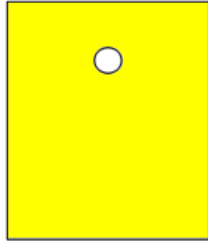
This diamond shaped tag represents that a visual inspection **only** was performed. This tag shows CONTRACTOR's name, identifies that a visual inspection was performed, and the actual year the work is performed.



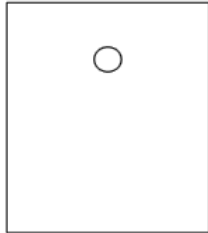
This round tag represents an inspection via a full 18" excavation and treatment with an approved paste. The tag shows CONTRACTOR's name and the actual year the work is performed.



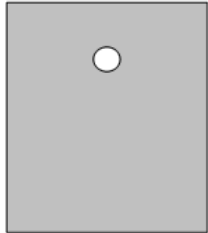
This oval tag is to be used whenever a sound and bore or partial excavate inspection takes place. The tag shows CONTRACTOR's name and the actual year the work is performed.



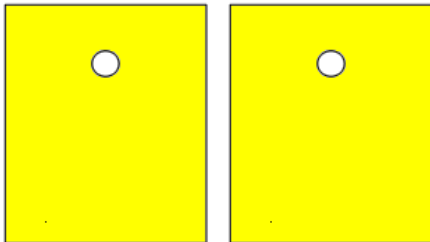
One yellow reject tag is used to denote that the pole is a reinforceable reject.



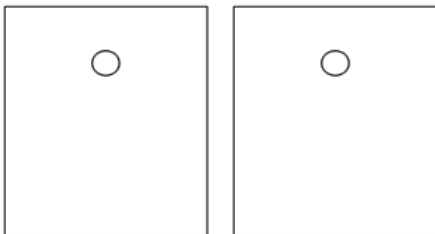
One white tag **may** be used to denote that the pole is a non-reinforceable reject.



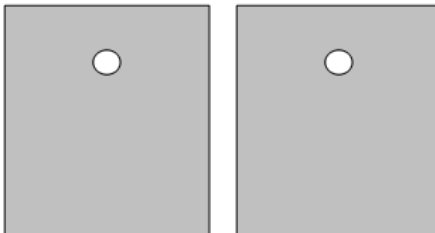
One silver tag **may** also be used to denote that the pole is a non-reinforceable reject.



Two yellow tags are used to denote a danger or priority pole that is reinforceable.



Two white tags **may** be used to denote a priority pole that is non-reinforceable.



Two silver tags **may** also be used to denote a priority pole that is non-reinforceable.



This tag is used whenever internal treatment is injected into a pole. This tag will be used in conjunction with one or more of the above tags depending on the type of inspection performed.



This tag is an example of a fumigant treatment tag. This tag shall be used whenever fumigant is applied to a pole. This tag will be used in conjunction with one of the above tags depending on the type of inspection performed.

8.0 Data Collection and Deliverables:

8.1 Data Requirements

OWNER desires to conduct a comprehensive pole inspection and maintenance program. OWNER will advise CONTRACTOR in writing of the type of data OWNER wants collected by CONTRACTOR. The data will be delivered within a geospatial software environment for viewing, searching, and reporting.

OWNER desires to improve the overall quality and completeness of pole inspection data as a secondary objective of the project. The combination of a data viewing tool together with improved data quality will help improve OWNER's ability to manage pole life cycle costs. The importance of the data-collection effort requires that it be performed professionally by experienced field personnel using technology that ensures delivery of high-quality data.

CONTRACTOR will provide appropriate hardware, software, and project management to ensure that OWNER receives data that meets its requirements for accuracy and completeness. At OWNER's request, CONTRACTOR can provide a demonstration of CONTRACTOR's data collection tools, processes, and a sample deliverable.

8.2 Data Specifications

An OWNER-supplied landbase that is acceptable to CONTRACTOR will be deployed by CONTRACTOR electronically to the field. A unique identifier will be created for each pole. Each pole will be placed on the digital landbase using GPS and/or relative positioning.

8.3 Data Delivery

Data collected will be delivered online in a geospatial enabled web-based application that includes both map and attribute views of the data. The online application shall provide access to reports and data queries with support of user generated search functions. Poles must be able to be searched and sorted into groups based on their condition, their attributes, their attachments (when applicable), and highlighted in a map view.

The online application shall provide a landbase backdrop that includes aerial imagery capable of being viewed at various zoom levels. CONTRACTOR's geospatial online application will be compatible with industry standard web browsers. All incremental data deliveries will be updated on the geospatial online application. CONTRACTOR shall host the data in the online application, but FPB shall retain ownership of data (see Section 8.4 for information regarding data archiving).

The geospatial online application shall provide the capability to view and download reports in Adobe PDF format. Reports shall consist of pole detail, weekly, and year-to-date summaries. CONTRACTOR's web-based application must support the ability to view all invoices, in Adobe PDF format, with the ability to relate each individual pole record with the corresponding invoice.

Data export functionality shall include the ability to export to an ESRI Personal geodatabase, Microsoft Access, or a comma delimited (Excel Spreadsheet) file format. The geospatial online application shall support the printing of map views and, if applicable, viewing of digital images.

CONTRACTOR shall demonstrate how its online application provides OWNER with a calculated Percent Remaining Strength for poles with decay (where applicable).

8.4 Data Archiving

CONTRACTOR will host the geospatial online application for the duration of the pole inspection project and for a maximum of 90 days after the end of the calendar year in which the project was completed. Options for additional archiving shall be made available at an additional cost. OWNER shall retain ownership of all data. Use of the geospatial online application will be governed by CONTRACTOR's online hosting agreement.

9. Procurement Schedule

The schedule for this RFP is as indicated below. It may be modified at the discretion of FPB. An addendum will be issued in the event of any scheduling changes.

Project Milestone	Date/Time
RFP Issued	11/08/2023
RFP Questions Deadline	11/15/2023
Answers to RFP Questions Distributed	11/22/2023
RFP Deadline	12/06/2023
Award or No Award (Tentative)	12/20/2023
Contract Executed (Tentative)	1/10/2024
Commencement of Work	No later than 3/4/24

9.1 Questions Pertaining to the RFP

Please submit questions via email to Travis McCullar (tmccullar@fewpb.com) by 11/15/2023. Responses to questions will be shared with all Proposers.

9.2 Notice of Intent to Submit Proposal

To ensure receipt of documents, respondents are encouraged to submit via email to the purchasing agent (Jennifer Hellard; jhellard@fewpb.com) their Notice of Intent to submit a proposal to ensure receipt of all addendums and other project documents. Addendums to this RFP based on submitted technical questions, along with changes to the proposal schedule, will be issued via email to Proposers who have confirmed intent to submit.

9.3 RFP Submission Guidelines

Do not submit an emailed proposal. One sealed hard copy and one electronic .pdf (on usb thumb drive) proposal shall be submitted to:

Frankfort Plant Board
RFP 2023-4
305 Hickory Drive
Frankfort, KY 40601

Any bid may be withdrawn at any time prior to the due date with a written request signed by the authorized respondent representative. Revised proposals may be submitted up to the original due date/time. **Bid proposals shall remain valid for 60 days after the RFP due date.**

9.4 Selection Process

Vendors may be asked to meet with FPB to present their proposal to FPB's evaluation team and answer any outstanding questions. Depending on the number and quality of the proposals received, FPB reserves the right to either not select or select a vendor. The successful respondent will agree on a formal agreement with FPB based on the draft terms and conditions included as Attachment C and respondent's terms and conditions.

10. Proposal Requirements

10.1. General Format

One hard copy and one usb thumb drive proposal shall be submitted to the address listed in Section 3.4. Proposals must be delivered to the below address no later than date and time listed below. Proposals received after this time will be returned to the respondent un-opened. Proposals will not be considered for award unless submitted in the format described below. Electronic and/or fax proposals will not be accepted.

Proposals submitted via email will not be considered. Bids must be submitted in a sealed envelope.

Deadline for Submissions:

12/6/23

2:00 p.m.

10.2 Proposal Components

Please include the following sections in your proposal submittal in the following order.

- **Cover Letter:** Cover letter must be signed by a legally authorized representative of the respondent. It must summarize key provisions of the proposal and must include the respondent contact's name, address, phone and email. Specify if the Proposal includes any Proposer's trade secrets that must be shielded in case FPB is subject to the Freedom of Information Act (FOIA) or other open records requests.
- **Executive Summary:** Include key provisions of the proposal, including understanding of FPB's goals, pricing, respondent's role on project, relevant experience with local, and key timeline dates.
- **Price Proposal:** Proposer shall complete and return Attachment A: Bid Pricing Sheet in its entirety to be considered for award. Prices shall be submitted on a per unit basis. Owner should submit prices on a per unit basis based on the estimated number of poles to be evaluated and treated.
- **Proposer Profile:** Years in business, description of background working with local governments, applicable state licensing, OSHA background and safety protocol, insurance, and quality control documentation.
- **Project Experience:** Include a minimum of [2] and maximum of [10] projects completed in the last 3 years similar in scope and complexity to the proposed project.
 - **References:** Provide 3 project references, including the contact person's name, email address, telephone number, and organization, as well as the nature of work performed and location.
 - **Litigation:** Indicate whether the Proposer, any team member, or any corporate officers have been party to any lawsuit involving the performance of any equipment it has installed and provide a summary of the issues and lawsuit status.
- **Project Team:** Organization chart and bios (length of time with firm, key projects, work history) of key team members and subcontractors, and their capability to perform work. Please only profile individuals that will directly be working on this project. Clearly identify the project manager.
- **Safety** – Include a brief description of the safety practices of your firm, as well as the OSHA Reporting Indicators for the last 3 years and any OSHA citations received in the past 5 years.
- **Comments or Exceptions to Agreement Terms:** FPB has included in the RFP package proposed agreement terms. Contractor shall review and provide comments or exceptions to proposed terms.
- **Clarifications and Exceptions**– If the Proposer believes that additional information must be included in their bid to clarify or take exception to the RFP, include in this section.
- **Completed Pricing and Bid Forms.** See attachment A and attachment E.

11. Proposal Evaluation

A selection committee from FPB will evaluate proposals according to the evaluation criteria below. Review and award will be based on the relative merit of the information provided in the response to the solicitation. Selection will be based on the selection criteria. Award shall be made to the Proposer submitting the most responsible and responsive proposal which offers the greatest value to FPB with criteria detailed and the scope of services set forth.

- Proposal Cost Effectiveness
- Technical Approach/ Implementation Schedule
- Proposer Qualifications/Project Experience
- Proposer's Project team members experience

FPB may elect to conduct interviews with selected respondents to ask questions or for more detail on the proposed project. FPB reserves the right to seek supplemental information from any respondent at

any time after official proposal opening and before award. This will be limited to clarification or more detail on information included in the original proposal. Upon acceptance of a proposal and intent to award, the successful respondent will be required to execute and return all required project documents and certificates of insurance within 30 days from the Notice of Award. Should the selected firm fail or refuse to execute the project documents, FPB reserves the right to accept the next best proposal.

12. Contract Term and Adjustments

The price contract established from this RFP will be for a 30 month period beginning January 1, 2024 and ending June 30, 2026 with options to renew for two (2) additional years (one year each) with the consent of the bidder and the Frankfort Electric and Water Plant Board. Contract years will align with FPB's fiscal years outlined below. The contract may be terminated early by either party with a 30 day written notice.

Year 1(Partial): January 1st 2024 – June 30th 2024

Year 2: July 1st 2024 – June 30th 2025

Year 3: July 1st 2025 – June 30th 2026

FPB intends to renew the contract concurrently with the beginning of a new fiscal on July 1st. Pricing adjustments may be made on this renewal date. These adjustments may be applicable to each individual item on the Contract based on the "Services" section of Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, special aggregate indexes, published by the U.S. Bureau of Labor Statistics. These adjustments will be rounded off to the nearest cent.

Each item on "Attachment A" shall be computed separately within the guidelines of this section a revised "Schedule A" shall be submitted annually by the CONTRACTOR for review by the Frankfort Electric and Water Plant Board.

The price established for the first year of this contract will be the base for the first anniversary adjustment. Succeeding anniversary adjustments will use the established prices of the preceding year as the base for the adjustment.

RFP 2023-4 In Service Wood Pole Inspection

Attachment A - Pricing

Base Contract Services

Service	*Bid Quantity (See Note)	Per Pole Price (Year 1)	Extended Price	69kV and Above Adder
Visual Inspection	300			
Partial Excavation	1000			
Full Excavation and Treatment	400			
Excavate and Reject	300			

*Bid Quantities are year 1 estimates and will be used for evaluation. Actual quantity may vary based on scheduling and conditions encountered during inspection process. Unit pricing to be adjusted according to Term and Adjustmen section of RFP.

Optional Add On Pricing	Units	Price	Notes
Digital Images	Per Image		
Replace down guy markers (Owner Supply Material)	Per Marker		
Replace missing grounds (Owner Supplies Material)	Per Pole		
Adding Pole Tags (Adhesive #s on Steel Plate)	Per Tag		
Partial Inspection of Foreign Owned Pole	Per Pole		
Inspect and annotate double wood conditions	Per Pole		
Record equipment in service (Transformers, fuses, etc.)	Per Pole		

Vendor Name:

PROPOSED IN SERVICE POLE INSPECTION AGREEMENT

This Agreement ("Agreement" or "Contract"), made and entered into this the ____ day of _____ 202_, by and between The Electric and Water Plant Board of the City of Frankfort, KY ("FPB" or "Frankfort Plant Board") and _____ ("Contractor").

WITNESSETH: that for and in consideration of the mutual agreements, covenants, promises and representations herein and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties intending to be legally bound, agree as follows:

CONTRACT DOCUMENT

The Contract Documents between FPB and Contractor consist of this Contract, the Specifications contained in the in service pole inspection request for proposal and its attachments ("RFP") which are incorporated by reference herein, Contractor's responses to the RFP, Drawings, Addenda issued prior to execution of the Contract, Modifications issued after execution of the Contract, any Change Orders executed by both parties, and any Exhibits attached hereto and incorporated by reference herein, specifically,

- Exhibit A – In Service Pole Inspection Request for Proposal and its Attachments.

(Collectively the "Contract Documents"). The Contract Documents are complementary and what is called for by any one shall be as binding as if called for by all.

The Contract Documents represent the entire and integrated agreement between FPB and Contractor regarding the Goods and Services to be provided and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification or Change Order. The Contract Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than FPB and the Contractor.

Contractor shall notify FPB of any conflict, error, ambiguity or discrepancy between the Contract Documents and other related documents.

DEFINITIONS

- Amendment – A written document, signed by FPB and Contractor, providing for an adjustment in the Services and Goods or in contract terms and conditions, issued after the Date of the Contract.
- Change Order or Modification Order – A written document signed by FPB and Contractor authorizing an addition, deletion, or revision in the Work, or an adjustment in the Contract Price or the Contract Time, issued on or after execution of the Agreement.
- Confidential Information – To the extent allowed by law and subject to the Kentucky Open Records Act, means any and all non-public information of either party, including the terms of this agreement, all technical information about either party's products or services, pricing information, marketing and marketing plans, FPB's End Users' data, Software, other business and financial information of either party, and all trade secrets of either party. Material labeled as "Confidential Information" will be presumed confidential until the relevant governmental authority deems it otherwise under the Kentucky Open Records Act.

Frankfort Plan Board (FPB) In Service Pole Inspection Agreement

- d. Contract Price or Contract Amount – The total moneys payable to Contractor.
- e. Contractor – “Contractor” means Contractor or _____
- f. Date of Contract or Effective Date of the Agreement – The date indicated in the Agreement on which it becomes effective.
- g. Defective – Means faulty, deficient, Equipment or Services which are non-conforming to Contractor’s published warranties.
- h. Equipment - Means all Hardware and related ancillary items, including Field Equipment, that Contractor provides to Customer under this Agreement pursuant to Purchase Orders and Change Orders, including any replacement product provided for failures of Equipment under the warranty provisions of manufacturer warranties.
- i. Final Acceptance – FPB’s written acceptance of all Work performed under the Contract Documents.
- j. Force Majeure – Means an event due solely to occurrences beyond the reasonable control of a party, which could not have been avoided through the exercise of reasonable care, prudence and diligence, including, without limitation, acts of God, hurricane, flood, volcano, tsunami, tornado, storm, tempest, mudslide, vandalism, strikes, lockouts, or other industrial disturbances, acts of public enemies, wars, blockades, insurrections, riots, epidemics, earthquakes, fires, restraints or prohibitions by any court, board, department, commission or agency of the United States or any States, any arrests and restraints, civil disturbances and explosion.
- k. Goods – The combination of the materials, documentation, supplies, Equipment, Hardware, Software, and User Documents which will be incorporated into or used to complete the Work.
- l. Governmental Authorities – Means federal, state or local bodies which may exercise regulatory authority or control over the Goods or Services.
- m. Intellectual Property – Means patents and patent applications, inventions (whether patentable or not), trademarks, service marks, trade dress, copyrights, trade secrets, know-how, data rights, specifications, drawings, designs, maskwork rights, moral rights, author’s rights, and other intellectual property rights, including any derivations and/or derivative works, as may exist now or hereafter come into existence, and all renewals and extensions thereof, regardless of whether any of such rights arise under the laws of the United States or of any other state, country or jurisdiction, any registrations or applications thereof, and all goodwill pertinent thereto.
- n. Per – Means in accordance with and/or as required by.
- o. Project – The total Goods and Services associated with the Work to be provided under the Contract Documents and may be the whole, or a part as indicated elsewhere in the Contract Documents.
- p. Proposal – The formal offer of the Offeror submitted on the prescribed Detailed Response, together with all applicable information submitted with the RFP that pertains to performance of the Work.
- q. Proposal Documents – All documents listed in the Proposal pertaining to requirements and services.
- r. Provide – Means furnish and install and, when applicable, place in operation in accordance with the Agreement.
- s. Purchase Order – The document issued by FPB’s Supply Chain to track the existence and payments for Work performed under the Contract.
- t. Specifications – The functional and technical requirements of the services, including all material, workmanship and administrative details applicable thereto.
- u. Work – The complete or the various separately identifiable parts of the Goods and Services that are performed by Contractor hereunder.

PERFORMANCE OF THE SERVICES

PERFORMANCE AND PAYMENT BOND

Not Required

WORK TO BE DONE

The Contractor shall furnish supervision, labor, transportation, equipment, installation services and material to provide FPB with comprehensive wood pole inspections and treatment, as defined and described in the Contract Documents. The Work will be in accordance with the Contract Documents and Specifications. The Work under this Contract will be performed in its entirety during the allocated time for the Work, unless otherwise altered by Amendment or Change Order. FPB will have the right to specify the sequence of the tasks performed in coordination with Contractor. All Work performed by the Contractor will be subject to the inspection of the FPB Representative. The Contractor shall be solely answerable for all damages to FPB or to any public, private or personal property due to the improper or negligent conduct of the Contractor or their Subcontractors, employees or agents while performing the Work covered by this Contract. FPB shall provide Contractor with certain information and data, upon which Contractor will rely in order to perform the Work. Contractor is not responsible for any inaccurate or missing data, and any additional expense incurred by Contractor as the result of inaccurate or missing detail will be the responsibility of FPB.

Contractor shall comply with the implementation schedule contained in the RFP attached hereto and incorporated by reference as if set forth fully herein.

PRICE, BASIS OF PAYMENT AND RETAINAGE

All costs in connection with the Work to be performed under the Contract shall be itemized on Attachment A of the RFP and shall not exceed this amount unless a Change Order is executed. FPB shall pay Contractor for the Equipment, and Services as provided in Attachment A as work progresses and meets the defined acceptance criteria.

Based upon invoices for payment submitted by Contractor, FPB shall make payments to the Contractor as follows:

- i) The period covered by each invoice for payment shall be one calendar month ending on the last day of the Month;
- ii) Provided that each invoice contains the Equipment and Services as agreed for that respective project Phase;
- iii) Make payment to the Contractor within 30 days for such Equipment and Services performed the preceding month.

Contract Retainage. Not requested.

AUTHORIZED REPRESENTATIVES; INSPECTION

Contractor and FPB shall each designate a representative authorized to act in behalf of each party and shall advise the other party in writing of the name, address, and telephone number (day and night) of such designated representative and shall inform the other party of any subsequent change in such designation. The FPB Representative shall be Russ Carter, who may be reached at 502-352-4372.

LIQUIDATED DAMAGES

[intentionally omitted]

DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

The date of commencement of the Work shall be the date in a Notice to Proceed Letter issued by FPB.

Frankfort Plan Board (FPB) In Service Pole Inspection Agreement

The Contract Time shall be measured from the date of commencement and shall terminate as specified in the Schedule.

NOTICE AND COMMUNICATIONS

All communications relating to the day-to-day activities under the Agreement shall be exchanged between the respective representatives of FPB and Contractor. All legal notices and communications required hereunder shall be in writing and shall be delivered personally to the corporate office of FPB and Contractor or shall be mailed by certified mail, postage prepaid, to the addresses shown this Agreement. Notice hereunder shall be on the date delivered.

INDEPENDENT CONTRACTOR

Contractor's relationship to FPB in the performance of this Agreement is that of an Independent Contractor. The personnel performing the Services under this Agreement shall at all times be under Contractor's exclusive direction and control and shall be employees of Contractor and not employees of FPB. Contractor shall be fully liable for all acts and omissions of its employees, Subcontractors, and their suppliers and shall be specifically responsible for sufficient supervision and examination to assure compliance in every respect with Agreement requirements. There shall be no contractual relationship between any Subcontractors or supplier of Contractor and FPB by virtue of this Agreement. No provision of this Agreement shall be for the benefit of any party except FPB and Contractor. Contractor shall pay all wages, salaries and other amounts due its employees in connection with this Agreement and shall be responsible for all reports and obligations respecting them, such as Social Security, Income Tax Withholding, Unemployment Compensation, Workers' Compensation and similar matters.

DELIVERY AND INSTALLATION/COMPLETION OF SERVICES

SCHEDULE OF SERVICES; WORK IN PROGRESS

Contractor shall perform inspections and treatments consistent with the Specifications and in accordance with the schedule(s) contained in the Exhibits attached hereto and incorporated by reference as if set forth fully herein.

The Contractor shall provide the FPB representative each workday morning with a schedule of crews and work locations for that day and report the status of Work scheduled the previous workday. Work dispatched to crews during the day shall be added to the work schedule of that crew for the current day with proper notation of job status at the end of the workday.

SUBSTITUTE AND "OR EQUAL" ITEMS

[Intentionally omitted]

DELAYS OR ADVANCES TO THE PROJECT SCHEDULE

Time is a critical element of this Agreement. Should the Contractor fall behind the Schedule, Contractor shall immediately take steps to bring the Project back on schedule. Such steps shall include adding additional staff, increasing the hours worked, adding equipment, working shift work, or any combination of the above, with all costs the Contractor's responsibility and charged to the Contractor's account. In the event of a change of scope, or in the event FPB provides Contractor with inaccurate or missing data, the parties shall agree on a Change Order or Amendment. Contractor's failure to meet the final date for completion in the Schedule will be considered a material breach of the Agreement.

Any delays outside of Contractor's control, including delays caused by Force Majeure, FPB, or other third parties, will automatically cause the schedule of the Work to shift at least the same amount of time of the pendency of the delay.

DAMAGES FOR DELAY

EXCEPT AS OTHERWISE PROVIDED FOR HEREIN, CONTRACTOR SHALL RECEIVE NO COMPENSATION

FOR DELAYS OR HINDRANCES TO THE WORK, AND THE CONTRACTOR WILL NOT BE ENTITLED TO ANY COMPENSATION OR RECOVERY OF DAMAGES OF ANY TYPE IN CONNECTION WITH ANY DELAYS, INCLUDING WITHOUT LIMITATION: CONSEQUENTIAL DAMAGES, IMPACT DAMAGES, LOST OPPORTUNITY COSTS OR OTHER SIMILAR DAMAGES. THIS PROVISION APPLIES TO DELAYS IN THE WORK AS A RESULT OF SUSPENSIONS OR DELAYS TO THE WORK IMPLEMENTED BY FPB.

MODIFICATION OF AGREEMENT – CHANGE ORDERS

Either party may, for any reason, modify, reduce, or expand the scope of the Agreement at any time with an Amendment and/or Change Order mutually agreed upon by the parties. The terms contained herein shall not be subject to modification except as provided in said Amendment and/or Change Order. If the Amendment/Change Order results in either an increase or decrease in the cost of performance or increases or decreases the time for delivery of the Work required herein, a claim for adjustment of the Price must be filed, in accordance with this Article, within fifteen (15) working days after receipt of such adjustment with the Contractor's representative or FPB's representative.

The value of any Work covered by a Change Order for an adjustment in the Contract Amount will be determined by application of unit prices contained in the Contract Documents to the quantities of the items involved or by a mutually agreed lump sum properly itemized and supported by sufficient substantiating data to permit evaluation.

Contractor shall continue performance of its obligations by this Agreement during any period wherein such discussions concerning adjustment to the Price take place.

The rights, warranties, and remedies available to FPB under this Agreement and otherwise shall in no way be modified by issuance of a Change Order, unless such terms are incorporated into it.

FORCE MAJEURE

Neither FPB nor Contractor shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to any cause beyond the reasonable control of the non-performing party.

If FPB or Contractor, by reason of a Force Majeure, is rendered unable to perform its duties under the Agreement, then upon said party, giving written notice of the particulars and estimated duration of said Force Majeure to the other party within 15 days after the occurrence of said Force Majeure (provided the event of Force Majeure itself does not prevent delivery of notice), shall have its time for performance of its obligations under this Agreement extended for a period equal to the time performance is delayed by said Force Majeure, but not for a period longer than three (3) months without the express written consent of the other party. The effects of said Force Majeure shall, so far as possible, be remedied with all reasonable dispatch, and the party subject to the Force Majeure shall use its best efforts to eliminate and mitigate the consequences thereof.

In the event that Contractor is subject to a Force Majeure and is unable or unwilling to remedy the effects of the Force Majeure so as to bring the Work into compliance with this Agreement with reasonable dispatch or within such longer time as provided by FPB in writing, either party may elect to terminate this Agreement. A Force Majeure for which notice of particulars and duration has not been given as provided above shall be an unexcused delay and shall give rise to such remedies as are available under this Agreement or otherwise. Neither party shall be liable to the other for any type of damages arising from a Force Majeure.

EXTENSIONS OF TIME

The Contractor has an obligation under this Agreement to keep FPB advised as to the status of the Work.

Contractor expressly agrees that the Contract time shall not be changed, nor an allowance be made by FPB, for delays in performance of the Work that are due to causes within the control of Contractor, including, but not limited to, Contractor's obligation to make delivery of Goods and Services. Contractor expressly agrees that it has considered and made allowances for all of the ordinary and reasonably anticipated delays and hindrances; this includes weather normally occurring in central Kentucky during the time of performance of this Contract.

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Except as provided above, the time of completion of the Work shall be extended for that portion of any period of delay which is due to causes beyond the control of or without the fault or negligence of the Contractor provided, however, no such extension shall be granted the Contractor unless Contractor provides written notice to FPB of such request within 30 calendar days after the start of the alleged delay. Such request shall contain documentation of the need for such extension, together with supporting data for the entire adjustment, and shall demonstrate Contractor has used all reasonable means to minimize the delay.

No additional compensation shall be due to Contractor for any said extension of time unless agreed to by FPB pursuant to an appropriate Change Order.

SUBCONTRACTING – ASSIGNMENT OF CONTRACT; SUCCESSORS

FPB acknowledges and agrees Contractor will utilize subcontractor(s) for installation. Apart from the foregoing, Contractor shall secure FPB's written approval before subcontracting any portion of its obligations under this Agreement. No such approval shall relieve the Contractor from any of the obligations of this Agreement with FPB. Agreements with Subcontractors shall contain necessary clauses whereby the Subcontractors shall comply with all applicable provisions of this Agreement agreed upon by the Contractor.

The award of a subcontract by Contractor in no manner limits or lessens the full responsibility of Contractor as provided under the terms and conditions of this Agreement. FPB reserves the right to reject any Subcontractor, though any objection must be for good cause. All Subcontractors shall be directly responsible to the Contractor and shall be under Contractor's general supervision.

Contractor shall make certain that all employees of any Subcontractor complete drug and alcohol testing in accordance with 49 C.F.R. Part 40 and undergo criminal background checks prior to performing any Work on the Contract. No employee of Contractor or Subcontractor testing positive for drugs or alcohol or having a criminal conviction shall perform Work on the Contract that requires access to customer premises or access to customer information without prior review and approval of FPB.

The Contractor shall not assign the Work or any part without the previous written consent of FPB. All of the terms, covenants, representations, warranties and conditions of this Contract shall be binding upon and inure to the benefit of, and be enforceable by, FPB. Notwithstanding the foregoing, either party may assign, transfer or delegate this Agreement without requiring the other party's consent; (i) to an Affiliate; (ii) as part of a merger; or (iii) to a purchaser of all or substantially all of its assets. Apart from the foregoing, neither party may assign, transfer or delegate this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld.

FPB DIRECTIVE AND RESOLUTION OF CLAIMS

The conduct of the Work is the responsibility of the Contractor and all orders to Contractor's employees, Subcontractors and Offerors will be issued by Contractor provided, however, Contractor will closely cooperate with FPB's Representative to the extent of its stated authority and to the extent consistent with the requirements of performance of the Work. FPB, or FPB's Representative, may direct the Contractor to take such action as they deem to be in FPB's interest. If Contractor is of the opinion that any such directive constitutes grounds for issuance of a Change Order, then Contractor shall request such Change Order.

No Work shall be delayed or postponed pending resolution of any disputes or disagreements except for (i) nonpayment by FPB of undisputed claims and (ii) as Contractor and FPB may agree in writing.

On a two (2)-month basis, or more frequent periodic basis if the parties mutually agree, the Project Team shall meet to discuss and attempt to resolve disputed claims then pending. If the parties determine that a claim should be resolved by a change in the Work, the Change Order procedure shall be followed, with full substantiation of all costs as provided for herein.

NOTICE TO CURE

If the Contractor refuses or fails to supply enough properly skilled workers, proper materials, or maintain the Project Schedule; or it fails to make prompt payment to its workers, Subcontractors or suppliers; disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction; or otherwise in material breach

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of a provision of this Agreement, the Contractor may be deemed in default of this Agreement. If the Contractor fails within (45) working days after written notification to commence and continue satisfactory correction of such default, with diligence and promptness, then FPB, without prejudice to any other rights or remedies, may terminate this Agreement with Contractor.

NOTIFICATION OF INFRINGEMENT

Contractor shall use its best efforts to promptly notify FPB in the event an employee at the management level or more senior level receives actual notice that use of the products and services, or a component thereof, as permitted under this Agreement, constitutes an infringement of or other violation of any copyright, patent, trademark, or trade secret of a third party.

RISK OF LOSS

For Goods where Contractor has installation responsibilities, risk of loss or risk of damage to the Good(s) shall remain with Contractor until installation of the Good(s) in the field. For Goods where Contractor does not have installation responsibilities, title and risk of loss transfer upon receipt at FPB's warehouse.

Contractor shall insure at full value any Goods until installation in the field or receipt at FPB's warehouse.

DOCUMENTATION

Contractor shall provide to FPB all records defined in the RFP prepared by Contractor to Contractor's customers. Custom documentation or materials not produced in the ordinary course are not included and will be priced separately.

DEFECTIVE GOODS AND SERVICES

Contractor shall provide the product and service warranties in accordance with the specifications.

DELIVERY OF GOODS

Contractor is responsible for delivery of any goods necessary to perform inspections and treatments. Risk of loss shall pass to FPB upon installation of the goods or receipt of the goods at FPB's warehouse if no installation is required.

REJECTION OF GOODS OR SERVICES

Equipment that does not conform to the product specifications are deemed to fail inspection and Contractor shall replace the failed Equipment at no charge. Contractor will not install Equipment until the earlier of (i) FPB's inspection or (ii) FPB's written notice to Contractor to install the Equipment or (iii) 15 days after delivery. After inspection of the goods, any applicable warranty contained herein shall control.

Prior to the completion of the installation services, Contractor will repair or replace and reinstall Defective goods at Contractor's cost. If the Contractor does not reinstall Defective goods within an agreed time period, then within a reasonable time not to exceed thirty (30) days after receiving written notice from FPB, FPB shall have the right to reinstall the goods at Contractor's expense.

If any defective Goods are repaired by Contractor and continue to evidence signs of problems, FPB may require Contractor to replace the Goods with substitute Goods meeting all requirements of this Agreement. FPB shall have the right to accept any Goods or Services under the Purchase Order (whether conforming or non-conforming) without relinquishing its right to reject other non-conforming Goods or Services.

WARRANTY AND BREACH OF WARRANTY

WARRANTY OF GOODS/SERVICES

Contractor warrants and guarantees the goods and services in accordance with its Warranties incorporated by reference herein.

WARRANTY OF TITLE

Contractor warrants and guarantees that title to all Work, materials and equipment covered by any Application for Payment, whether incorporated into the Work or not, will pass to FPB free and clear of all liens or other types of encumbrances no later than the time of payment to Contractor.

WARRANTY

Contractor warrants and guarantees the products and service in accordance with its Warranties, incorporated by reference herein.

PROPRIETARY INFORMATION

SCOPE OF PROPRIETARY INFORMATION

Contractor and FPB acknowledge that each party may acquire information and material that is the confidential, proprietary or trade secret information of the other party. As used herein, "Proprietary Information" includes, but is not limited to, all Specifications, drawings, sketches, schematics, models, samples, tools, algorithms, technical or business information, research and development, production and engineering processes, costs, profit and margin information, customer lists, marketing, production and future business plans.

USE OF PROPRIETARY INFORMATION

To the extent allowed by law, Contractor and FPB agree to take all steps reasonably necessary to hold in trust and confidence the Proprietary Information of the other party. The receiving party hereby agrees to hold Proprietary Information of the disclosing party in strict confidence, not to disclose it to third parties or to use it, in any way, commercially or otherwise, other than as permitted under this Agreement. The receiving party shall limit the disclosure and use of the Proprietary Information to employees, agents, and Subcontractors with a need to know who: (i) have been advised of the proprietary nature thereof; and (ii) have acknowledged the express obligation to maintain such confidentiality. The receiving party's obligations set forth herein shall survive the termination of this agreement.

Both parties represent that it will not divulge any "Proprietary Information" to any third parties. Neither party is permitted to reveal Proprietary Information to a subsequent client, vendor, or customer without written consent from an authorized representative of the other party.

KENTUCKY OPEN RECORDS ACT REQUIREMENTS

Contractor understands and agrees that FPB is a public agency governed by the Kentucky Open Records and Open Meetings Acts. Therefore, non-disclosure of documents or any portion of a document submitted may depend upon official or judicial determinations made pursuant to the applicable law. As such, FPB may be required by the Open Records Act to disclose materials that Contractor otherwise considers confidential or proprietary.

If Contractor believes any communication contains trade secrets or other proprietary information that the Contractor believes would cause substantial injury to the Contractor's competitive position if disclosed, the Contractor shall request that FPB withhold from disclosure the proprietary information by marking each page containing such proprietary information as confidential.

FPB will provide Contractor with advance written notice of any request prior to providing the requesting party with any information. FPB and Contractor will provide a response to the requesting party within three (3) days.

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In any case, Contractor agrees that it will indemnify, defend and hold harmless FPB from and against any and all claims and costs (including attorney's fees) that relate to the disclosure or non-disclosure of information, pursuant to the Kentucky Open Records Act or otherwise, that Contractor or a third-party, such as a supplier or Subcontractor, considers confidential or Proprietary Information.

If Contractor or Subcontractor objects to the release of the requested information, then Contractor shall assume all responsibility for any challenges resulting from the non-disclosure, indemnify, defend and hold harmless FPB from and against any and all damages (including but not limited to attorneys' fees that may be awarded to the party requesting the Contractor or Subcontractor information), or any information otherwise associated with the Work, and pay any and all costs and expenses related to the withholding of Contractor or Subcontractor information or any information otherwise associated with the Work.

In no event shall FPB be liable for damages of any type to any third party resulting from the release of any information provided by Contractor or Subcontractor or any other information associated with the Work. Contractor shall reimburse FPB for all expenses incurred as a result of withholding any materials of Contractor or Subcontractor or any information associated with the Work.

Nothing received by the receiving party from the disclosing party will be considered to be Proprietary Information if: (i) it has been published or is otherwise available to the public other than by a breach of this Agreement; (ii) it has been rightfully and lawfully received by the receiving party from a third party without confidential limitations; (iii) it has been independently developed by personnel of the receiving party who have had no access to the Proprietary Information; (iv) it was known by the receiving party prior to its first receipt from the disclosing party; (v) it is hereafter disclosed by the disclosing party without restriction on further disclosure; or (vi) it is disclosed pursuant to a court order, subpoena or by operation of law, provided the receiving party has given the affected party prior advance written notice so that the affected party may attempt to obtain a protective order limiting disclosure and use of the Proprietary Information.

INVOICING AND PAYMENT

PAYMENT

FPB shall pay for the Goods and Services in accordance with the Exhibits attached hereto and incorporated by reference as if set forth fully herein. In return, Contractor is responsible to complete all Work in accordance with the terms of this Agreement. If Contractor expends all funds, but the services and products are not in complete accordance with the RFP Requirements, then Contractor is responsible to complete Work in accordance with the Contract without further compensation unless FPB's actions have caused the failure to meet Acceptance Criteria.

FPB is a tax-exempt municipal utility. Hence, the Price quoted shall not include any state, excise, transactional, use, privilege, or similar taxes. FPB shall provide all applicable tax exemptions and deductions to Contractor. To the extent applicable, FPB is liable for all sales, use and other taxes (whether local, state or federal) imposed on this Agreement or the goods, services, licenses, and/or other rights provided to FPB hereunder. Contractor shall pay and hold FPB harmless from all taxes and contributions for unemployment insurance, retirement benefits, life pensions, annuities, and similar benefits which may now, or hereafter, be imposed by law or collective bargaining agreements with respect to persons employed by Contractor.

All freight, packing or shipping charges shall be included in the Price, though Contractor reserves the right to charge additional fees for special requirements for packing.

INVOICES

Invoices for all goods sold by Contractor hereunder will be delivered along with the relevant good. Invoices for services will be delivered upon completion of the applicable service

All invoices shall be submitted to the attention of the FPB Accounts Payable Section, P.O. Box 308 Frankfort, KY 40602. Separate invoices shall be prepared for any modifications authorized by Change Order. All invoices shall include any supporting documentation necessary to verify the charges billed. FPB shall pay each invoice thirty (30) days from receipt of said invoice. Payment for amounts due Contractor shall be construed as the date check is deposited in the United States mail.

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- Invoices for payments and correspondence for this Agreement must reference the FPB Purchase Order Number. Invoices which do not reference the FPB Purchase Order Number will be returned unpaid.
- The payment by FPB for the Goods and Services covered by each such invoice shall constitute full payment, less retainage as applicable, for all such Goods and Services, including extra or additional Goods and Services.
- Payment otherwise due to the Contractor may be withheld by FPB without payment of interest because of defective Goods or Services by the Contractor. If and when the cause, or causes, for withholding any such payment shall be remedied or removed and satisfactory evidence of such remedy or removal has been accepted by FPB, the payment withheld shall be promptly made to Contractor.

All purchase orders shall be sent to the address listed below. Contractor may change this address at any time, upon written notice to FPB (such notice may be provided via email).

Contractor USA Inc.

TESTING OF COMPLETED WORK; PLACING WORK IN SERVICE

The FPB representative may test any portion or all of the Work. Failure to test the Work prior to payment shall not operate to void any applicable warranty. Any Work failing to meet Specifications or the applicable standards contained in the specifications shall be corrected within the time and to the standard specified. Corrections shall be made at the expense of the Contractor except when caused by material issued by FPB to the Contractor in a faulty condition.

If desired by FPB, portions of the Work may be placed in service when completed. The Contractor shall give proper access to the Work for this purpose; but such use and operation shall not constitute completion of the Agreement.

WITHHOLDING PAYMENTS

FPB may withhold payments due the Contractor to the extent necessary to protect itself against loss from the following:

- Claims or liens filed against the work; and
- Failure of the Contractor to make payments properly to Subcontractors for material or labor.

When the above conditions are removed, payment shall be made for the amount withheld because of the specific conditions. If FPB withholds payments pursuant to this section, then it must notify Contractor, in writing, detailing with specificity the basis for the withholding, and an accounting justifying the amount withheld.

LIENS; RELEASE OF LIABILITY

The Contractor shall keep FPB property and the Work free and clear of all liens, claims and encumbrances arising from the performance of the Work. Contractor shall defend, indemnify and save harmless, FPB from any and all claims, liens, demands or actions, arising out of the services, labor and materials furnished by the Contractor or any Subcontractors. The Contractor agrees to reimburse FPB for all monies paid and expense incurred by FPB in discharging such liens or in connection with any action or proceeding for removal or enforcement.

Before receiving final payment for the Work, the Contractor shall complete a Release of Liens in a form acceptable to FPB. The acceptance by the Contractor of the final payment shall operate as a full release and waiver to FPB and FPB's representatives, directors, agents, and employees from any and all claims against FPB.

FPB may withhold any monies due the Contractor to satisfy any liens, claims or encumbrances arising from the performance of the Work.

TERMINATION

TERMINATION FOR CAUSE

Either party may terminate this Agreement if the other party commits a material breach of this Agreement and such material breach is not cured within forty-five (45) days of written notice by the other party. Upon any expiration or termination of this Agreement, Contractor's and FPB's obligations hereunder shall cease.

TERMINATION AT WILL

FPB may terminate this Agreement for its own convenience upon thirty (30) days prior written notice when FPB has determined that such termination will be in the FPB's best interests. When it has been determined that this Agreement should be terminated for the convenience of the FPB, FPB shall pay Contractor for all work performed and goods delivered prior to written notice of termination.

APPLICABLE LAWS AND REGULATIONS

PERFORMANCE OF CONTRACT, CHOICE OF LAW AND VENUE

THIS CONTRACT IS PERFORMABLE IN FRANKFORT, FRANKLIN COUNTY, KENTUCKY AND IS GOVERNED BY THE LAWS OF THE STATE OF KENTUCKY.

Exclusive venue shall be in The Circuit Court of Franklin County, Kentucky. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE PARTIES AGREE TO A BENCH TRIAL AND THAT THERE SHALL BE NO JURY IN ANY DISPUTES.

APPLICABLE LAWS AND REGULATIONS

The Goods shall be sold and delivered and the Services provided in accordance with all applicable local, state and federal laws, ordinances, statutes, codes, rules, and regulations (including those relating to wages, hours, desegregation, equal opportunity in employment, and safety, including OSHA) in effect as of the Date of Contract. Contractor shall defend, indemnify, and save FPB harmless from all claims, causes of action, suits, judgments, administrative or regulatory proceedings, losses, costs, or damages by reason of any actual or alleged violation thereof, including any fines, penalties or any other cost arising out of Contractor's failure to so comply, provided that in the event Contractor's cost of performance of the Agreement is affected due to any amendment of rules or regulations occurring after the date of issuance of the Contract to the extent FPB is legally required to order a change in performance, the parties hereto shall agree upon an equitable adjustment to the Price.

PERMITS AND LICENSES

Contractor shall obtain all necessary permits, licenses, inspections and any other forms of documentation, including zoning approvals, required relating to the Goods and Services provided hereunder at its sole cost unless the law or regulation governing such permitting or licensing requires that FPB do so. Upon request, the Contractor shall furnish FPB copies of all permits, licenses or other documentation applicable to this Agreement.

INSURANCE AND INDEMNIFICATION

INSURANCE

Contractor shall provide a certificate of insurance showing professional liability, pollution liability, commercial general liability, business auto liability, and employers' liability (workers' compensation) insurance BEFORE BEGINNING WORK.

The certificate of insurance will include a copy of an endorsement issued by Contractor's insurance company naming FPB as an ADDITIONAL INSURED ON A PRIMARY AND NON-CONTRIBUTORY BASIS. FPB's

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failure to review certificates of insurance and endorsements will not relieve the Contractor from the Contractor's obligation to maintain such insurance.

The certificates of insurance will include:

- \$2,000,000.00 limits for commercial general liability, business auto liability, pollution liability, professional errors and omissions liability, and employers' liability (workers' compensation) with umbrella limits of \$5,000,000.00.
- Be issued by an insurance carrier that maintains an A.M. Best's rating of "A-" or better, is duly admitted in the State of Kentucky and is reasonably acceptable to FPB.

The commercial general liability policy should:

- Include commercial general liability aggregate limits of at least \$2,000,000.00 with the general aggregate limit applicable per project.
- Be an occurrence coverage form equivalent to ISO's CG 00 01 10 01.
- Include coverage for liability arising from premises-operations, independent contractors, products-completed operations, personal and advertising injury and liability assumed under an insured contract (including tort liability of another assumed in a business contract).
- Include no endorsements or modifications arising from explosion, collapse, underground property damage or work performed by Subcontractors.
- Include a waiver of subrogation.
- Name FPB as an additional insured on a primary and non-contributory basis for ongoing and completed work using ISO form, CG 20 10 11 85 or a combination of ISO forms, CG 20 10 10 01 and CG 20 37 10 01.

Additionally, FPB requires Contractor to:

- Carry completed operations insurance for one (1) year.
- Name FPB as an additional insured on a primary and non-contributory basis on Contractor's commercial general liability insurance for one (1) year after Final Acceptance of the Project.
- Provide at least ten (10) days' written notice prior to cancellation or termination of your commercial general liability, business auto liability employers' liability, professional errors and omissions (cyber) liability and professional liability policies.

The professional liability policy should:

- Include limits in an amount equal to at least the value of this project with such limits applicable on a per project basis.

Contractor will require any Subcontractor to remain insured in accordance with the herein stated requirements. Contractor shall indemnify, defend and hold harmless FPB for any loss or cost (including attorneys' fees) suffered by the failure of any Subcontractor to be so insured.

Contractor agrees that it and all its Subcontractors will comply with all applicable Worker's Compensation laws and that it will from time to time, at the request of FPB, furnish evidence to FPB that all payments required by such laws have been and are being made.

INDEMNITY

To the fullest extent permitted by law, Contractor shall indemnify, defend (at Contractor's sole expense) and hold harmless, the FPB, affiliated companies of FPB, its partners, joint ventures, representatives, members, designees, officers, directors, shareholders, employees, agents, successors, and assigns ("Indemnified Parties"), from and against any and all claims for bodily injury, death or damage to property, demands, damages, actions, causes of action, suits, losses, judgments, obligations and any liabilities of any kind, costs and expenses (including but not limited to investigative and repair costs, attorneys' fees and costs, and consultants' fees and costs) ("Claims") which arise from or are in any way connected with the Work performed, materials furnished, or services provided under this Agreement by Contractor or its agents or Subcontractors.

These indemnity and defense obligations shall apply to any acts or omissions, negligent or willful misconduct of Contractor, its employees or agents or Subcontractors, whether active or passive. Said indemnity and defense obligations shall further apply, whether or not said claims arise out of the concurrent act, omission, or negligence of the Indemnified Parties, whether active or passive. Contractor shall not be obligated to indemnify and defend the Indemnified Parties for claims found to be due to the sole negligence or willful misconduct of Indemnified Parties.

This indemnity provision shall survive termination of this Agreement.

PATENT AND COPYRIGHT INDEMNITY

Contractor shall indemnify defend and hold FPB harmless, at Contractor's sole expense, against any claim, suit or proceeding brought against FPB resulting from, relating to, or arising out of a claim for an infringement of a patent, copyright, trademark, or misappropriation of a trade secret of a third party of the. Contractor will take up the defense and also pay any costs including, without limitation, reasonable attorneys' fees, expert's fees, expenses or damages awarded to third parties or incurred by FPB relating to such defense provided that FPB provides to Contractor: (i) prompt written notice of any such claim, (ii) all reasonably available information and assistance, and (iii) the right to control the defense and any settlement reasonable of such claim. Contractor may settle, at Contractor's sole expense, any claim, suit or other action against FPB for which Contractor is responsible under this Section provided that such settlement shall not otherwise affect Contractor's obligations to FPB under this Agreement. FPB reserves the right to employ counsel at its own expense and participate in the defense of any claim.

Upon notice of an alleged infringement or if in Contractor's opinion such a claim is likely, or if FPB's rights hereunder are restricted by a valid court order, then Contractor may, at its option and sole expense: (i) procure the right to continue using the alleged infringing material; (ii) replace the material with non-infringing material which is materially equivalent in features, functionality and quality; or (iii) modify the material to make it non-infringing while retaining all material features, functionality and quality.

Contractor's obligations and duties set forth in this Article shall not apply to a claim of infringement by a third party if: (i) the claim of infringement arises out of modifications or alterations neither made nor authorized by Contractor provided that the claim would have been avoided by the absence of such modifications or alterations; (ii) FPB is using other than the most current release of the software or hardware made generally available if such claim would have been prevented by the use of such release at the time the alleged infringement occurred; (iii) the claim of infringement arises out of the combination of software with hardware or software not provided by Contractor; (iv) the claim of infringement directly results from Specifications provided to Contractor by FPB or approved by FPB or is the result of Contractor's compliance with an industry standard; (v) if FPB has materially breached this Agreement and such breach remains uncured; or (vi) if FPB has used or is using the equipment and material for any use other than the Permitted Use. This indemnity provision shall survive termination of this agreement.

DATA SECURITY

To the extent Contractor receives Personal Information as defined by and in accordance with Kentucky's Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931 to 61.934 (the "Act"), Contractor shall secure and protect the Personal Information by, without limitation: (i) complying with all requirements applicable to non-affiliated third-parties set forth in the Act; (ii) utilizing security and breach investigation procedures that are appropriate to the nature of the Personal Information disclosed and reasonably designed to protect the Personal Information from unauthorized access, use, modification, disclosure, manipulation,

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or destruction; (iii) notifying Frankfort Plant Board ("FPB") of a security breach relating to Personal Information in the possession of Contractor or its agents or Subcontractors within seventy-two (72) hours of discovery of an actual, or suspected, breach unless the exception set forth in KRS 61.932(2)(b)2 applies and Contractor abides by the requirements set forth in that exception; (iv) cooperating with FPB in complying with the response, mitigation, correction, investigation, and notification requirements of the Act; (v) paying all costs of notification, investigation, and mitigation in the event of a security breach of Personal Information suffered by Contractor; and (vi) at FPB's discretion and direction, handling all administrative functions associated with notification, investigation, and mitigation.

TO THE FULLEST EXTENT PERMITTED BY LAW CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE ELECTRIC AND WATER PLANT BOARD OF THE CITY OF FRANKFORT, KY ("FPB") FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES BROUGHT BY THIRD PARTIES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES OR EXPERT FEES, ARISING OUT OF OR RESULTING FROM THE LOSS OF ANY PERSONAL INFORMATION SUPPLIED BY THE ELECTRIC AND WATER PLANT BOARD OF THE CITY OF FRANKFORT, KY ("FPB") REQUIRED FOR THE PERFORMANCE OF THIS AGREEMENT.

THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

BACKGROUND CHECKS AND DRUG TESTING

- 1) Contractor agrees that:
- 2) Contractor it is in compliance with any applicable local, state or federal laws concerning mandatory Drug and Alcohol Programs.
- 3) As a term of this Contract for services to be performed on behalf of the FPB, the Contractor agrees to comply with any drug or alcohol testing that may be required by applicable federal, state or local law.
- 4) Contractor and any Subcontractor shall perform pre-employment criminal background checks, drug testing and alcohol testing, as well as random testing where authorized by law, on all of its employees and Subcontractor employees that perform work on homes or properties of FPB's customers or have access to the personal information of FPB customers, in each case consistent with applicable law. No such employee of Contractor or Subcontractor testing positive for drugs or alcohol or having a criminal conviction shall have access to the personal information of FPB customers or perform work on homes or properties of FPB's customers without prior approval of FPB.

CONTRACTOR SHALL COMPLETE THE CERTIFICATION ATTACHED HERETO REGARDING DRUG AND ALCOHOL TESTING PROGRAMS.

- 5) Intentionally Omitted.
- 6) All drug tests shall include screening for marijuana, cocaine, opiates, phencyclidine and amphetamines. Screening and confirmation levels for drug and alcohol testing shall be as required in the Department of Transportation Regulations 49 C.F.R. Part 40.
- 7) The Contractor shall, under the United States Immigration Reform and Control Act of 1986 ("ICRA"), as amended, and with all regulations, verify the identity and employment eligibility of all persons hired to work under this Contract, which includes completing and retaining the Employment Eligibility Verification Form ("I-9"). Further, Contractor shall indemnify, defend and hold harmless FPB and FPB's agents from violation of any applicable immigration laws.
- 8) The cost of all criminal background screening, drug testing and alcohol testing shall be at Contractor's expense.

CHARACTER OF WORKERS AND EQUIPMENT

If in the opinion of FPB any person employed by the Contractor or by any Subcontractor fails to conduct themselves in a manner that adequately protects the Work and FPB facilities or would jeopardize FPB's customers or drug or

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alcohol or criminal background checks reveal an issue unacceptable to FPB management, then FPB has the right to request that such persons be removed from the Work and from performing any other activities in furtherance of the Work. Should the Contractor fail to remove such person or persons or fail to furnish suitable and sufficient machinery equipment or workers necessary for the proper prosecution of the Work, then the FPB representative may suspend the Work until there is compliance.

IDENTIFICATION OF WORKERS

The Contractor shall provide all of its employees and all personnel performing Work on the Project with a personalized identification badge that displays that person's title or position and the company for which that person works. Each worker shall display the badge at all times.

SAFETY

The Frankfort Plant Board requires that all contractors operate in compliance with standards set forth by applicable federal, state, and local regulatory agencies, including but not limited to the Occupational Safety and Health Administration, Environmental Protection Agency and Department of Transportation. To comply with the regulations set forth by these agencies it is necessary for Contractor and any Subcontractor performing Work on the Project to operate under an established safety program pertaining to the Contractor's or Subcontractor's specific line of business. Failure to maintain an established safety program that is in compliance with all applicable federal, state and local regulations is a material breach of this Agreement.

CONTRACTOR SHALL COMPLETE THE SAFETY PROGRAM CERTIFICATION ATTACHED HERETO.

MISCELLANEOUS

RECORDS AND AUDIT

FPB, or its designated agent, shall have the right to audit, at any time but no more than once per year, the Contract-related records and associated documents of the Contractor and Subcontractor. Such right to audit shall be for the determination of the accuracy and validity of the Contractor's and Subcontractor's billings to FPB and for verifying compliance with other terms and conditions of the Contract. Contractor will not make available its costs or other internal financial reporting documents.

Contractor and Subcontractor shall maintain all records required to be kept by law, rule or regulation, or records required to document performance of the Services specified in the Contract Documents. The records shall be maintained for the period required by law, for a reasonable period in the absence of applicable law, or for three (3) years after completion of contract term, whichever is greater. Contractor shall provide to FPB copies of such records as provided in the Contract Documents or as reasonably requested by FPB after performance of the Services.

EQUAL OPPORTUNITY

Neither the Contractor nor any Subcontractor will discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, disability, political belief or affiliation, or any other protected class and will comply with all federal and state statutes applicable to Contractor or Subcontractor, such as affirmative action plans and reporting requirements. Contractor shall comply with all provisions of Executive Order 11246 as amended if applicable.

CONTRACTOR SHALL COMPLETE THE CERTIFICATION ATTACHED HERETO REGARDING EQUAL OPPORTUNITY IN EMPLOYMENT AND E.O. 11246.

NON-WAIVER OF RIGHTS

The failure of FPB to insist upon strict performance by the Contractor or FPB's failure or delay in exercising any rights or remedies provided in the Agreement or by law shall not be deemed or construed as a waiver of any claims.

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LEGAL ADDRESSES

All notices, letters and other communication to the parties will be mailed or delivered to the parties' business address listed as follows:

FPB
P.O. Box 308
Frankfort, Kentucky 40601
Attn: Chief Electric Engineer
Copy to: hprice@fewpb.com
Contractor

Either party may change its address at any time by any instrument in writing delivered to the other party.

SEVERABILITY OF PROVISIONS

If any provision of this Agreement is held invalid, illegal, or unenforceable, the remainder of the Agreement shall remain valid and enforceable and shall be construed to conform to the intent of the parties.

DISPUTE RESOLUTION PROCESS

This Article shall govern any dispute between FPB and Contractor arising from or related to the subject matter of this Agreement that is not resolved by agreement between their respective personnel responsible for day-to-day administration and performance of this Agreement. Prior to the filing of any suit with respect to such a dispute (other than a suit seeking injunctive relief with respect to confidential information, specific performance, or intellectual property rights), the party believing itself aggrieved (the "Invoking Party") will call for progressive management involvement in the dispute negotiation by giving written notice to the other party. Such a notice will be without prejudice to the Invoking Party's right to any other remedy permitted by this Agreement. FPB and Contractor will use their best efforts to arrange personal meetings and/or telephone conferences as needed, at mutually convenient times and places, between their negotiators at the following successive management levels, each of which will have a period of allotted time as specified below in which to attempt to resolve the dispute:

Table with 4 columns: Level, FPB, Contractor, and Allotted Time. Rows include First Level (Project Director, 5 days), Second Level (Chief Operating Officer, 5 days), and Third Level (General Manager, 15 days).

The allotted time for the first-level negotiators will begin on the date of the Invoking Party's notice. If a resolution is not achieved by the negotiators at any given management level at the end of their allotted time, then the allotted time for the negotiators at the next management level, if any, will begin immediately. If a resolution is not achieved by negotiators at the final management level within their allotted time, then either party may, within ten (10) days thereafter, request mediation to resolve the dispute. The mediation shall not be binding unless an agreement is reached. The mediation shall be scheduled at a mutually convenient date, time and location. The allotted period for completion of the mediation shall be thirty (30) days unless agreed otherwise.

If a resolution is not achieved by mediation, then either party may file an action to resolve the dispute. In any case, and except as otherwise provided, mediation is a condition precedent to the filing of any suit or action.

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IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first written above.

CONTRACTOR

By: _____

Date: _____

Frankfort Plant Board

By: _____

Board Chair

Date: _____

Attest:

By: _____

Date: _____

IX. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE CERTIFICATE

A. Has your company filed the required Employer Information Report, EEO-1 (Standard Form 100) with the Secretary of Labor's Joint Reporting Committee for the prior period ending March 31?

YES

NO

If your answer to Question A above is "NO", check the following appropriate reasons for not filing:

1. Employ less than one hundred people company-wide.
2. Have specific exemption from Secretary of Labor as provided in Section 20 of Executive Order 11246, as amended.

Within Thirty (30) days after receipt of any order from the **Frankfort Electric and Water Plant Board** and prior to each March 31 thereafter, during the performance of work under said order, the undersigned firm agrees to file Standard Form 100, entitled "Equal Employment Opportunity Information Report EEO-1" in accordance with instructions contained therein, unless such firm has either filed such report within twelve months preceding the date of the award or is not otherwise required by law or regulations to file such a report.

B. In consideration of the undersigned being placed in the **Frankfort Electric and Water Plant Board's** "Supplier Document" for the year ending March 31 next, the undersigned certifies that he does not and will not maintain or provide for his employees any segregated facilities at any of his establishments and that he does not and will not permit his employees to perform their services at any location under his control where segregated facilities are maintained. The undersigned agrees that a breach of this certification is a violation of the Equal Opportunity Clause in any subcontract, contract, purchase order, or agreement that the undersigned may receive from the **Frankfort Electric and Water Plant Board**.

As used in this certification, the term "Segregated facilities" means any waiting room, work areas, rest room, and washrooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated on the basis of race, creed, color or national origin, because of habit, local custom or otherwise.

The undersigned further agrees that he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause; that he will retain such certification in his files and that he will forward the following notice to his proposed subcontractors (except when the proposed subcontractors have submitted identical certification for specific time periods).

**"NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT
FOR CERTIFICATION OF NONSEGREGATED FACILITIES"**

"A certification of Nonsegregated Facilities, as required by the May 9, 1967 order on Elimination of Segregated Facilities, by the Secretary of Labor (32 Fed. Reg. 7439, May 19, 1967) must be submitted prior to the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause. The certification for all subcontractors during a period (i.e., quarterly, semi-annually, or annually).

(Note: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.)"

C. Do you have at each of your facilities a current written Affirmative Action Compliance Program as required by Title 41 of the Code of Federal Regulations (CFR) 60-1.40; and current written Affirmative Action Programs for disabled veteran, veterans of the Vietnam Era and Handicapped workers as required by CFR 60-250.4 and CFR 60-741.4?

YES

NO

If "NO" within 120 days after receipt of any order resulting from attached quotation, the undersigned firm agrees to develop and maintain written Affirmative Action Compliance Programs as required. (Current law requires the contractor to develop a written Affirmative Action Compliance Programs in those cases where the contractor has received prime contract or subcontracts for \$50,000 or more and employs fifty (50) or more people).

CONTRACTOR (SELLER/SUPPLIER): _____

MAILING ADDRESS / PHONE: _____

Authorized Representative's
NAME (PRINT OR TYPE): _____

Authorized Representative TITLE: _____

Dated Signature of Authorized Representative: _____

If you received this as part of an Invitation to Bid please Return with your BID.

OTHERWISE

Please return to: Personnel Officer/EEO Coordinator
Frankfort Electric and Water Plant Board
P.O. BOX 308
Frankfort, KY 40602

X. NOTICE TO PROSPECTIVE CONTRACTORS OF REQUIREMENT OF GENERAL SAFETY PROGRAM

The Frankfort Plant Board requires that all contractors operate in compliance with standards set forth by federal, state, and local regulatory agencies, including but not limited to the Occupational Safety and Health Administration, Environmental Protection Agency and Department of Transportation. To comply with the regulations set forth by these agencies it is necessary for each contractor to operate under an established safety program pertaining to the contractor's specific line of business.

The primary goal of a safety program is to protect the health and safety of employees and the public. Our goals are also to conserve and protect property and the environment. **IT IS OUR ABSOLUTE CONVICTION THAT:**

- This is a moral responsibility of each firm and worker involved.
- Safe and healthful work is more efficient, effective and inseparable from how we perform our work.
- Accidents and injuries are unnecessary costs

We accomplish work which is free from accident and injury by providing vigorous leadership that is visible through the organization.

How well we conduct our work in a hazard-free manner, according to the direction provided, is a key factor in our performance for which we are each accountable.

There are certain basic elements that are incorporated into the safety program:

- Effective management leadership from each contractor;
- Organization of a **General Safety Program**;
- On-site supervisor with authority to carry out their responsibilities including suspension of work to correct unsafe conditions;
- Proper training and supervision; and
- Employee participation

Does your organization operate under an established safety program that is in compliance with all applicable federal, state and local regulations and does this program embody the philosophies described above?

YES

NO

CONTRACTOR (SELLER/SUPPLIER): _____

MAILING ADDRESS / PHONE: _____

Authorized Representative's
NAME (PRINT OR TYPE): _____

Authorized Representative TITLE: _____

Dated Signature of Authorized Representative: _____

If you received this as part of an Invitation to Bid, please return with your bid.

OTHERWISE

Please return to: Safety Officer
Frankfort Electric and Water Plant Board
PO Box 308
Frankfort, KY 40602

IX. DRUGFREE WORKPLACE COMPLIANCE CERTIFICATE

PLEASE SIGN BELOW TO INDICATE: 1) Contractor is in compliance with any applicable local, state or federal laws concerning mandatory Drug and Alcohol Testing Programs; and 2) AS a term of any contract, the Contractor agrees to comply with any such drug and/or alcohol testing that may be required by law.

CONTRACTOR : _____
MAILING ADDRESS/PHONE: _____

Authorized Representative's
NAME (Print or Type): _____
Authorized Representative's TITLE: _____
SIGNATURE & DATE: _____

**If you received this as part of an Invitation to Bid please Return with your BID;
Otherwise, Return to: Personnel/Safety Officers, PO Box 308, Frankfort KY 40602**

**DRUGFREE WORKPLACE COMPLIANCE
CERTIFICATE**