

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

In the Matter of the Application of Kansas Gas)
Service, a Division of ONE Gas, Inc., for Approval)
of a Privatization Contract Establishing the)
Terms, Conditions, Rates, and Charges for) Docket No. 19-KGSG- 194 - CON
Ownership and Operation of the Natural Gas)
Distribution System Serving Fort Riley, Kansas,)
and for Approval of the Proposed Accounting)
Treatment for the System.)

**APPLICATION
(PUBLIC VERSION)**

Kansas Gas Service (“KGS” or the “Company”), a Division of ONE Gas, Inc., (“ONE Gas”), files this Application pursuant to K.S.A. 66-117, K.S.A. 66-1,201, and K.S.A. 66-1,202 seeking an Order from the State Corporation Commission of the State of Kansas (“KCC” or the “Commission”) approving the September 27, 2018, privatization contract between KGS and the Defense Logistics Agency Energy (“DLAE”). The DLAE FEE - Utility Services Contract (the “Contract”) establishes the terms, conditions, rates, charges, and costs for KGS’s ownership and operation of the natural gas distribution system at Fort Riley, Kansas (the “Distribution System”). KGS also requests approval of the proposed accounting treatment for the privatized system. In support of its Application, the Company states:

1. KGS is a natural gas public utility operating within the state of Kansas in accordance with the certificates of convenience and necessity issued by the State Corporation

Commission of the State of Kansas ("KCC" or "Commission"). KGS provides natural gas distribution service to approximately 646,000 customers in Kansas. KGS's principal place of business within the state of Kansas is located at 7421 West 129th Street, Overland Park, Kansas 66213.

2. KGS is one of three fully regulated natural gas distribution utilities owned and operated by ONE Gas with the other two utilities located in Oklahoma and Texas. Through these three utilities, ONE Gas serves approximately 2.1 million customers. The Company also provides privatized natural gas utility service to Fort Bliss in Texas and Fort Sill in Oklahoma.

3. In addition to signatory counsel, Judy Jenkins Hitchye and C. Michael Lennen, pleadings notices, orders and other correspondence and communications regarding the Application should be sent to:

Joe A. Kent
Director of Business Development
5828 E. 15th Street
Tulsa, OK 74112
joe.kent@onegas.com

Janet L. Buchanan
Director of Rates and Regulatory
7421 W. 129th Street
Overland Park, KS 66213
janet.buchanan@onegas.com

4. Fort Riley owns and operates the Distribution System that receives and distributes natural gas throughout the post. The Distribution System includes an estimated 3,600 service connections and 115 miles of distribution mains and service lines. Upon KCC approval, Fort Riley itself will become KGS's only customer receiving distribution service under the Contract.

5. On March 10, 2015, the DLAE, acting on behalf of Fort Riley, initiated a process for privatization of the Distribution System through issuance of a solicitation for offers. The solicitation was subsequently amended on multiple occasions with the final amendment issued on June 29, 2017. After extensive negotiations commencing in mid-2015, KGS submitted a "Final

Revised Proposal for the Privatization of the Fort Riley Natural Gas Utility System” on February 28, 2018. The Fort Riley privatization initiative is consistent with nationwide efforts by the Department of Defense to privatize utility systems on military bases to streamline operations and focus on the military’s core mission. The initiative also permits Fort Riley to benefit from the experience and capability of a regulated natural gas distribution utility.

6. KGS was notified on September 27, 2018, that the Contract establishing the terms and conditions for KGS’s ownership and operation of the Distribution System had been approved by the DLAE and awarded to KGS. A true and correct copy of the Contract is attached hereto as “Confidential Exhibit 1”.

7. Contract performance and payment is expressly conditioned on review and approval of the Contract by the Kansas Corporation Commission (“KCC”). The Contract’s transition plan establishes an 18-month transition period from execution of the Contract to transfer of ownership of the Distribution System and commencement of operations by KGS. The transition plan includes an estimated 8-month period from the Contract execution date to receipt of KCC approval. If KCC approval is received earlier, then KGS and Fort Riley will be able to shorten the transition period. A shorter approval period will benefit all parties by allowing the Department of Defense to realize its goal of returning attention to its core missions sooner and KGS can bring new focus to operation of the Distribution System benefitting those who live and work on the base. The Contract provides that Fort Riley will purchase, and KGS will furnish, natural gas utility distribution services for a period of 50 years commencing with the Contract start date (i.e., the date when the Distribution System is conveyed to KGS and KGS begins to furnish natural gas distribution services).

8. KGS's certificated service territory currently encompasses the area surrounding Fort Riley. Accordingly, no amendment or extension of KGS's certificate of convenience and necessity will be required for the Company to operate the Distribution System and to furnish service under the Contract.

9. KGS currently provides regulated natural gas transportation service to Fort Riley at ten (10) border station delivery points under a KCC-approved tariff. The border stations are located on KGS's high-pressure transmission lines that traverse the post. The Contract does not affect the terms and conditions of KGS's transportation tariff or Fort Riley's procurement of its natural gas supply.

10. The purchase price for the Distribution System is [REDACTED]. Payment will be made by KGS through a credit on monthly invoices for the contracted services provided to Fort Riley. The credit will extend over a period of six hundred (600) months (50 years) from the end of the transition period (including KCC review), and transfer of ownership of the system from the Government to KGS. The terms of the Contract include a [REDACTED] rate applicable to the unamortized balance of the purchase price. The monthly credit (inclusive of interest) is \$[REDACTED].

11. The Contract provides that KGS will charge Fort Riley a monthly Contract Rate Charge ("CRC") and an [REDACTED] in exchange for operating the natural gas distribution system during the Contract's 600-month term. Additionally, Fort Riley will pay certain pre-transfer charges for projects that include, but are not limited to, an initial leak survey, system inspection and mapping, environmental site assessment, and cathodic protection assessment.

12. The CRC is based on traditional cost of service principles. The mechanism includes: return on KGS's undepreciated investment in the Distribution System; recovery of operation and maintenance costs ("O&M") (based on KGS's system average O&M costs); administrative and general costs (including allocated corporate costs); and depreciation expense. The mechanism's rate of return will be the rate established for KGS (or modified) by the KCC in a general rate proceeding. The CRC will be recalculated at least annually, in part to reflect changing costs of Distribution System investments (e.g., capital costs of system upgrades, connections, initial system deficiency corrections, retirements, and accumulated depreciation). As it relates to ad valorem taxes, Kansas, by statute, has created an ad valorem tax exemption for privatized utility systems on military installations located within the state, *see*, K.S.A. 79-201a. Consequently, the CRC will not include an ad valorem tax component, nor will the Company's ad valorem tax surcharge rider reflect any costs associated with the Distribution System. Similarly, the annual CRC recalculation will obviate the need for a separate Gas Supply Reliability Surcharge ("GSRS") component for the Fort Riley Contract service. As noted in paragraph 10, the Contract characterizes the monthly Utility Service Charge as the CRC less the \$ [REDACTED] monthly purchase credit.

13. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

14. KGS will include revenues, investments and costs associated with providing the privatized service in KGS's overall calculation of rate base, cost of service, and revenue requirement for its Kansas jurisdictional operations. KGS, however, will track and separately account for certain costs and investments associated with the privatized service as required under the Contract. For example, KGS will identify and track Distribution System capital investments and related depreciation expense for the purpose of calculating the CRC, as well as ensuring that the investments, otherwise eligible for recovery through the GSRS, will not be included in the Company's annual GSRS calculation.

15. KGS has conducted a preliminary due diligence assessment of the physical condition of the Distribution System and has identified certain potential deficiencies and areas of concern that have been addressed in the Contract. For example, the Company's assessment noted uncertainty regarding (a) the extent of steel pipe corrosion, (b) whether plastic pipe in all cases had been properly installed with tracer wire and warning tapes, and (c) some inconsistency of compliance with Title 49 procedures and documentation. Nonetheless, KGS found that, given the age and relatively small number of code violations, the Distribution System appeared to be in reasonably good condition. Pursuant to the Contract, KGS will undertake additional due diligence during the transition period, prior to assuming ownership and commencing operation of the Distribution System. Costs related to transition projects identified in the Contract are to

be recovered through a fixed transition charge. Any potential costs related to additional capital investments will be included in adjustments to the [REDACTED].

16. Under the Contract, KGS is to provide natural gas “utility service(s) in accordance with industry-standard construction, operations, maintenance, management, environmental, safety, and other relevant standards, that apply to similarly-situated utility services providers servicing customers whose service characteristics are comparable to the service characteristics of [Fort Riley].”¹

17. With this Application, KGS is submitting the testimony of three witnesses: Joe A. Kent, Director of Business Development for ONE Gas; Janet Buchanan, Director of Rates & Regulatory Reporting, KGS; and Sean C. Postlethwait, Managing Director – Field Operations, KGS. Mr. Kent discusses the negotiation process with Fort Riley and the DLAE, summarizes the terms of the Contract, outlines steps to be completed by KGS during the transition period, and explains the methodology for determining the purchase price of the Distribution system and the [REDACTED]. Ms. Buchanan describes the CRC and explains how it is to be calculated initially and recalculated thereafter. She addresses how KGS proposes to account for certain Distribution System investments, costs and revenues, and how KGS will pay for the Distribution System. She also discusses the anticipated impact of the Fort Riley privatization project on the Company and its customers. Mr. Postlethwait provides an overview of the Distribution System and identifies projects to be completed during the transition period. He also addresses organizational and staffing plans that will be implemented to meet contractual performance and safety standards.

¹ See, Contract, Section C.3.2.

18. The Contract comports with KGS's obligation to provide reasonably efficient and sufficient service and facilities for its customers. It is structured to facilitate timely recovery of costs and to generate revenues associated with furnishing the service that will be reflected in subsequent general rate proceedings. The terms of the Contract also advance a national Department of Defense policy of privatizing functions that are not central to the mission of the Department while ensuring that utility systems are constructed and maintained, and utility services are delivered in accordance with applicable industry and regulatory standards.

WHEREFORE, KGS respectfully seeks Commission approval of the Contract establishing the terms, conditions, rates, and charges for ownership and operation of the Distribution System serving Fort Riley, Kansas; the proposed accounting treatment for the Distribution System; and such other relief as the Commission deems to be just and reasonable.

Respectfully submitted,

KANSAS GAS SERVICE
A Division of ONE Gas, Inc.

/s/ Judy Y. Jenkins Hitchye

Judy Y. Jenkins Hitchye, #23300
7421 West 129th Street
Overland Park, Kansas 66213-5957
(913) 319-8615 Phone
(913) 319-8622 Facsimile
judy.jenkins@onegas.com


/s/ Charles Michael Lennen

C. Michael Lennen, # 08505
MORRIS, LAING, EVANS, BROCK &
KENNEDY, CHTD.
800 SW Jackson Street, Suite 1310
Topeka, Kansas 66612-1216
(785) 232-2662 Phone
(785) 232-9983 Facsimile
mlennen@morrislaing.com

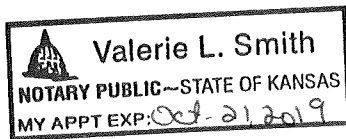
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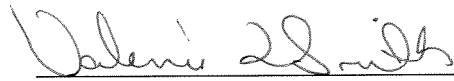
STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

The undersigned, upon oath first duly sworn, states that he is the attorney for Kansas Gas Service, a Division of ONE Gas, Inc., that he has read the foregoing *Application (Public version)* that he is familiar with the contents thereof, and that the statements contained therein are true and correct to the best of his knowledge and belief.


Charles Michael Lennen, #08505

Subscribed and sworn to before me this 13th day of November, 2018.




Notary Public

My Appointment Expires: Oct 21, 2019

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that a true and correct copy of the above and foregoing *PUBLIC Application* was forwarded this 13th day of November, 2018, addressed to:

LEO HAYNOS, CHIEF OF PIPELINE SAFETY AND ENERGY
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
l.haynos@kcc.ks.gov

JEFFERY MCCLANAHAN
DIRECTOR OF RATES
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD ROAD
TOPEKA, KS 66604
j.mcclanahan@kcc.ks.gov

DELLA SMITH
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
d.smith@curb.kansas.gov


AMBER SMITH, CHIEF LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
a.smith@kcc.ks.gov

DAVID W. NICKEL, CONSUMER COUNSEL
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
D.NICKEL@CURB.KANSAS.GOV

JUDY JENKINS HITCHYE, MANAGING ATTORNEY
KANSAS GAS SERVICE, A DIVISION OF ONE GAS, INC.
7421 W 129TH ST
OVERLAND PARK, KS 66213-2713
Judy.jenkinshitchye@onegas.com

/s/ Charles Michael Lennen
Charles Michael Lennen, #08505

(X)	SEC.	DESCRIPTION	PAGE(S)	(X)	SEC.	DESCRIPTION	PAGE(S)
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20B. UNITED STATES OF AMERICA	20C. DATE SIGNED
BY  (Signature of Contracting Officer)	27 SEP 2018

SECTION B

Supplies or Services and Prices/Costs

B.1 Systems to be Conveyed

The utility system(s) shown below represent the utility systems included in this contract:

Installation, State	Utility System
Fort Riley, KS	Natural Gas Distribution System

B.2 Utility Service Charges

The Contract Line Item Numbers (CLINs) shown below, represent the natural gas distribution system included in this contract for privatization. The total monthly price due to ONE Gas, Inc. DBA Kansas Gas Service (hereafter named “Kansas Gas Service” or “KGS”) is the sum of the amounts due in each month for the applicable schedule, monthly credit as payment for purchase price, transition cost, initial system deficiency corrections, and monthly charge for recoverable portion of purchase price.

B.2.1 Type of Contract

This is a Regulated Tariff Rate Special Contract.

B.2.2 CLINs 0001 – 0050: Utility Services Charge

The total monthly Utility Services Charge due to KGS is the fully built up monthly charge to the Government for provision of utility services, including operations and maintenance and renewals and replacements. The Contract Rate Charge and the Monthly Credit collectively represent the price to provide utility services at Fort Riley and form the basis for the Utility Services Charge. Invoicing for the Utility Services Charge will commence following completion of the first full month of service after the contract start date, in accordance with Section G.2, *Submission and Payment of Invoices*. Price changes for CLINs 0001 – 0050 will be determined in accordance with Section G.7, *Utility Service Charge Adjustment*.

B.2.2.1 CLINs 0001 – 0050: Contract Rate Charge

The applicable tariff for this contract is the Contract Rate Charge (CRC). The CRC incorporates a return on and of the KGS investment in the natural gas distribution system plus associated expenses and income taxes. These items collectively represent the cost to serve Fort Riley, and form the basis for the Contract Rate Charge (see Exhibit JE7, *Vol. IV – Price Proposal*, Table 2-7 for the derivation of the CRC for Contract Year 1). The CRC will be adjusted at least annually in accordance with Section G.7, *Utility Service Charge Adjustment*.

B.2.2.2 CLINs 0001 – 0050: Monthly Credit as Payment for Purchase Price and Recoverable Portion of the Purchase Price

In accordance with 10 U.S.C. § 2688(c)(1)(B), the Government will receive a reduction in charges for utility services as consideration for the fair market value of the natural gas distribution system. The purchase price of

[REDACTED]

B.2.2.3 Schedule 1: Utility Services Charge

[illegible]

[REDACTED]

[REDACTED]

[REDACTED]

□ □ □ □ □

B.2.4 CLIN 0101: Transition

The transition period will commence on the contract award date (CAD) and will end upon execution of the Bill of Sale in accordance with Section C.13, *Operational Transition Plan*. It is anticipated that the transition period will last 18 months. The transition price identified in Section B.3, *Schedule*, for CLIN 0101 is firm-fixed price and is payable upon completion of the transition period. If, due to Government delay, the transition period must be extended, the contractor may be entitled to an adjustment in accordance with Section G.4, *Price Adjustments*.

B.2.4.1 Schedule 3: Transition Projects

Project #	Project Name	Price (FFP)
T-1	Transition Planning and Management	
T-2	Initial Leak Survey	
T-3	System Map, Inspection, Inventory & Repair	
T-4	Pothole Inspections	
T-5	Phase I Environmental Site Assessment	
T-6	Cathodic Protection Assessment	
T-7	On-Site Yard	
Total Price:		

B.2.5 Initial System Deficiency Corrections

The estimated cost for each Initial System Deficiency Corrections (ISDCs) for the Fort Riley natural gas distribution system is listed in Section B.2.5.1, *Schedule 4: Initial System Deficiency Corrections*. Payment for the ISDCs will be made through an adjustment to the Utility Services Charge in accordance with Section G.7, *Utility Service Charge Adjustment*. The ISDCs will not be separately invoiced.

B.2.5.1 Schedule 4: Initial System Deficiency Corrections

Schedule 4 illustrates the Initial System Deficiency Corrections for the natural gas distribution system, as described in Section B.2.5 of this contract.

ISDC #	Project Name	Start Date	Completion	Project Cost

Utility Service Payment by the Government

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[illegible]

CLIN	SUPPLIES/SERVICES	QTY	UNIT	UNIT PRICE	AMOUNT
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]				
	[REDACTED]				
[REDACTED]	[REDACTED]				
	[REDACTED]				
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]				
	[REDACTED]				
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
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	[REDACTED]				
	[REDACTED]				

SECTION C

Description/Specifications/Work Statement

C.1 Precedence

In accordance with Federal Acquisition Regulation (FAR) 52.215-8, any inconsistency in this contract shall be resolved by giving precedence in the following order: (a) The Schedule (excluding the specifications); (b) Representations and other instructions; (c) Contract clauses appearing in the contract; (d) Contract clauses incorporated by reference; (e) Other documents, exhibits, and attachments; and (f) the specifications. Additionally, the terms and conditions of Sections A through K, including the Section J attachments, shall take precedence over any inconsistent provisions contained within portions of the Contractor's proposal incorporated in or made exhibits to the Contract. Exceptions not specifically identified by the Contractor in its proposal in accordance with the requirements of Section L of the solicitation and expressly accepted by the Contracting Officer in writing shall not be deemed to be part of the Contract and shall not be binding on the Government.

C.2 Authority, Scope, and Program Goal

C.2.1 General

The Government is conveying the utility system identified in Section B.1, *Systems to be Conveyed*. Subsequent to conveyance of the utility system, the Government will acquire the corresponding utility service from the Contractor as the new owner of the system.

C.2.2 Authority

Utilities privatization consists of two transactions: 1) the conveyance of the utility infrastructure via a Bill of Sale; and 2) the acquisition of utility services on the privatized system(s) via a utility services contract. The conveyance of the utility system(s) is a property disposal action made in accordance with 10 U.S.C. § 2688, and is not covered under the FAR or this contract. The acquisition of utility services is a FAR Part 41 acquisition and will be governed by the FAR and its applicable supplements.

C.2.3 Scope

The Contractor shall assume ownership of the utility system and infrastructure specified in Section B.1, *Systems to be Conveyed*, (the "system(s)" or "utility system(s)"), and as the new owner, to operate and maintain the systems and provide utility services to the Government. Assumption of ownership and provision of utility services shall be performed in accordance with all terms, conditions, and special contract requirements, specifications, attachments, exhibits, and drawings contained in this contract or incorporated by reference.

C.2.4 Program Goal

The desired goal of the conveyance is to transfer all rights, title, and interest of the Government in and to the utility system listed in the Schedule. Consequently, the Government will retain no reversionary interests in the utility system sold, other than the terms regarding the repurchase option and rights to access. The transfer of title will be accomplished after contract award and full transfer is the intended and preferred consequence. The utility system being sold includes equipment, fixtures, structures, and other improvements utilized in connection with the utility system, which will be more specifically described in the Bill of Sale. The divestiture will not include the real property upon, under, or around the utility system. In addition to the sale of the utility system identified in the Bill of Sale, the Government will also acquire utility services from the transferee.

C.2.5 Utility Systems

An attachment is included in Section J for the utility system listed in Section B.1 and are herein referred to as a "utility-specific attachment." The utility-specific attachment provides details specific to the Installation utility system and requirement.

C.2.5.1 The property being sold in this action will be as described in the utility-specific attachment to the contract. The system will be sold in an “as is, where is” condition without any warranties, representations, or obligation on the part of the Government to make any alterations, repairs, or improvements.

C.3 Requirement

C.3.1 Utility Services Requirement

Subject to the terms and conditions of this contract, the Contractor (a.k.a. “System Owner”) shall furnish all necessary labor, management, supervision, permits, licenses, certifications, equipment, supplies, materials, transportation, and any other incidental items or services required for the complete ownership of and provision of utility services via the utility system(s), including operation, maintenance, repair, upgrade, and improvement of the system(s).

The Contractor shall provide reliable and dependable utility services to each Government or tenant connection within the service area (see Section C, *Service Area*) 24 hours each and every day. The Contractor shall be responsible for providing capital investments and all other resources required to own, maintain, and operate its utility system(s) in a safe and reliable condition, and to meet all the requirements listed herein.

Access to the utility system(s) will be as specified in Section C, *Access to the Utility System*.

C.3.2 Performance Standards

The Contractor shall ensure adequate and dependable utility service(s) to all facilities and equipment served. Unless otherwise provided for in this contract, the Contractor shall provide utility service(s) in accordance with industry-standard construction, operations, maintenance, management, environmental, safety, and other relevant standards, that apply to similarly situated utility services providers serving customers whose service characteristics are comparable to the service characteristics of the Installation. The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, and unusually severe weather. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

Services provided shall comply with all applicable Federal, state, and local laws/regulations and any Installation specific requirements set forth in the utility-specific attachment, as they may be amended from time to time, including those requirements relating to health, safety, and the environment. The Contractor shall modify its service practice as necessary to accomplish such compliance.

If a change in the service requirement necessitated by compliance with later imposed/modified laws and regulations or Installation requirements constitutes reasonable cause for an adjustment to the service charge, the charge will be adjusted in accordance with either FAR 52.243-1, *Changes -Fixed-Price-Alt 1*, or FAR 52.241-7, *Changes in Rates or Terms and Conditions of Service for Regulated Services*, as applicable (hereinafter the “Changes clause”).

C.3.3 Sub-Metering

The Contractor shall be responsible for reading, maintaining, and calibrating all sub-meters on the privatized utility system, as identified in the utility-specific attachment. The Government will use sub-meters for internal installation billing purposes, commodity management, and energy conservation purposes. Meter reading reports shall be submitted to the recipient identified in the utility-specific attachment.

All costs for providing, installing, reading, reporting, and maintaining the existing and additional meters shall be the responsibility of the Contractor.

C.3.3.1 Future Sub-Meters

The Contractor shall provide, install, read, maintain, and calibrate sub-meters requested by the Government for any purpose throughout the contract period. Government-approved installation of and responsibility for future sub-meters (not on the system at the time of sale *or* identified for installation as part of the contract) may constitute reasonable cause for an initial installation charge and a utility service charge adjustment in accordance with Section G.

C.3.4 Energy and/or Water Efficiencies and Conservation, Renewable Energy Generation, and Energy Security

The Contractor shall strive to provide energy and/or water efficient systems. In addition, the Contractor will facilitate interconnection of new or existing renewable energy generation assets that are located on the installation, whether the Government or a third party is the owner/operator of any such generation assets. The Government has an established program for conducting and implementing energy and/or water savings, conservation projects, and renewable energy generation projects to reduce utility usage, costs, and to obtain other benefits including mandated levels of renewable energy usage and reduction of emissions. Some of these have resulted in the Government entering into long-term financing arrangements with non-Government entities. The utility-specific attachment identifies any such energy and/or water savings projects that are currently in place for the specific utility system.

Additionally, the Government may enter into energy-security and resilience projects, including, but not limited to, the use of microgrids, system-redundancy projects for critical infrastructure, and auxiliary or emergency generation. The Contractor shall facilitate development and implementation of these projects, as requested by the Government.

The Contractor agrees to take no action that will negatively impact these utility conservation or security projects without prior approval of the Contracting Officer. The Government reserves the ability to enter into any future energy and/or water savings or security projects. Projects implemented by the Government that will require changes in the privatized system shall be coordinated between the parties prior to implementation.

If, after award, additional efficiency System Deficiency Corrections (SDCs)/Upgrades projects are identified by the Contractor, they shall be proposed to the Government in accordance with Section C.11, *SDCs/Upgrades/Connections and Renewals and Replacements*. The Government may consider cost-savings sharing and incentives either through utility services charge adjustments or lump-sum payments.

C.3.5 Commodity Supply

Natural gas commodity supply is not included in this contract, even if any production facilities are included as part of the system to be conveyed. The Government retains the right to procure or supply any commodity that will be transported on the system covered by this contract from any source, including the Contractor if the Contractor proposes to supply the commodity via an alternate proposal. In accordance with FAR 41.102, natural or manufactured gas cannot be procured under this contract.

The Government will remain the customer of record and retain ownership of all commodities transported and distributed through the Contractor-owned system unless otherwise provided in the contract.

C.4 Service Area

The service area is defined as all areas within the Government installation boundaries and any other facilities and property boundaries under the control of the Installation. Within the service area and upon the Government's

request, the Contractor shall provide utility services to all existing and new customers. At any time, by written order, the Contracting Officer may designate any location within the service area where utility services under this contract shall commence or be discontinued. Any service charge adjustment as a result of these actions will be in accordance with Section G.

C.4.1 Use of Distribution Systems to Serve Areas Outside the Installation Service Area

The Contractor may use the utility infrastructure on the Installation to serve or benefit areas or customers outside the service area(s) only with concurrence of the Government. Compensation to the Government will be negotiated. In no way shall service to off-installation customers degrade or hinder reliable service, or create unhealthy, unsafe, or unacceptable conditions or outages to the Government's facilities.

C.4.2 Joint Use

C.4.2.1 Government Use

The Government may have property and equipment installed on or attached to poles, conduits, pipes, duct banks, towers, buildings, and other portions of the utility system(s) to be transferred. The Government reserves the right to continue to use the property to be transferred for this purpose, to enter on the transferred property to maintain, repair, operate, upgrade, and replace its property and equipment, and to install new Government equipment. Any upgrade or replacement of such installed or attached property shall be made only after coordinating with the Contractor. Any upgrade or replacement of such installed or attached property shall comply with all applicable safety regulations.

Attachment fees shall not apply. However, costs of any make-ready work related to safety requirements may be recovered under the contract. All new attachments will be coordinated with the Contractor prior to the attachment.

C.4.2.2 Commercial Use

C.4.2.2.1

The Contractor shall enter into joint use agreements with the Installation's telephone company, cable television company, and other service providers in accordance with applicable law and regulation.

C.4.2.2.2

Certain system components may have third-party equipment attached pursuant to a lease or other contractual arrangement between the third party and the Installation. The Contractor will take ownership of these components subject to such lease(s), with any revenue continuing to accrue to the Installation until the lease(s) expire or are otherwise terminated at the discretion of the Installation. Any new lease(s), lease extensions, or other arrangements between the Contractor and any third party to permit attachment of third party equipment to system components must be approved by the Installation and may be subject to revenue sharing, all of which must be negotiated with the Installation under separate agreement. The Installation considers cellular telephone antennae to be mission-essential equipment and requests for permission by a third party to attach such equipment to the Contractor-owned components shall not be unreasonably withheld or subjected to unreasonable fees.

C.5 Utility System Ownership, Personnel, and Security

C.5.1 Utility System Ownership

C.5.1.1 Transfer of Title

A general description of the utility system assets to be transferred is included in the utility-specific attachment. Prior to the transfer of title, such facilities shall continue to be owned by the Government. Transfer of title shall

be accomplished by Bill of Sale, with access provided via the Right to Access granted in the Contract. The Bill of Sale shall provide the complete list of all assets to be sold.

The Contractor shall neither transfer nor assign its interests in the utility system assets transferred by Bill of Sale without the prior written consent of the Government. No transfer or assignment of the Contractor's interests in the utility system assets transferred by Bill of Sale shall occur except in connection with the Government's recognition of a successor in interest to this contract under FAR 42.1204. The parties shall prepare and execute such additional documents as may be necessary to implement the ownership transfer.

C.5.1.2 Tools, Vehicles, and Equipment

Unless listed in the final Bill of Sale, Government-owned tools, vehicles, and equipment used for system operations and maintenance that are not a physical part of the utility system will remain the property of the Government.

C.5.1.2.1 Contractor Vehicles

All Contractor vehicles shall be readily identifiable. Identification shall include displaying Contractor name in a clear and unobstructed location on the vehicle.

C.5.1.2.2 Contractor Communications Devices

Prior to operating communications devices on the Installation, the Contractor shall obtain approval of the Installation Communication Group by requesting an available clear frequency. The Contractor shall follow all Installation procedures for operating communications devices on the Installation in accordance with Department of Defense FAR Supplement (DFARS) 252.235-7003, *Frequency Authorization*.

C.5.1.2.3 Contractor Advertising

The Contractor shall not place or display (nor permit a third party to place or display) advertising of any kind on Government property or on the Contractor's property located on the Installation. Reasonable markings on the Contractor's property, including vehicles, for the purpose of identifying it as the Contractor's property are permitted.

C.5.1.2.4 Radiation-Causing Devices

The Contractor shall provide the Government with notice that it has obtained all licenses required by Federal laws and regulations for all licensed or licensable radiation source or byproduct materials and provide the Government copies of the licenses. The Government may deny the use or storage of any radiation source or byproduct material on the Installation. The Contractor shall comply with the terms of the licenses and all applicable Federal laws and regulations when maintaining, storing, utilizing, and disposing of radiation source or byproduct materials.

C.5.1.3 Placement of Utility System

The Contractor shall comply with requests from the Installation regarding the placement of new or renewal utility systems either overhead or underground, unless to do so would cause the Contractor to violate any applicable law or regulation or would be inconsistent with sound utility operational practices. Requests for placement that differ from normal utility practice may constitute a reasonable cause for an equitable adjustment in accordance with Section G.

C.5.1.4 Contractor Facilities

The Contractor, at its expense, shall acquire, furnish, install, and operate and maintain all facilities required to provide the utility service hereunder. The Contractor shall have title to all facilities it builds and equipment it installs under this contract, except as otherwise provided herein. If available, and at the Government's sole discretion, the Contractor may be permitted to either build or lease office space, maintenance shops, materials storage/staging areas, or other facilities on the Installation, free of any rental or similar charge.

The Contractor shall be responsible for acquiring all utilities, janitorial services, building maintenance, and ground maintenance for these facilities. The Government may, if its capabilities permit, consent to provide certain of these services to the Contractor on a reimbursable basis, as defined in the utility-specific attachment.

New construction or remodeling of existing facilities shall comply with the Installation's architectural standards and be fully coordinated with the Installation prior to beginning construction.

The Government shall transfer ownership of Building 1693 to the Contractor within ten (10) days of the Kansas Corporation Commission's approval of this utility services contract in accordance with Section H.15, *Kansas Corporation Commission (KCC) Regulatory Approval*. Access to Building 1693 will be in accordance with the general rights of access as provided in section C.6.1. The price for the transfer and preparation of Building 1693 for use as a service facility is included in Section B.2.4.1, *Schedule 3: Transition Projects, Project T-7, On-Site Yard*.

C.5.1.5 Record Drawings and Utility System Maps

The Contractor shall maintain record drawings for all existing and new facilities installed by the Contractor within the service area. Upon reasonable request and with reasonable notice, the Government may use and copy such drawings. The Contractor shall provide available drawings to the Government in an electronic media format that is reasonable given the Contractor's related, current technology at the time of the request, and is reasonably compatible with the latest release software compatible with Government systems at no cost to the Government. The Contractor will also provide information to allow for updates to the Installation Geographical Information System (GIS).

Within one year of the contract start date and annually thereafter, the Contractor shall provide one hard copy (size to be determined by the Government) and one electronic media format of updated system maps to include all Contractor-owned facilities (including new infrastructure, previously unmapped infrastructure, corrected infrastructure and infrastructure properties).

The Contractor shall perform identification of unmapped infrastructure in conjunction with joint inventory and other projects to the maximum extent possible. The Contractor shall submit updated maps annually in conjunction with submission of the Annual SDC/Upgrades/Connections and R&R Plan.

C.5.1.6 Disposition of Removed or Salvaged Materials

The removal and disposition of facilities and materials that are not used and useful for the purpose of providing utility service shall be the responsibility of the Contractor. The Contractor shall notify the Contracting Officer or designated representative when removing hazardous substances in accordance with Section H.9, *Hazardous Substances*, and the Specific Service Requirements outlined in the utility-specific attachment. If the Contractor discovers pre-existing abandoned utility plant items not identified on existing maps, the Contractor shall notify the COR promptly to permit the Installation to document the abandoned facilities. In order to prevent hazardous conditions, the Contractor shall be responsible for ensuring that no interconnections exist between abandoned and utilized facilities.

C.5.1.7 Liens and Mortgages

The Contractor shall not engage in any financing or other transaction creating any mortgage upon any Government property, place or suffer to be placed upon Government property any lien or other encumbrance, or suffer any levy or attachment to be made on the Contractor's interest in any easement or right to access to Government property. For the purposes of this clause, property shall include, but not be limited to: fee, lease, license, personal property, or any authorized Government use or interest in property.

C.5.2 Personnel

For purposes of this contract, the term "personnel" or "employee(s)" refers to any person performing work related to this contract, including but not limited to, the Contractor's employees, agents, representatives, or

subcontractors. The Contractor shall not permit any personnel to work under this contract if such person is identified to the Contractor as a potential threat to the health, safety, security, general well-being, or operational mission of the Installation or population. All personnel will comply with Installation security, health, and safety conditions.

The Contractor will allow the Installation to review on a continuing basis a listing of all personnel engaged in providing utility services to the Installation. The listing will provide sufficient information on all personnel to allow precise Government identification of each individual.

C.5.2.1 Speaking, Reading, and Understanding English

Where reading, understanding, and discussing environmental, health, and safety warnings are an integral part of an employee's duties, that employee shall be able to understand, read, write, and speak the English language fluently. All personnel that interface with customers shall be able to speak and understand the English language fluently.

C.5.2.2 Personnel Appearance and Identification

The Contractor's personnel shall present a neat appearance and be readily recognized as Contractor personnel. As required by the Installation, the Contractor shall ensure each employee obtains from Security Forces an identification card that shall include at a minimum the employee's name, photograph, and Contractor's name. Each employee shall follow established Installation procedures for displaying their identification card while within the boundaries of the Installation.

C.5.2.3 Employee Certification

The Contractor shall ensure that employees meet all applicable federal, state, local, and Installation certification, licensing, and medical requirements to perform all assigned tasks and functions as defined in this contract.

C.5.2.4 Installation's Rules Apply to the Contractor

Rules, regulations, directions, and requirements issued by the Installation, or other command authorities, under their responsibility for good order, administration, and security, including Specific Service Requirements as outlined in the utility-specific attachment, apply to all personnel who enter the Installation or who travel by Government transportation.

C.5.2.5 Controlled-Access Areas

The Contractor shall apply for personnel security clearances required for performance after the contract is awarded. Personnel requiring access to secured areas or restricted areas under the control of the Installation shall comply with applicable regulations. The Government reserves the right to terminate the entry of any employee upon disclosure of information that indicates the individual's continued entry to the Installation is not in the best interests of national security. Additionally, violation of, or deviation from, the established security procedures by the Contractor's personnel may result in the confiscation of identification media and the denial of future entry to the Installation.

C.5.2.6 Conflict of Interest

The Contractor shall not knowingly employ any person who is a U.S. Government employee if employing that person would create a conflict of interest. Additionally, the Contractor shall not knowingly employ any person who is an employee of the Government, either military or civilian, unless such person seeks and receives written approval according to DOD 5500.7-R, *Joint Ethics Regulations (JER)*.

C.5.2.7 Employment of Military Personnel

The Contractor is cautioned that off-duty active military personnel hired under this contract may be subject to permanent change of station, changing duty hours, or deployment. Military reservists and National Guard members may be subject to recall to active duty. The abrupt absence of these personnel could adversely affect the

Contractor's ability to perform. However, their absence at any time shall not constitute an excuse for nonperformance under this contract.

C.5.2.8 Employment of Quality Assurance Representative Personnel

The Contractor is prohibited from employing Quality Assurance Representatives whom the Contractor knows or should know are responsible for monitoring any contracts/subcontracts awarded to the Contractor.

C.5.2.9 Applicability of the Service Contract Act of 1965 and Davis-Bacon Act

If applicable, the Contractor shall comply with the Service Contract Act of 1965 ("SCA") and Davis-Bacon Act ("DBA"), as amended unless an exception exists.

C.6 Access to the Utility System

C.6.1 General

The Contractor and its agents, employees, contractors, and subcontractors shall have reasonable access to the Installation to accomplish its duties and responsibilities under the Contract, to include the installation of Contractor-owned lines and pipes, or the construction of utility system components as directed by government in accordance with Section C.4, *Service Area*. Such access is subject to the general supervision and control of the Installation Commander, Fort Riley and his / her duly authorized representatives. In accepting the rights, privileges, and obligations established hereunder, the Contractor recognizes that Fort Riley (the "Installation") serves the national defense and that the Government will not permit the operation, construction, installation, repair, and maintenance of a utility system and the provision of utility services to interfere with the Installation's military mission or the national defense.

For the purposes of this Section C.6.1, access to the Contractor-owned above-ground and underground lines/pipes under this Contract shall be a total of thirty (30) feet in width fifteen (15) feet on each side of the lines/pipes). The access to the utility system containing operational components of the Contractor-owned system shall include the area inside the fence line that encloses the area and an area of four (4) feet outside the perimeter of the fence line. The Contractor is also provided access to all areas/facilities associated with facilities, lines and pipes covered by this Contract for purposes of performing the Utilities Privatization contract as directed by the Government under this Contract.

If the Contractor is denied access to the system, due to circumstances beyond its control or negligence, its obligations and liabilities under this Agreement will be suspended if such a deficient condition would not have occurred but for its inability to gain access to the utility system and was not the result of previous deficiencies in performance.

C.6.2 Contractor's Right to Access the Utility System

This Installation is an operating military installation that is closed to the public and is subject to the provisions of the Internal Security Act of 1950, 50 U.S.C. § 797, and of 18 U.S.C. § 1382. Access to the Installation is subject to the control of its Installation Commander and is governed by such regulations and orders as have been lawfully promulgated or approved by the Secretary of Defense or by any designated military commander. Access by the Contractor, its officers, employees, contractors of any tier, agents, and invitees is subject to such regulations and orders. Contractor access to the utility system as provided in this Section C.6.2, *Contractor's Access to the Utility System*, is subject to all regulations and orders currently promulgated or which may be promulgated by lawful authority as well as all other conditions contained herein. Such regulations and orders may, by way of example and not by way of limitation, include restrictions on who may enter, how many may enter at any one time, when they may enter, and what areas of the Installation they may visit, as well as requirements for background investigations, including those for security clearances, of those entering. The Contractor is responsible for the actions of its officers, employees, contractors of any tier, agents, and invitees while on the Installation and acting under this Contract.

In the event Contractor access to the utility system is either prohibited or curtailed by the Government or in the event the presence of the Contractor's property shall be considered detrimental to governmental activities, the Contractor shall, from time-to-time and upon notice to do so, and as often as so notified, remove or relocate its property to such other location or locations on the Installation as may be required by the Contracting Officer or authorized representative, and in the event the Contractor's property shall not be removed or relocated within ninety (90) days after any aforesaid notice, the Government may cause the same to be done. Any removal or relocation of the Contractor's property at the direction of the Government under this Section shall be at the Government's expense.

The Contractor further recognizes that the operation, construction, installation, repair, and maintenance of the utility system on the Installation may be subject to requirements and approvals not ordinarily imposed by civilian authorities, including, but not limited to, compliance with the National Environmental Policy Act of 1969, as implemented. The Contractor agrees to abide by all applicable regulations and Installation requirements.

The access granted under this Contract is personal to the Contractor shall neither be transferred nor assigned without the prior written approval of the Government. No transfer or assignment of the Contractor's access under this Contract shall occur except in connection with the Government's recognition of a successor in interest to the Contract under FAR Subpart 42.12, *Novation and Change-of-Name Agreements*.

C.6.2.1 Condition of the Property

The portions of the Installation on which the Contractor is granted access are provided in an "as is, where is" condition without any warranty, representation by the Government concerning their condition, or obligation on the part of the Government to make any alterations, repairs, improvements, or corrections to defects whether patent or latent. At such times and for such part of the Installation as the Installation Commander may determine, the Government and the Contractor, hereinafter referred to as the "Parties," will prepare and sign a Physical Condition Report to reflect the condition of the portions of the Installation where the utility systems are sited prior to the any ground disturbing activities of the Contractor. Such Report shall be used by the Government upon the expiration or termination of this Contract to determine whether the Contractor has fulfilled its obligations to maintain and restore the portions of the Installation where said utility systems are sited, to the condition required by this Contract.

C.6.2.2 Airspace Regulations

If the Contractor's property located on the Premises intrudes into airspace subject to regulation under the Federal Aviation Regulations or their military counterparts, such property shall be operated, constructed, installed, repaired, and maintained in conformance with such regulations.

C.6.2.3 Government Access

The Contractor's access to the utility system hereunder shall not be interpreted as interfering with or otherwise limiting the right of the Government and its duly authorized officers, employees, contractors of any tier, agents, and invitees to enter upon the any portion of the installation on which the Contractor is authorized access for any lawful purpose.

C.6.2.4 Other Grants of Access

The Contractor's access hereunder is subject to and shall not interfere with all outstanding easements, rights-of-way, leases, permits, licenses, and uses for any purpose with respect to the Installation. The Government shall have the right to grant additional easements, rights-of-way, leases, permits, and licenses, and make additional uses with respect to the any portions of the Installation, including those portions where the Contractor's utility system is sited. This is provided, however, that the Government shall not grant any such additional easements, rights-of-way, leases, permits, licenses, or uses which will, as determined in the sole discretion of the Government, unreasonably interfere with the Contractor's access to the utility system under this Contract.

C.6.2.5 Liability for Damages

The Contractor shall keep the portions of the Installation on which access is granted to perform its obligations under this Contract, in good order and in a clean, safe condition by and at the expense of the Contractor.

Any interference with the use of or damage to any real or personal property under the control of the Government incident to the exercise of the rights and privileges granted to the Contractor under this Contract shall be promptly corrected by the Contractor to the satisfaction of the Installation Commander. If the Contractor fails to promptly repair or replace any damaged property after being notified to do so by the Installation Commander, the Government may repair or replace such property and the Contractor shall be liable to the Government for the costs of such repairs or replacements.

C.6.2.6 Contractor Restoration

On or before the date of expiration or termination of this Contract, the Contractor shall vacate any and all portions of the Installation on which the Government granted access under this Contract, and the Contractor shall remove all of its equipment, fixtures, structure, property and improvements of whatever nature from the Installation and restore the land on which the contracted was granted access to a condition satisfactory to the Installation Commander without additional expense to the Government. Such restoration shall include, if applicable, removal of contamination caused by the Contractor. The Contractor may, upon receipt of the prior written consent of the Government, which consent shall not be unreasonably withheld by the Government, abandon in place any buried conduits, pipes, duct banks, tubes, or wires (Underground Abandoned Utilities), provided that (i) the nature, location, and depth of such Underground Abandoned Utilities are known to the Contractor and shown on the Contractor's records, and (ii) the Underground Abandoned Utilities neither contain any environmental contaminant nor pose an environmental or safety hazard. The Contractor may also, upon receipt of the prior written consent of the Government, which consent shall be granted in the Government's sole discretion, abandon in place all or part of any of the Contractor's other above-grade or below-grade equipment, fixtures, structures, property, and improvements (Other Abandoned Utilities). In the event of a dispute between the Contractor and the Government over whether certain of the Contractor's equipment, fixtures, structures, property, and improvements should be characterized as Underground Abandoned Utilities or Other Abandoned Utilities, such equipment, fixtures, structures, property, and improvements shall be deemed to be Other Abandoned Utilities for purposes of this Contract.

C.7 Response to Service Interruptions/Contingencies and Catastrophes

The Contractor shall employ sound utility practices to ensure continuous, dependable, and reliable utility services and to minimize the scope and length of any service disruption. If the installation has a specific response time requirement then it will be identified in the utility-specific attachment for each utility system.

The Contractor shall maintain a Service Interruption/Contingency and Catastrophic Loss Plan. The Plan shall define procedures and provisions for reacting to all service interruptions. The Plan shall address possible causes for interruption including, but not limited to, acts of God or public enemy, natural disasters, human error, equipment failure, vehicular damage, vandalism, employee strikes, cease and desist orders, and Notice of Violations (NOVs) issued by any regulatory agency. The Contractor may propose standard operating procedures broadly applicable across its customer base as its Plan.

The Contractor shall maintain and update the Plan as necessary and adhere to its requirements throughout the contract term. It shall not be materially altered without the Government's prior consent. However, the Contractor need not seek the Government's consent prior to minor, non-substantive alterations in such procedures, but the Government will be notified of the alterations within a reasonable period of time (no less than annually).

In the event the Installation has an Emergency Restoration Plan that prioritizes service restoration, the Contractor shall adhere to the priority list established by the Installation's Plan.

C.8 Repair Response Procedures

The Contractor shall identify to the Government and implement clearly defined procedures by which Installation personnel can submit service requests to the Contractor. The Contractor also shall clearly identify any difference in service request procedures that apply to emergency, urgent, and routine matters. The Government will be responsible for disseminating such procedures within the Installation. The Contractor shall provide a service request line with a local or toll-free telephone number by which it can be contacted 24 hours a day, 7 days a week, for service requests. This number will connect the Government to a Contractor representative capable of estimating Contractor repair crew arrival time. When a system condition designation is downgraded to a less severe condition, required response times shall run from the date and time that the initial service call was made.

The Contractor shall maintain records of all service request calls, documenting the time of the call, time of service response, cause of request, and action taken (including time and date completed). Such records shall be retained for two years, and may be reviewed by the Contracting Officer or designated representative upon reasonable notice.

If the service request affects building operations, the Contractor shall coordinate all work with the person responsible for the building or facility. The Government will provide the Contractor with a list of Government representatives and the buildings or facilities for which they are responsible.

Section JA1.3.24, *Utility Outage*, contains specific requirements in addition to the following requirements in subparagraphs C.8.1 through C.8.4, which together shall govern the Contractor's response times and procedures:

C.8.1 Notification Procedures

The Contractor shall have in place mechanisms, means, or procedures by which Installation personnel can submit service requests to the Contractor. If there is an order of precedence of phone numbers for Government personnel to call, the Contractor shall determine and clearly define that precedence. The Contractor also shall clearly identify any difference in service request procedures that apply to emergency, urgent, and routine matters.

The Government will be responsible for disseminating such procedures within the Installation. In addition, the Contractor shall provide to the Contracting Officer or designated representative the name of the local Utility Manager or other responsible person and an alternate with after-hours contact telephone numbers.

C.8.2 Emergency Service Requests

An emergency condition is one that is detrimental to the mission of the installation, significantly impacts operational effectiveness, or compromises the safety, health, and life of personnel. Such requests shall include, but are not necessarily limited to natural gas outages or natural gas leaks.

The Contractor shall ensure it is able to receive the Installation's emergency service requests 24 hours a day, every day. Once an emergency request is received, the Contractor shall respond immediately. A representative knowledgeable of the system and the Service Interruption/ Contingency and Catastrophic Loss Plan shall be on the site of the emergency within one hour. Additionally, repair crews appropriately trained to eliminate the condition shall be at the emergency site within two hours. Work will be continuous until the emergency condition is eliminated or downgraded and service is restored. All emergencies will be remedied or downgraded to a non-emergency status within 24 hours, unless the cost and/or level of effort to do so is unreasonable. For regulated utilities, the service and its restoration in times of outage for emergency service requests shall be at least equivalent to the service provided to other similar customers.

C.8.3 Urgent Service Requests

An urgent condition is not an emergency but significantly hinders performance of Installation activities and requires elimination of potential fire, health, and safety hazards (for example, environmental controls, non-emergency utility leaks, special requests and events, plumbing problems, downgraded emergency responses, etc.).

Once an urgent request is received, the Contractor shall respond with a representative knowledgeable of the system and the Service Interruption/Contingency and Catastrophic Loss Plan to the site of the request within 24 hours. All urgent requests will be remedied within five calendar days. For regulated utilities, the service and its restoration in times of outage for urgent service requests shall be at least equivalent to the service provided to other similar customers.

C.8.4 Routine Service Requests

A routine service request is one that does not pose an immediate threat to public health, safety, or property, or to a mission or operation conducted at the Installation. Such requests may arise due to situations that, if left uncorrected will cause measurable discomfort or inconvenience to the customer, waste resources, create the need for additional minor repairs, or is aesthetically unpleasant or inconvenient.

The Contractor is not required to respond to the Installation's routine service requests outside normal duty hours. The Contractor may respond to routine service requests outside of normal duty hours at its option and with appropriate coordination. Initial response to any routine service request shall be made within five calendar days, and completed within 30 calendar days of receiving the request. For regulated utilities, the service and its restoration in times of outage for routine service requests shall be at least equivalent to the service provided to other similar customers.

C.9 Coordination of Work

C.9.1 Routine Work

Routine work, such as the scheduled repair, replacement, or removal of system components that require service interruption, shall be coordinated with the Contracting Officer's Representative at least two weeks prior to commencing work to ensure minimal impact to the mission and operations. The Contractor and Government shall each provide a single point of contact for coordination.

Notification shall include date, time of outage, a list of buildings that will be affected, and the estimated time until the service will be restored. The Contractor shall also notify building occupants in advance of an outage.

C.9.2 Routine, Urgent, and Emergency Service Requests

Any routine, urgent, or emergency service request by Government personnel shall be reported to the Contractor's service request line or point of contact. Emergency service requests to the Contractor or emergencies identified by the Contractor shall be identified immediately to the Contracting Officer's Representative.

C.9.2.1 Scheduled Utility Services Interruptions

The Installation reserves the right to reschedule Contractor work requiring service interruption at any time if such interruption might materially adversely affect the Installation's mission and operations. If an interruption is rescheduled, the parties shall coordinate a mutually acceptable alternative time for the scheduled service interruption. Scheduled utility outages may be required to occur after normal duty hours to lessen the inconvenience to Installation mission-critical functions. Except for outages required to be scheduled outside of normal working hours in accordance with the utility specific attachment, Section J, the Contractor may be entitled to an equitable adjustment in accordance with Section G where such rescheduling to non-duty hours results in additional costs. Only designated Government personnel, in coordination with the Contracting Officer's designated representative may request utility services interruption. The Contractor will refer any other service interruption requests to a designated Government representative.

C.9.3 Construction and Restoration of Site

The Contractor will ensure that proper temporary facilities and controls are in place during any construction and other work it performs that could affect Installation activities. All work must include temporary facilities and

control measures to facilitate the flow of vehicular, emergency, and pedestrian traffic to include the following: high-intensity reflective signs, barricades, temporary sidewalks, fencing, and traffic cones. Once work is complete, the Contractor will restore the area to an equal or better condition. Site restoration requires proper waste cleanup, removal, and disposal; replacement of cracked pavement and sidewalks; proper repair and sealing of utility cuts both on improved and unimproved land and roadways; replacement of loam or topsoil; top dressing by hand; lawn bed preparation; hydro air seeding, mulch, fertilizer, and shrub replacement.

C.9.3.1 Excavation Permits

The Contractor shall obtain a written excavation permit from the Contracting Officer's Representative or applicable Installation personnel before commencing any digging or excavation on the Installation. The excavation permit will contain requirements normally applied to similar excavation work on the Installation. The Contracting Officer's Representative or applicable Installation personnel will notify the Contractor as to reasonable time periods for applying for an excavation permit.

C.9.3.2. Underground Utility Location

At the request of the Installation, the Contractor shall be responsible for locating underground utility system components in support of the Installation's excavation permit process. Requests for line location shall be responded to within three working days of the request at no additional cost to the Government.

Information regarding frequency of line locates, underground utility locations, and Points of Demarcation are identified in the utility-specific attachment and/or the Technical Library.

C.9.4 Duty Hours

Normal duty hours shall be Monday-Friday (0700-1630). All routine work shall be accomplished during normal duty hours. The Government must approve deviations from these duty hours.

C.9.5 Coordination, Planning and Programming

The Contractor shall be available for meetings as reasonably required by the Contracting Officer or designated representative. This includes planning and programming activities for projects and plans that may impact the utility systems. Costs associated with such activities shall be included in the Contractor's O&M costs as part of normal operations. The following listing generally describes activities in which the Contractor may be requested to participate:

- (1) Meetings for planning and design of Military Construction (MILCON) projects expecting to impact or connect to the utility system;
- (2) Discussions concerning proposed plans and initiatives expected to impact demand for utility services;
- (3) Discussions concerning impacts to the system of any future Base Realignment and Closure (BRAC) action.

C.9.6 Exercises and Crisis Situations Requiring Utility Support

The Contractor shall respond to Installation emergency and crisis situations and exercises that require utility support. The Contractor shall respond to these events with qualified personnel and equipment as soon as possible after notification. Participation may be in a simulated capacity equal to other participants. In no case will response be longer than those requirements listed in Section C, *Emergency Service Requests*. The Contractor shall advise and assist the on-scene Commander until the event is terminated. Extra work effort under these circumstances may entitle the Contractor to an equitable adjustment in accordance with Section G.

C.9.7 Government Operation

During Contingencies and/or in the event of Contractor Non-Performance, the Government may take over operation of the system. In such circumstances, the Contractor shall make the privatized facilities available at no

cost to the Government for as long as the circumstance requiring Government operation persists. Operation/performance by the Government shall not be deemed a waiver of the Government's right to pursue any remedies for Contractor non-performance that may otherwise exist under the terms of this Contract.

C.9.7.1. Contingencies

The Government reserves the right to perform or supplement performance of contract functions with Government-designated, Government-trained and qualified personnel during periods of disaster, emergency, or other conditions that affect the Installation and prevent the Contractor from fulfilling its obligations under the contract. The Government shall use best efforts to coordinate with the Contractor and obtain authorization before supplementing the Contractor's performance in these circumstances. Such authorization shall not be unreasonably withheld.

C.9.7.2. Contractor Non-Performance

The Government reserves the right to perform or supplement performance of contract functions with Government-designated personnel if the Contractor consistently fails to perform its obligations under the contract, has been notified in writing of failure to perform its obligations, and has not cured the performance failures within a reasonable time.

C.9.8 Plant Control

After obtaining the prior permission of the Contracting Officer's Representative, the Contractor may trim or remove plants and trees that pose a potential hazard to its utility system. In those areas where the plants or trees contribute to historic or aesthetic values and trimming or removing them would be destructive of those values, the Contractor may be prohibited from trimming or removing them. In all instances, plants or trees listed as threatened or endangered under applicable federal, state, interstate, or local law will not be harmed by the activities of the Contractor.

C.10 Environmental Compliance

The Contractor shall comply with all applicable environmental laws and regulations including Installation-specific requirements (collectively, "Environmental Requirements"). Environmental Requirements include any statute, law, act, ordinance, rule, regulation, order, decree, permit, or ruling of any Federal, state, and/or local government, or administrative regulatory body, agency, board, or commission or a judicial body, relating to the protection of human health and/or the environment or otherwise regulating and/or restricting the management, use, storage, transportation, treatment, disposal, and/or any release of a hazardous substance, hazardous waste, pollutant, or other material. The Contractor shall provide the Government with advance written notice, of and an opportunity to jointly participate in, meetings pertaining to the (privatized) natural gas distribution system (including permit request meetings) with environmental regulatory authorities.

Should implementation of response actions with respect to Environmental Requirements interfere with Contractor's activities under the Contract, such actions may constitute an excusable delay for which Contractor may be entitled to an excuse from performance.

C.10.1 Permit Compliance

Once ownership of the utility system is transferred, the Contractor shall be the party of record for all environmental permits related to operating the system. Thereafter, the Contractor shall be responsible for obtaining any new or revised permits needed to operate and maintain the utility system. The Government shall remain the party of record, and retain responsibility for, any applicable permits prior to the transfer of ownership, as defined by Section C.13, *Operational Transition Plan*. For those permits that are not transferable by the Government, the Contractor shall indemnify the Government as provided in Section H.4.1, *Environmental Liability*.

C.10.2 Spill Contingencies

The Contractor shall adopt the procedures of the Installation Spill Contingency Plan or shall submit to the Contracting Officer for review and acceptance a Contractor-developed Spill Contingency Plan. A Contractor-developed plan shall be prepared in accordance with the National Response Team's Integrated Contingency Plan Guidance (<http://www.epa.gov/emergencies/guidance.htm#oneplan>).

C.10.3 Work in Environmentally Sensitive Areas

The Contractor shall comply with Installation procedures and standards for work in and around environmentally sensitive or contaminated property. Prior to accessing any environmentally sensitive or contaminated areas, the Contractor shall coordinate with the designated Government Representative.

C.10.4 Environmental Impact Assessments

Modification of the utility system on Government installations may require an Environmental Impact Assessment in accordance with environmental impact analysis processes applicable to the Installation. The Contractor shall be responsible for fully-cooperating with the Government and any third parties to facilitate the assessment process, including, but not limited to, providing records, preparing documents, and allowing access to utility infrastructure.

C.10.5 Hazardous Material and Waste Minimization

Hazardous materials used in utility system operation and maintenance shall be handled in accordance with applicable laws and regulations. Appropriate Material Safety Data Sheets (MSDS) shall accompany all hazardous materials used on the Installation. The Contractor shall submit copies of MSDS to the Contracting Officer's Representative and retain a copy of each MSDS on-site. The Contractor shall maintain a viable hazardous waste minimization program that includes making every commercially-reasonable effort to identify and utilize non-hazardous or less hazardous materials than those currently in use and recycling versus disposing of consumable wastes.

C.10.6 Environmental Response

The Contractor shall be responsible for accomplishing at no cost to the Government any environmental response required as a result of the Contractor's activities. The Contractor may be required to perform, but shall not be responsible for the cost of, remediation for preexisting environmental conditions with the exception of Asbestos and Lead-based paint as outlined in Section C.10.7, *Asbestos and Lead-based Paint*, below. Unexploded ordnance shall be considered a preexisting environmental condition and shall not be disturbed by the Contractor but, upon discovery, shall be immediately reported to Installation Security and the Contracting Officer's Representative. The Contractor shall not undertake to move any soil media off-site without the written permission of the Government. This requirement is in effect even if the Contractor does not believe the media is contaminated.

The Contractor shall provide the Government with a copy of all correspondence with environmental regulatory authorities related to enforcement actions or notices of violations that arise from, affect, or otherwise relate to the Contractor's performance under the contract, within 5 days of receipt or issuance.

The Contractor shall not perform any response, removal, remedial or restoration actions on or affecting the Installation relating to Environmental Requirements without the prior written consent of the Government, except that such prior written consent shall not be required to the extent that prompt action is required to abate an imminent and substantial threat to health, safety and welfare and the Government has been notified of Contractor's intent to take such actions. Such Government consent will not be unreasonably withheld.

C.10.7 Asbestos and Lead-based Paint

The Contractor will not make any improvements or engage in any construction on Government property which contains asbestos-containing material (ACM), without prior approval of the Contracting Officer or designated

representative. Any such improvements or construction shall be done in compliance with all applicable Federal, state, interstate, and local laws and regulations governing ACM. The Contractor is responsible for monitoring the condition of its facilities and/or plant containing ACM on Government property for deterioration or damage.

The Contractor will, at its expense, test any painted surface to be affected by any of its operations, construction, installation, repair, or maintenance activities to determine if the paint is lead-based and will handle that surface in compliance with all applicable laws and regulations.

The Contractor may be required to perform, but shall not be responsible for the cost of, remediation for preexisting ACM or lead-based paint which is disturbed or damaged by the Contractor or is deteriorated; except that the Contractor shall be responsible for the cost of any remediation of ACM or lead-based paint necessitated due to Contractor's non-compliance with the terms of this contract or Contractor's fault, negligence, or misconduct.

C.10.8 Environmental Restoration Program

If the Installation has not been listed on the National Priorities List (NPL) under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, at the time of contract award, but is listed subsequent to the award of this contract, the Government will provide the Contractor with a copy of any Federal Facility Agreement (FFA) that is entered into between the Government and the Environmental Protection Agency (EPA), along with any amendments to the FFA when they become effective.

If the Installation has been listed on the NPL at the time of the award of this Contract but no FFA has been entered into, the Government will provide the Contractor with a copy of any FFA subsequently entered into along with any amendments to the FFA when they become effective.

If the Installation has been listed on the NPL at the time of award of this Contract and an FFA has been entered into, the Contractor acknowledges that the Government has provided it with a copy of the FFA, with current amendments. The Government will provide the Contractor with a copy of any subsequent amendments thereto.

The Contractor agrees that should any conflict arise between the terms of such agreement as it presently exists, or may be amended or entered into, and the provisions of this Contract, the provisions of the FFA will take precedence.

C.11 SDCs/Upgrades/Connections and Renewals and Replacements

C.11.1 Responsibility

The Contractor shall be responsible for all required SDCs, upgrades, and renewals and replacements necessary to maintain and operate the utility system in a safe, reliable condition, such that the system is complete and usable, and to meet the requirements of this contract.

C.11.2 Initial System Deficiency Corrections/Connection Charges

Initial System Deficiency Corrections (ISDC)/connection charges are those necessary to reach the standards typically maintained by the Contractor on its utility systems or to ensure compliance with applicable law, so that subsequent renewals and replacements will permit the long-term safe and reliable operation of the utility system. All ISDCs/Connections shall be listed in the first submittal of the Initial System Deficiency Corrections and Renewals and Replacements Plan, as part of the offer. Any ISDCs/Connections proposed to remedy Government-identified deficiencies listed in the utility-specific attachment, shall be complete within five years of the contract start date. The Government reserves the right to buy down a previously amortized ISDC/connection at no penalty to the Government.

C.11.2.1 Amortization of Major Capital Expenses

The Contractor shall finance ISDCs using the minimum amortization schedules below, dependent upon the dollar amount of each ISDC. The following guidelines set minimum amortization schedules; however, longer amortization is preferred, up to the life of the asset or contract end date, whichever occurs first.

- **Below \$1 Million**: No amortization schedule is required.
- **\$1 to \$5 Million**: A minimum 5-year amortization schedule is required.
- **Over \$5 Million**: Provide one or more amortization schedules of not less than 10 years duration.

C.11.3 Renewals and Replacements

Renewals and replacements are investments in the utility system to renew or replace system components that fail or reach the end of their useful life.

C.11.4 Annual SDC/Upgrades/Connections and Renewals and Replacements Plan

The Contractor shall prepare and submit annually to the Contracting Officer for approval an SDC/Upgrades/Connections and Renewals and Replacements Plan that identifies SDCs/Upgrades/Connections and major renewals and replacements the Contractor intends to accomplish. Each Plan shall contain a proposed SDC/Upgrade/Connection list with work efforts that the Contractor intends to accomplish for each of the five years following plan submission. The plan shall be structured as follows:

- Year 1 shall include detailed information for each work effort including site plans, cost estimates, schedules, and an analysis of the impact of construction on Installation operations and the environment. It shall also address safety requirements.
- Years 2-5 shall include work effort descriptions, order-of-magnitude estimates, and general-area site plans for each work effort.

Unless the Contracting Officer provides written notification of an alternate date, the first Annual Plan shall be submitted no later than **March 31** of the first full fiscal year following contract start, and annually thereafter. The Plan shall be submitted to the COR designated in Section G.

C.11.4.1 SDCs/Upgrades

The Contractor may propose SDCs/Upgrades to include, but not limited to, energy efficient and/or water conservation projects in the Annual Plan (Future SDCs/Upgrades/Connections). The Government reserves the right to determine at its discretion whether it will pay for any portion of proposed SDCs/Upgrades/Connections. Future SDCs/Upgrades/Connections required to comply with requirements and standards imposed by law that have changed during the contract term will be paid subject to the availability of funds. Approved SDCs/Upgrades and improvements identified in the Plan will be paid, in accordance with Section B.3, *Schedule*, when accomplished. The Government further reserves the right to pay for any SDC/Upgrade/Connection as a lump-sum payment rather than by amortizing the SDC/Upgrade/Connection costs. The Government further reserves the right to buy down a previously amortized SDC/Upgrade/Connection at no penalty to the Government.

In the event the Government exercises its right to make a lump-sum payment, the parties shall negotiate in good faith to reach a bilateral agreement on all terms and conditions including price, consent to which will not be unreasonably withheld by either party. The Government acknowledges and agrees that any such lump sum price must necessarily include, among other things, a component representing the future economic value to the contractor had the cost of service been capitalized in the contractor's rate base and recovered through an increased contract rate charge to the Government over the remaining term of the contract pursuant to normal regulatory accounting treatment.

C.11.4.2 Renewals and Replacements

Renewals and replacements identified in the Plan will be paid in accordance with Section B.3, *Schedule*.

C.11.4.3 Requirements and Standards

The Plan shall include an assessment of any new or revised standards and clearly address planned system improvements or operational changes needed to comply with such standards.

C.11.4.4 Anticipated Connections and Disconnections

The Plan shall include a list of anticipated new service connections, including a preliminary design and estimated installation costs. The Government will provide a list of new service requirements and anticipated disconnections.

C.11.5 Connections and Disconnections

The Government may require the Contractor to make future connections and/or disconnections. The Contractor shall coordinate this work with the Contracting Officer's Representative and obtain approval from the Contracting Officer.

If a connection or disconnection constitutes reasonable cause for a change in the utility services charge, the rate will be re-negotiated in accordance with Section G.

C.11.5.1 Temporary Connections

The Contractor shall extend temporary service to the Government or contractors performing work on the Installation when requested by the Government.

The Government will identify the party responsible for reimbursing the Contractor for temporary connections. The temporary connection customer shall provide the following information regarding any temporary service connections to the Contracting Officer's Representative:

1. Name of the temporary customer
2. Cost
3. Date of Installation
4. Expected duration of the connection
5. Description of the connection, including route and type of material
6. POC, Title, and Phone Number

C.11.5.2 Permanent Connections

(a) *Charge*. In consideration of the Contractor furnishing and installing at its expense any new connecting facilities requested by the Government, the Government may pay the Contractor a mutually agreed upon connection charge. Any payment will be in a form agreed to by the parties and as permitted by applicable law. When the Government requests new connecting facilities, including work necessary to increase the capacity of existing facilities, the Contractor shall submit a detailed proposal identifying the work necessary to provide the required utility services, any proposed connection charge, and the proposed change in the monthly utility services fee that will go into effect upon completion and placement into service of the new connecting facilities.

Payment for connection charges may be made as a line item under this contract or directly by the requesting party; however, regardless of payment method, the terms and conditions of this contract shall control. As a condition precedent to final payment, the Contractor shall execute a release of any claims against the Government arising under or by the virtue of such installation. Proposed changes to the monthly utility services fee(s) must be approved in advance by the Contracting Officer, regardless of the payment vehicle utilized for the connection charge.

(b) *Ownership, operation, maintenance, and repair of new facilities to be provided.* The facilities to be supplied by the Contractor under this clause, notwithstanding the payment by the Government of a connection charge, shall be and remain the property of the Contractor and shall, at all times during the life of this contract or any renewals thereof, be operated, maintained, and repaired by the Contractor at its expense. All taxes and other charges in connection therewith, together with all liability arising out of the construction, operations, maintenance, or repair of such facilities, shall be the obligation of the Contractor.

(c) *Credits.*

(1) Where the Government is part of the Contractor's general rate base and the Contractor subsequently includes the cost of the connecting facilities in its general rate base, the Contractor agrees to allow the Government, on each monthly bill for service furnished under this contract to the service location, a credit in the form of a percentage of the amount of each such bill as rendered until the accumulation of credits shall equal the amount of such connection charge. The amount of the credit percentage shall be negotiated, but shall not be less than that provided for under the terms of any tariff filed by the Contractor or otherwise provided by the Contractor to any commercial customer, provided that the Contractor may at any time allow a credit up to 100 percent of the amount of each such bill.

(2) In the event the Contractor serves any customer other than the Government (regardless of whether the Government is being served simultaneously, intermittently, or not at all) by means of these facilities, the Contractor shall promptly notify the Government in writing. Unless otherwise agreed by the parties in writing at that time, the Contractor shall promptly credit the Government, up to 100 percent of each monthly bill, until there is refunded the amount that reflects the Government's connection costs for that portion of the facilities used in serving others.

(d) *Terminations.* Payment for and disposition of wholly or partially completed facilities upon termination of the contract shall be in accordance with the terms and/or formulas set forth in the Government Repurchase Option clause (see Section H, *Government Repurchase Option*, this Contract).

C.11.5.3 Third-Party Construction

(a) Where the Government contracts with a third party to construct new utility system infrastructure that is intended to connect to the Contractor's system, the following terms and conditions shall apply:

(1) The Contractor will provide the Government and the third-party contractor with specifications (the "Specifications") applicable under the terms of this Contract for its system components and for interconnections.

(2) The Government will require the third-party contractor to renovate or construct any infrastructure that will connect to the Contractor's existing systems in accordance with the Specifications.

(3) The Government will coordinate with the Contractor to ensure the existing system can accommodate any additional load requirements necessitated by the renovation/construction. Should the Contractor determine that the existing systems require upgrades to support the additional load requirements; a price for the upgrade will be negotiated in accordance with the Changes Clause.

(b) At the Government's option, the Contractor will take ownership of system components renovated or constructed by the third-party contractor to the Specifications. Any adjustment to service requirements and the contract price as a result of these actions will be in accordance with the Changes Clause.

(c) The Contractor shall have the right to reasonably inspect the third-party contractor's construction of system components for which the Contractor will take ownership. The fixed-price hourly rate to be paid by the Government for such inspections shall be specified below and shall be subject to adjustment in accordance with the appropriate price adjustment clauses/mechanisms applicable to the monthly utility service charges under this Contract. If no rate is specified, then inspections shall be deemed to be among the utility services included in the monthly Utility Services Charge. Any inspection charge rates identified below will not be considered in evaluation of offers for awards although rates may be addressed during negotiations and must be determined fair and reasonable.

Hourly Inspection Charge Rate: \$67.43 per hour.

(d) If third-party constructed system components are not built to the Specifications, the Contractor shall identify such components and the basis for the discrepancy to the Government with specificity. The Government may direct the Contractor to perform any work required to bring the system into compliance with the Specifications, in which case the Contractor will be compensated in accordance with the Changes Clause.

(e) In the event the parties are unable to agree on an equitable price adjustment for any of the above paragraphs, the matter shall be resolved under the Disputes provisions of this contract.

C.12 Operations and Maintenance/Quality Management

The Contractor shall maintain an Operations and Maintenance Plan / Quality Management Plan. The Plan shall ensure the provision of reliable, cost-effective, and compliant service over the term of the contract. The Contractor shall update the Plan as necessary and adhere to its requirements throughout the contract term. It shall not be materially altered without the Government's consent.

C.13 Operational Transition Plan

The Operational Transition Plan (Exhibit JE4) shall be executed during the transition period. The Plan shall not be materially altered without the Government's consent. The transition period will begin on contract award and end no later than the contract start date.

This transition period is intended to provide the Contractor time to perform additional due diligence functions, complete the joint inventory, and stand up operations in support of the contract. The Contractor will be paid for transition costs in accordance with the pricing proposal. Transition costs are defined as all costs expended during the transition period that are necessary and reasonable to assume ownership and responsibility for the system.

The Contractor was required to base its proposal on the inventory listed in the utility-specific attachment. If during the joint inventory that takes place during the transition period between contract award and contract start, the Contractor identifies additional inventory not listed in the utility-specific attachment, the Contractor may submit a request for an equitable adjustment to the Contracting Officer. If the Contractor determines that the inventory listed in the utility-specific attachment is overstated, the Contractor shall report the extent of the overstatement to the Contracting Officer, who will determine an equitable adjustment as appropriate.

The Bill of Sale (BOS) must be approved/signed by the appropriate Service official(s) prior to contract start, and the Government requires 60 days for the BOS coordination and approval process. This BOS process cannot begin until the agreed upon joint inventory is complete. Therefore, the Contractor's transition plan must permit sufficient time for the joint inventory to be completed and agreed upon at least 60 days prior to contract start date to provide the Government the necessary 60-day BOS processing period prior to conclusion of the transition period. The BOS shall include all additional infrastructure identified as a result of the joint inventory. Failure to timely submit the joint inventory may result in extension of the transition period and a delayed contract start date. Any resultant additional transition costs incurred as a result of failure to meet these timeliness requirements will only be compensated by the Government where the failure is not attributable in any way to the acts or omissions of the Contractor.

C.14 Historical, Architectural, and Landscaping Requirements

Cultural resources on Federal property are protected and managed by the Archaeological Resources Protection Act of 1979 and other applicable laws. The Contractor shall exercise care so as not to disturb or damage artifacts or fossils (should any be uncovered) during the excavation operations. Should the Contractor discover evidence of possible scientific, prehistoric, historic, or archaeological finds, the Contractor shall immediately cease work at that location and notify the Contracting Officer's designated representative. The Contractor shall provide the said representative with complete information as to the specific location and nature of the findings. Where appropriate by reason of discovery, the Contracting Officer may order delays in time of performance or changes in the work or both. If such delays or changes are ordered, an equitable adjustment will be made in accordance with the applicable clauses of the contract.

Information regarding historical, architectural, and landscaping requirements is identified in the utility-specific attachment and/or the Technical Library.

C.15 Reserved

C.16 Latent Subsurface Inventory

For purposes of this Subsection, "latent subsurface inventory" means additional subsurface inventory not listed in the BOS (as amended) that was not reasonably discoverable during the transition period due diligence assessment. If, after the contract start date, the Contractor discovers latent subsurface inventory not covered by another provision in this Contract, such inventory shall be promptly identified to the Contracting Officer. If the Military Service determines to convey such inventory to the Contractor, then a modification will be issued to add the inventory to the Contract and the contract price adjusted as necessary and appropriate.

SECTION D

Packaging and Marking

None

SECTION E

Inspection and Acceptance

The following FAR Clause is incorporated by reference:

FAR 52.246-4: Inspection of Services -- Fixed-Price (Aug 1996) in accordance with (IAW) FAR 46.304

SECTION F

Deliveries or Performance

F.1 Contract Term

The Contractor agrees to furnish, and the Government agrees to purchase, utility distribution services, in accordance with the terms and conditions of this contract, for a maximum period of 50 years commencing with the contract start date, provided that the Government is able to make the determination required by 10 U.S.C. § 2688(d)(2). If the Government terminates the contract, whether for convenience or default, the appropriate FAR termination clauses will apply.

F.2 Commencement of Utility Services

The Contractor shall complete all transition activities and be prepared to provide utility services on the contract start date. The contract start date, as defined below shall begin on the first day of a given month. The period of performance for the utility services contract begins at the contract start date.

Phase I	Phase II
Transition Period (Pre-performance)	Contract Start Date (Performance Period)
Contractor proposes duration of Transition Period; Transition Period begins upon execution of contract award unless a later date is specified.	Transition Period ends with the conveyance of Utility System Infrastructure and Performance of Utility Services Contract begins.

F.3 50-Year Performance Period

The following table shows the period of performance for Fort Riley.

Fort Riley, KS			
Year	Period of Performance	Year	Period of Performance
1	04/01/2020 –03/31/2021	26	04/01/2045 –03/31/2046
2	04/01/2021 –03/31/2022	27	04/01/2046 –03/31/2047
3	04/01/2022 –03/31/2023	28	04/01/2047 –03/31/2048
4	04/01/2023 –03/31/2024	29	04/01/2048 –03/31/2049
5	04/01/2024 –03/31/2025	30	04/01/2049 –03/31/2050
6	04/01/2025 –03/31/2026	31	04/01/2050 –03/31/2051
7	04/01/2026 –03/31/2027	32	04/01/2051 –03/31/2052
8	04/01/2027 –03/31/2028	33	04/01/2052 –03/31/2053
9	04/01/2028 –03/31/2029	34	04/01/2053 –03/31/2054
10	04/01/2029 –03/31/2030	35	04/01/2054 –03/31/2055
11	04/01/2030 –03/31/2031	36	04/01/2055 –03/31/2056
12	04/01/2031 –03/31/2032	37	04/01/2056 –03/31/2057
13	04/01/2032 –03/31/2033	38	04/01/2057 –03/31/2058
14	04/01/2033 –03/31/2034	39	04/01/2058 –03/31/2059
15	04/01/2034 –03/31/2035	40	04/01/2059 –03/31/2060
16	04/01/2035 –03/31/2036	41	04/01/2060 –03/31/2061
17	04/01/2036 –03/31/2037	42	04/01/2061 –03/31/2062
18	04/01/2037 –03/31/2038	43	04/01/2062 –03/31/2063
19	04/01/2038 –03/31/2039	44	04/01/2063 –03/31/2064
20	04/01/2039 –03/31/2040	45	04/01/2064 –03/31/2065
21	04/01/2040 –03/31/2041	46	04/01/2065 –03/31/2066
22	04/01/2041 –03/31/2042	47	04/01/2066 –03/31/2067
23	04/01/2042 –03/31/2043	48	04/01/2067 –03/31/2068
24	04/01/2043 –03/31/2044	49	04/01/2068 –03/31/2069
25	04/01/2044 –03/31/2045	50	04/01/2069 –03/31/2070

F.4 Clauses Incorporated by Reference

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text.

The following FAR Clauses are incorporated by reference:

FAR Paragraph	Clause Title	IAW	Date
52.242-15	Stop Work Order	FAR 42.1305(b)(1)	Aug 1989
52.242-17	Government Delay of Work	FAR 42.1305(c)	Apr 1984

SECTION G

Contract Administration Data

G.1 DFARS 252.201-7000: Contracting Officer's Representative (Dec 1991)

(a) *Definition.* *Contracting Officer's Representative* means an individual designated in accordance with subsection 201.602-2 of the Defense Federal Acquisition Regulation Supplement and authorized in writing by the contracting officer to perform specific technical or administrative functions.

(b) If the Contracting Officer designates a contracting officer's representative (COR), the Contractor will receive a copy of the written designation. It will specify the extent of the COR's authority to act on behalf of the contracting officer. The COR is not authorized to make any commitments or changes that will affect price, quality, quantity, delivery, or any other term or condition of the contract.

G.2 Submission and Payment of Invoices

The Government will pay the Contractor for utility services in accordance with Section B.3, *Schedule*.

The Contractor shall submit monthly invoices electronically using the Wide Area Workflow (WAWF) system in accordance with DFARS clause, 252.232-7003, *Electronic Submission of Payment Requests and Receiving Reports*. The WAWF system is located at the following internet website: <https://wawf.eb.mil>. Failure to submit invoices in WAWF may result in delay of payment.

The Contractor shall prepare and submit the electronic invoice for payment by the 25th of each month for the previous month's billing period.

G.3 DFARS 252.232-7006: Wide Area WorkFlow Payment Instructions (May 2013)

(a) *Definitions.* As used in this clause—

“Department of Defense Activity Address Code (DoDAAC)” is a six position code that uniquely identifies a unit, activity, or organization.

“Document type” means the type of payment request or receiving report available for creation in Wide Area WorkFlow (WAWF).

“Local processing office (LPO)” is the office responsible for payment certification when payment certification is done external to the entitlement system.

(b) *Electronic invoicing.* The WAWF system is the method to electronically process vendor payment requests and receiving reports, as authorized by DFARS [252.232-7003](#), *Electronic Submission of Payment Requests and Receiving Reports*.

(c) *WAWF access.* To access WAWF, the Contractor shall—

(1) Have a designated electronic business point of contact in the System for Award Management at <https://www.acquisition.gov>; and

(2) Be registered to use WAWF at <https://wawf.eb.mil/> following the step-by-step procedures for self-registration available at this web site.

(d) *WAWF training.* The Contractor should follow the training instructions of the WAWF Web-Based Training Course and use the Practice Training Site before submitting payment requests through WAWF. Both can be accessed by selecting the “Web Based Training” link on the WAWF home page at <https://wawf.eb.mil/>

(e) *WAWF methods of document submission.* Document submissions may be via web entry, Electronic Data Interchange, or File Transfer Protocol.

(f) *WAWF payment instructions.* The Contractor must use the following information when submitting payment requests and receiving reports in WAWF for this contract/order:

(1) *Document type.* The Contractor shall use the following document type(s).

Invoice 2-in-1

(2) *Inspection/acceptance location.* The Contractor shall select the following inspection/acceptance location(s) in WAWF, as specified by the contracting officer.

Fort Riley, Kansas

(3) *Document routing.* The Contractor shall use the information in the Routing Data Table below only to fill in applicable fields in WAWF when creating payment requests and receiving reports in the system.

Routing Data Table

<i>Field Name in WAWF</i>	<i>Data to be entered in WAWF</i>
Pay Official DoDAAC	HQ0490
Issue By DoDAAC	SP0600
Admin DoDAAC	SP0600
Inspect By DoDAAC	N/A
Ship To Code	N/A
Ship From Code	N/A
Mark For Code	N/A
Service Approver (DoDAAC)	N/A
Service Acceptor (DoDAAC)	W55RN3
Accept at Other DoDAAC	N/A
LPO DoDAAC	N/A
DCAA Auditor DoDAAC	N/A
Other DoDAAC(s)	N/A

(4) *Payment request and supporting documentation.* The Contractor shall ensure a payment request includes appropriate contract line item and subline item descriptions of the work performed or supplies delivered, unit price/cost per unit, fee (if applicable), and all relevant back-up documentation, as defined in DFARS Appendix F, (e.g. timesheets) in support of each payment request.

(5) *WAWF email notifications.* The Contractor shall enter the e-mail address identified below in the “Send Additional Email Notifications” field of WAWF once a document is submitted in the system.

Send additional email notifications to the Contracting Officer’s Representative, Contracting Officer and Contract Specialist(s).

(g) *WAWF point of contact.*

(1) The Contractor may obtain clarification regarding invoicing in WAWF from the following

contracting activity's WAWF point of contact.

The Contracting Officer and Contract Specialist(s).

(2) For technical WAWF help, contact the WAWF helpdesk at 866-618-5988.

(End of clause)

G.4 Price Adjustments

Other price adjustments resulting from changed service requirements, at the request of either party to this contract and with reasonable cause, may be negotiated, at any time, in accordance with the Changes clause, if applicable. Price adjustments for noncompliance with accounting procedures shall be in accordance with Section G.5.1.

Any changes to charges, terms, or conditions as a result of negotiations shall be made part of this contract by the issuance of a bilateral contract modification. The failure of the parties to agree upon any change after a reasonable period of time shall be a dispute under the Disputes clause as defined in Section I.

G.5 Accounting Procedures

The Contractor shall maintain records of all costs and payments associated with the provision of utility service to the Installation using the National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts (USOA), Federal Energy Regulatory Commission (FERC) USOA, the Rural Utility Service (RUS) USOA, or the American Water Works Association (AWWA) USOA, or an alternative USOA acceptable to the Government. The USOA may be supplemented by the Contractor's standard accounting procedures and generally recognized accounting practices and principles, as long as such supplemental procedures and practices are consistent with the NARUC (or an accepted alternative) USOA. The standard utilized must be consistent with the Contractor's written and established practices for measuring, assigning, and allocating costs.

G.5.1 Price Adjustment for Noncompliance with Accounting Procedures

The Government shall be entitled to a price adjustment if it finds that the contract price was adjusted as a result of the use of noncompliant or inconsistent accounting practices. The amount of the adjustment shall be the difference between the contract price that was negotiated and the price that would have been negotiated had the Contractor used compliant and established accounting practices that were in accordance with FERC, NARUC, RUS, AWWA, or other accepted alternative USOA, and were consistent with the Contractor's written and established practices. In such cases, the Government shall be entitled to a credit or cash recovery, at the Government's option, for the amount of the increased price plus interest. The interest rate shall be computed from the date of the payment by the Government until the date of repayment by the Contractor. The interest rate shall be the rate specified at 26 U.S.C. § 6621(a)(2).

G.6 Accounting and Appropriation Data

ACRN AA is hereby established in the amount of \$1,695,700.00, as provided under Direct Fund Cite MIPR Number: 11106798. A funding breakdown of ACRN AA is provided below:

AA 02120182018 2020000 A22TT 131079QUTS 253G 0011106798 0040844538 021001 \$ [REDACTED]

Funding Breakdown:		
Funding for ACRN AA:	On CLIN 0101	\$ [REDACTED]
Total Funding:		\$ [REDACTED]
Total Funding for ACRN AA:		\$ [REDACTED]
Remaining Funds for ACRN AA:		\$0.00

G.7 Utility Service Charge Adjustment

At the request of either party to this contract, and with reasonable cause, the Utility Service Charge may be discussed and adjusted as a result of a system increase or decrease, change in condition, or inflationary conditions in accordance with FAR 52.241-7, *Changes in Rates or Terms and Conditions of Service for Regulated Services*, whichever is applicable. Any changes to charges, terms, or conditions as a result of negotiations shall be made part of this contract by the issuance, in a timely manner, of a bilateral contract modification. The failure of the parties to agree upon any change after a reasonable period of time shall be a dispute under the Disputes clause of this contract.

The Contract Rate Charge component of the Monthly Utility Service Charge shall be recalculated on an annual basis for all work completed as of December 31st of the previous calendar year, with the new monthly rate being updated in May and applied in the upcoming year commencing with the June billing month. Recalculation shall be based on Exhibit JE8, *Contract Rate Charge Template*. Per Exhibit JE8, the Rate of Return component of the Contract Rate Charge shall be based on the most recent decision of the Kansas Corporation Commission in a Kansas Gas Service rate proceeding.

The annual recalculation will reflect changes as of December 31st of the previous calendar year in the rate base for the privatized system and in Kansas Gas Service's system-wide plant-in-service values and cost of service as reported in annual Kansas Corporation Commission or Federal Energy Regulatory Commission filings. Any capital expenditure in excess of \$1,000,000 (in 2017 dollars) in any one calendar year may be renegotiated and reflected in the Contract Rate Charge once it is completed and put into service. For future capital upgrades resulting from changed service requirements, at the request of either party to this contract and with reasonable cause, the Contract Rate Charge may be recalculated at any time.

Notwithstanding any other provision, the cost of service basis for the Contract Rate Charge, as well as the Extraordinary Operations and Maintenance (EOM Charge), does not include pressure testing of existing lines in order to establish a higher maximum allowable operating pressure (MAOP). Such pressure testing required for the convenience of the Government shall be as approved by the Contracting Officer and in accordance with FAR 52.241-7, *Changes in Rates or Terms and Conditions of Service for Regulated Services*.

Any changes to the Contract Rate Charge is subject to the availability of funds and the Contracting Officer's approval.

G.8 Third-Party Construction Hourly Inspection Charge Adjustment

The Third-Party Construction Hourly Inspection Charge identified in Section C.11.5.3, will be adjusted annually in accordance with the Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U) Midwest Urban.

SECTION H

Special Contract Requirements

H.1 Mobilization and Other Contingencies

In the event of troop mobilization or other contingencies, the Contractor will be expected to promptly take whatever measures are needed to meet any new demands placed upon it, to include extended work hours and expansion of the contract work force.

Extra work effort under these circumstances may entitle the Contractor to equitable adjustment under the Changes clause.

H.2 Insurance Requirements

H.2.1 Insurance Certificate

Contractor shall deliver or cause to be delivered upon execution of this contract (and thereafter not less than thirty (30) days prior to the expiration date of each policy furnished pursuant to this contract) to the Government a certificate of insurance evidencing the insurance required by this contract. Each certificate provided shall clearly state the contract number. The Contractor cannot undertake work under the Contract until the certificate of insurance is accepted by the Contracting Officer.

H.2.2 Types of Insurance

During the entire period this contract shall be in effect, the Contractor and its subcontractors at any tier shall carry and maintain the following:

H.2.2.1 General Liability

Commercial general liability insurance with a minimum combined single limit of \$1,000,000 per occurrence and \$2,000,000 in the aggregate for all premises and operations, including products/completed operations. The policy shall include coverage for bodily injury, including death, and property damage arising out of the acts or omissions by or on behalf of the Contractor by any invitee or any other person or organization, or involving any owned, non-owned, or hired automotive equipment in connection with the Contractor's activities. The policy shall also include broad form property damage and shall cover independent contractors. The policy shall include coverage for hazards referred to as XCU (explosion, collapse, and underground).

H.2.2.2 Automobile Liability

Comprehensive automobile liability insurance with a combined single limit of \$1,000,000 per occurrence for bodily injury and property damage. Coverage shall include owned, hired, and non-owned vehicles.

H.2.2.3 Workers' Compensation and Employer's Liability

If and to the extent required by law, workers' compensation and employer's liability insurance. Workers' compensation coverage is to be provided in compliance with applicable laws and employer's liability limits shall be at least \$500,000.

H.2.2.4 Umbrella/Excess Liability Coverage

Umbrella or Excess Liability coverage in an amount of \$1,000,000 per occurrence and \$1,000,000 in the aggregate. Coverage is to be in excess of commercial general liability, automobile liability, and employer liability.

H.2.3 General

All policies of insurance which this contract requires the Contractor to carry and maintain or cause to be carried or maintained pursuant to this contract shall be with insurance companies who have an A.M. Best Financial Strength

Rating of A- or better and a Financial Size Category of VIII or higher.. All such policies of insurance shall list the Government as additional insured, except for workers' compensation. Each such policy shall provide that any losses shall be payable notwithstanding any act or failure to act or negligence of Contractor or Government or any other person; provide that no cancellation, reduction in amount, or material change in coverage thereof shall be effective until at least sixty (60) days after receipt by Government of written notice thereof; provide that the insurer shall have no right of subrogation against the Government; and be reasonably satisfactory to the Government in all other respects. In no circumstances will the Contractor be entitled to assign to any third party rights of action which the Contractor may have against the Government. The foregoing notwithstanding, any cancellation of insurance coverage based on nonpayment of the premium shall be effective upon ten (10) days written notice to the Government. The Contractor understands and agrees that cancellation of any insurance coverage required to be carried and maintained by the Contractor under this contract will constitute a failure to comply with the terms of this contract.

H.2.4 Self-insurance

The requirements to maintain insurance under Section H, *Insurance Requirements*, may be met by the use of self-insurance only under the following conditions and with the express **prior** written approval of the Contracting Officer:

H.2.4.1 Submittals

If the Contractor desires to self-insure, the Contractor shall submit to the Contracting Officer, in writing, a request to self-insure. The Contractor shall, when submitting any documents under this provision, apprise the Contracting Officer of any such documents that constitute confidential or proprietary business records, and mark those records accordingly. To support the determination of the Contracting Officer regarding the request, said officer may request some or all of the following information, to the extent the Contractor maintains such information, on the Contractor's proposed self-insurance program—

- (1) A complete description of the program, including any resolution of the board of directors authorizing and adopting coverage, including types of risks, limits of coverage, assignments of safety and loss control, and legal service responsibilities;
- (2) If available, the corporate insurance manual;
- (3) The terms regarding insurance coverage for any Government property;
- (4) The Contractor's latest financial statements;
- (5) Loss history and premiums history;
- (6) The means by which the self-insurance will be funded;
- (7) Claims administration policy, practices, and procedures;
- (8) The method of projecting losses; and
- (9) A disclosure of all captive insurance company and reinsurance agreements, including methods of computing cost.

H.2.4.2 Programs of Self Insurance

Programs of self-insurance covering Contractor's insurable risks, including the deductible portion of purchased insurance, may be approved by the Contracting Officer when examination of a program indicates that its application is in the Government's interest; such determination is within the sole discretion of the Government. The Government will not approve a program of self-insurance for workers' compensation in a jurisdiction where workers' compensation does not completely cover the employer's liability to employees, unless the Contractor—

- (1) Maintains an approved program of self-insurance for any employer's liability not so covered; or
- (2) Shows that the combined cost to the Government of self-insurance for workers' compensation and commercial insurance for employer's liability will not exceed the cost of covering both kinds of risk by commercial insurance.

H.2.4.3 Approval

Once the Contracting Officer has approved a program, the Contractor must submit to that official for approval any major proposed changes to the program. Any program approval may be withdrawn if the Contracting Officer finds that either—

- (1) Any part of a program does not comply with the requirements of this part and/or the criteria at FAR 31.205-19; or
- (2) Conditions or situations existing at the time of approval that were a basis for original approval of the program have changed to the extent that a program change is necessary.

H.2.4.4 Qualifications

To qualify for self-insurance, the Contractor must demonstrate to the Government an ability to sustain the potential losses involved. In making the determination, the Contracting Officer shall consider the following factors:

- (1) The soundness of Contractor's financial condition, including available lines of credit;
- (2) The geographic dispersion of assets, so that the potential of a single loss depleting all the assets is unlikely;
- (3) The history of previous losses, including frequency of occurrence and the financial impact of each loss;
- (4) The type and magnitude of risk, such as minor coverage for the deductible portion of purchased insurance or major coverage for hazardous risks; and
- (5) The Contractor's compliance with Federal and State laws and regulations.

H.3 Availability of Funds

Nothing in this contract shall be construed to obligate funds in advance of appropriations.

H.4 Liability

The Contractor shall indemnify and hold the Government harmless against any and all judgments, expenses, liabilities, claims, and charges of whatever kind or nature that arise from the Contractor's acts or omissions in the performance of, or as a result of its activities under, this contract, whether tortious, contractual, or other, except to the extent such claim or charge is cognizable under the Federal Tort Claims Act, or, in regard to indemnification, to the extent the Contractor is prohibited from doing so by Federal or state law.

H.4.1 Environmental Liability

The Contractor shall indemnify, defend, save, and hold the Government harmless against any and all judgments, expenses, liabilities, claims, and charges of whatever kind or nature, resulting from the Contractor's failure to comply with Section C.10, *Environmental Compliance*. Such indemnification shall include, but is not limited to, any costs or claims arising from, or related to, any damage to property, or injury to, or death of, a person to the extent that the Contractor's failure to comply with Environmental Requirements and/or management of contaminated materials caused, or contributed to, such damage, injury, or death. The Contractor shall not be required to indemnify the Government for Losses that are both caused by pre-existing environmental conditions and not caused by the negligence, misconduct, or recklessness of the Contractor.

H.5 Notification of Infrastructure/Service Contract Transfer

The Contractor shall provide 120-day written notice prior to any resale, transfer, or encumbrance of the system or any components thereof. Regardless of the disposition of the Contractor's property, the utility services contract can only be transferred to another entity with the Government's consent (See FAR 42.1204, *Applicability of Novation Agreements*).

H.6 Government Termination Liability Prior to Conveyance

If for any reason conveyance of the utility system does not occur, the Government's termination liability will be limited to transition costs.

H.7 Government Repurchase Option

1. The Government may, at its sole option, repurchase the privatized system at the end of the contract term or in the event the contract is terminated for the convenience of the Government or for default.
2. The Government shall exercise its repurchase option by providing written notice to the Contractor.
3. As consideration for the repurchase, the Government shall pay the Contractor the amount of the Contractor's Unrecovered Investments in the System as defined in Paragraph 8 below. The repurchase shall become effective and the System shall become the property of the Government 120 days after the Government issues notice of its intent to exercise its repurchase option or on such later date as the Government may designate.
4. In the event of a repurchase, the system shall be transferred to the Government free of all liens and encumbrances. The Contractor and the Government shall cooperate in preparing and executing all documents required to accomplish the transfer. All information in all media (electronic, paper, and otherwise) including, without limitation, books, manuals, operating procedures, specifications, databases and maps necessary or useful for operating the System shall be transferred to the Government with the System. In addition, copies of all Contractor operations and maintenance records shall be transferred to the Government with the System.
5. To the extent the Contractor receives payments for Unrecovered Investments in accordance with this clause; the Contractor shall not be entitled to equivalent payments for Unrecovered Investments under any termination, cancellation, or similar provision of the Contract.
6. In the event of termination for default, the Government may offset against payments made as consideration for repurchase under this Section any damages, including excess procurement costs, it suffers as a consequence of the Contractor's default. The Government shall have no obligation to tender the repurchase price until the quantum of such damages is defined.
7. The Contractor shall maintain an up to date account of the current System repurchase price throughout the contract term based upon a methodology established by the Contractor and approved by the Government prior to contract award. Upon request, the Contractor shall make the account available to the Government with appropriate supporting documentation.

8. Definitions

A. For purposes of this Section, "Privatized System" or "System" means all fixtures and equipment used or useful for operating the utility system[s]

B. For purposes of this Section, "Unrecovered Investments" means

1. The purchase price for the utility system[s] defined in Section B of the contract but only to the extent the Contractor has paid all or a portion of the purchase price to the Government without offsetting recovery;
2. Improvements or additions to the system located on Government property and approved by the Government that are:

- a) identified in the Contractor's Initial System Deficiency Corrections and Renewal and Replacement Plan and subsequent Plans provided annually throughout the contract term ;
or
- b) the result of requests for connections or connecting facilities.

However, the Contractor will only be compensated to the extent such investments have not been recovered by the Contractor in the form of payments made by or on behalf of the Government on account of such investments.

H.8 Foreign Object Damage Prevention Program

The Contractor shall comply with the Installation's foreign object damage prevention program whenever it engages in activities on or around flightlines, airfields, or runways.

H.9 Hazardous Substances

The Contractor, at its expense, must comply with all applicable laws on occupational safety and health, the handling and storage of hazardous materials, and the proper handling and disposal of hazardous wastes and hazardous substances generated by its activities. Responsibility for the costs of proper handling and disposal of hazardous wastes and hazardous substances is governed by applicable law. The terms hazardous materials, hazardous wastes, and hazardous substances are as defined in the Federal Water Pollution Control Act, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the Solid Waste Disposal Act, the Clean Air Act, and the Toxic Substances Control Act, and their implementing regulations, as they may be amended from time to time.

Any unexploded ordnance discovered on Government property by the Contractor is the responsibility of the Government and will not be disturbed by the Contractor but, upon discovery, shall be immediately reported to Installation Security, Installation Safety, and the Contracting Officer's Representative.

H.10 Interest Allowability of Capital Investment

Pursuant to the DoD Class Deviation signed 31 March 2011 and as determined by the Contracting Officer, the Contractor will be permitted to recover its interest costs associated only with capital expenditures to acquire, renovate, replace, upgrade, and/or expand utility systems. Interest rates used to calculate allowable interest costs must be limited to 600 basis points above the Contract Disputes Act (CDA) interest rate (41 U.S.C. § 7109) in effect at the time the Contractor makes the capital expenditure. The Contractor shall not receive facilities capital cost of money under FAR 52.215-16, *Facilities Capital Cost of Money*. CDA interest rate(s) are determined by the Bureau of the Public Debt and are published at the following website:

<http://www.fms.treas.gov/prompt/index.html>.

H.11 Contribution in Aid of Construction (CIAC) Tax Liability

A purchase by the Contractor of a Government utility system at less than fair market value may be treated as a CIAC and taxable income to the Contractor. As a result, the Contractor may incur an associated income tax liability. It is the responsibility of the Contractor to ensure that all transactions undertaken under the contract are in compliance with the United States Internal Revenue Service notices, guidelines, rules, and regulations governing the CIAC tax, and particularly the notices, guidelines, rules, and regulations governing how to determine fair market value, so that there is no CIAC tax liability to the Government. The Government will have no liability for, nor will it pay, any CIAC tax, related to the initial purchase of the utility system, for which the Contractor is liable, or may become liable because of the Contractor's performance under this contract.

H.12 Differing Site Conditions

(a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of –

- (1) Subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or made available to offerors during the negotiation process; or
- (2) Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.

(b) The Contracting Officer shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the contract modified in writing accordingly.

(c) No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required; *provided*, that the time prescribed in paragraph (a) of this clause for giving written notice may be extended by the Contracting Officer.

(d) No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

H.13 Future SDCs/Upgrades/ Connection Charges

Payment for Future SDCs/Upgrades/Connection Charges for which the Government agrees to pay in accordance with Section C, *SDCs/Upgrades/Connection Charges and Renewals and Replacements*, will be in addition to the monthly Utility Services Charge for the number of months agreed upon and will commence when the SDC/Upgrade/Connection is put in useful service. The amortization schedule shall specify for each SDC/Upgrade/Connection the additional monthly payment included in addition to the monthly Utility Services Charge and the number of the payment (of the total payments required).

If new SDCs/Upgrades/Connections are required as a result of a change in service requirements, the Utility Services Charge may be re-negotiated in accordance with Section G.

H.14 Disposition at Contract Expiration

(a) At least one year prior to the end of the contract, the Parties should begin discussions concerning disposition at contract expiration. The parties may mutually agree to renew the contract through execution of a follow-on contract. However, if the Parties mutually agree to forego renewal through a follow-on agreement, then the Parties should enter discussions to address disposition of the system, including possible:

- (1) transition of ownership of the System from the Contractor to the Government under the Government's Repurchase Option;
- (2) transition of any remaining service requirements from this contract to the Contractor's commercial or regulatory service standards; or
- (3) the abandonment of the system.

(b) The total duration of any follow-on contract shall not exceed the greater of fifty (50) years or the length of time then authorized by 10 U.S.C. § 2688 or any other applicable statute.

(c) In the event that following expiration or termination of the Contract, the Government's disposition or usage of the real property upon which the utility system is located effectively results in permanent inability of the Contractor to recover its investment in the system by providing service to either the Government or other customers, the Contractor may seek reimbursement of its unrecovered investment in the system.

H.15 Unrecovered Investments Associated with the Removal or Abandonment of Infrastructure

(a) The Government's liability for unrecovered investments as provided in Section H.7, in excess of \$15,000 (in 2017 dollars) in any contract year, in any rate-based natural gas utility service asset that, as a result of a specific Government request under Section C.11.5, the Contracting Officer determines is abandoned, no longer used and useful for the provision of a natural gas distribution service, or otherwise no longer needed, shall be measured by the asset's original rate-based cost, less accumulated depreciation, plus removal or abandonment cost, less salvage value; provided, however, that the unrecovered investments for approved improvements, additions, or connections include construction work in progress and retirement work in progress.

(b) The Government is not obligated to make any payment for unrecovered investments unless the Contractor provides adequate substantiating documentation to support the amount requested as determined by the Contracting Officer.

(c) This section does not apply to:

- (1) assets funded by the Government through the exercise of its right to pay lump-sum;
- (2) assets that were part of the initial conveyance and reflected in the BOS or any amendments thereto, provided, however, that the Monthly Credit for Purchase Price shall be reduced by any such unrecovered investment for an asset that was part of the initial conveyance and reflected in the BOS or any amendments thereto; or
- (3) any other assets that are not a part of the rate base (*e.g.*, contributed plant) as determined by the Contracting Officer.

H.16 Kansas Corporation Commission (KCC) Regulatory Approval

The contract award shall be conditioned upon the Kansas Corporation Commission's (KCC) review and approval of this utility services contract. Upon the receipt of a bilaterally executed copy of the contract, the Contractor shall expeditiously prepare a filing with the KCC for such review and approval. The Government shall cooperate by providing a Declaration or other such reasonable documentation that might be needed to support the regulatory approval process; provided that the Contractor shall provide appropriate guidance on the need for and content of such documentation. Should the KCC impose any substantive conditions on its regulatory approval that are unacceptable to either the Government or the Contractor, the parties shall negotiate in good faith to modify the contract to alleviate any objectionable provisions. Either party may terminate the contract, upon 30 days written notice, without penalty or added costs, in the event (i) KCC approval is not obtained within twelve (12) months from the date of contract award or (ii) the parties are unable to alleviate any objectionable provisions imposed incidental to the KCC's approval within six (6) months from the date of the KCC's final approval of the contract.

SECTION I

Contract Clauses

In the event of any inconsistencies between non-mandatory FAR and DFARS clauses incorporated by reference herein or elsewhere and any clauses set forth in full text in this Contract, the full text clauses shall control.

I.1 FAR 52.252-2 Clauses Incorporated by Reference (Feb 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at these addresses:

<http://farsite.hill.af.mil>
<http://www.acquisition.gov>

(End of Clause)

I.2 FAR Clauses

The following FAR clauses are incorporated by reference:

FAR Paragraph	Clause Title	IAW	Date
52.202-1	Definitions	FAR 2.201	Nov 2013
52.203-3	Gratuities	FAR 3.202	Apr 1984
52.203-5	Covenant Against Contingent Fees	FAR 3.404	May 2014
52.203-6	Restrictions on Subcontractor Sales to the Government	FAR 3.503-2	Sep 2006
52.203-7	Anti-Kickback Procedures	FAR 3.502-3	May 2014
52.203-8	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity	FAR 3.104-9(a)	May 2014
52.203-10	Price or Fee Adjustment for Illegal or Improper Activity	FAR 3.104-9(b)	May 2014
52.203-12	Limitation on Payments to Influence Certain Federal Transactions	FAR 3.808(b)	Oct 2010
52.203-13	Contractor Code of Business Ethics and Conduct	FAR 3.1004(a)	Oct 2015
52.203-17	Contractor Employee Whistleblower Rights and Requirements to Inform Employees of Whistleblower Rights	FAR 3.908-9	Apr 2014
52.203-19	Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements	FAR 3.909-3(b)	Jan 2017
52.204-4	Printed or Copied Double-sided on Postconsumer Fiber Content Paper	FAR 4.303	May 2011
52.204-9	Personal Identity Verification of Contractor Personnel	FAR 4.1303	Jan 2011

FAR Paragraph	Clause Title	IAW	Date
52.204-10	Reporting Executive Compensation and First-Tier Subcontract Awards	FAR 4.1403(a)	Oct 2016
52.204-13	System for Award Management Maintenance	FAR 4.1105(b)	Oct 2016
52.204-16	Commercial and Government Entity Code Reporting	FAR 4.1804(a)	Jul 2016
52.204-19	Incorporation by Reference of Representations and Certifications	FAR 4.1202(b)	Dec 2014
52.204-23	Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities	FAR 4.2004	Jul 2018
52.207-3	Right of First Refusal of Employment	FAR 7.305(c)	May 2006
52.209-6	Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment	FAR 9.409	Oct 2015
52.209-7	Information Regarding Responsibility Matters	FAR 9.104-7(b)	Jul 2013
52.209-9	Updates of Publicly Available Information Regarding Responsibility Matters	FAR 9.104-7(c)	Jul 2013
52.215-2	Audit and Records – Negotiation	FAR 15.209(b)	Oct 2010
52.215-8	Order of Precedence – Uniform Contract Format See Section C.1 of contract	FAR 15.209(h)	Oct 1997
52.215-11	Price Reduction for Defective Certified Cost or Pricing Data—Modifications	FAR 15.408(c)	Aug 2011
52.215-13	Subcontractor Certified Cost or Pricing Data—Modifications	FAR 15.408(e)	Oct 2010
52.215-21	Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data – Modifications	FAR 15.408(m)	Oct 2010
52.219-4	Notice of Price Evaluation Preference for HUBZone Small Business Concerns	FAR 19.1309(b)	Oct 2014
52.219-8	Utilization of Small Business Concerns	FAR 19.708(a)	Nov 2016
52.219-9	Small Business Subcontracting Plan <i>Alternate II</i>	FAR 19.708(b)(1)(ii)	Jan 2017 Alt II Nov 2016
52.219-16	Liquidated Damages—Subcontracting Plan	FAR 19.708(b)(2)	Jan 1999
52.219-28	Post-Award Small Business Program Representation	FAR 19.309(d)	Jul 2013
52.222-1	Notice to the Government of Labor Disputes	FAR 22.103-5(a)	Feb 1997
52.222-3	Convict Labor	FAR 22.202	Jun 2003

FAR Paragraph	Clause Title	IAW	Date
52.222-4	Contract Work Hours and Safety Standards – Overtime Compensation	FAR 22.305	May 2014
52.222-21	Prohibition of Segregated Facilities	FAR 22.810(a)(1)	Apr 2015
52.222-26	Equal Opportunity	FAR 22.810(e)	Sep 2016
52.222-35	Equal Opportunity for Veterans	FAR 22.1310(a)(1)	Oct 2015
52.222-36	Equal Opportunity for Workers with Disabilities	FAR 22.1408(a)	Jul 2014
52.222-37	Employment Reports on Veterans	FAR 22.1310(b)	Feb 2016
52.222-40	Notification of Employee Rights Under the National Labor Relations Act	FAR 22.1605	Dec 2010
52.222-50	Combating Trafficking in Persons	FAR 22.1705(a)	Mar 2015
52.222-54	Employment Eligibility Verification	FAR 22.1803	Oct 2015
52.223-3	Hazardous Material Identification and Material Safety Data	FAR 23.303	Jan 1997
52.223-5	Pollution Prevention and Right-to-Know Information <i>Alternate I</i>	FAR 23.1005(b)	May 2011 Alt I May 2011
52.223-6	Drug-Free Workplace	FAR 23.505	May 2001
52.223-12	Refrigeration Equipment And Air Conditioners	FAR 23.804(b)	Jun 2016
52.223-18	Encouraging Contractor Policies to Ban Text Messaging While Driving	FAR 23.1105	Aug 2011
52.225-13	Restrictions on Certain Foreign Purchases	FAR 25.1103(a)	Jun 2008
52.227-1	Authorization and Consent	FAR 27.201-2(a)(1)	Dec 2007
52.228-5	Insurance-Work on a Government Installation	FAR 28.310	Jan 1997
52.232-1	Payments	FAR 32.111(a)(1)	Apr 1984
52.232-8	Discounts for Prompt Payment	FAR 32.111(b)(1)	Feb 2002
52.232-11	Extras	FAR 32.111(c)(2)	Apr 1984
52.232-17	Interest	FAR 32.611(a) and (b)	May 2014
52.232-18	Availability of Funds	FAR 32.706-1(a)	Apr 1984
52.232-23	Assignment of Claims <i>Alternate I</i>	FAR 32.806(a)(1)	May 2014 Alt I Apr 1984

FAR Paragraph	Clause Title	IAW	Date
52.232-25	Prompt Payment	FAR 32.908(c)	Jan 2017
52.232-33	Payment by Electronic Funds Transfer --System for Award Management	FAR 32.1110(a)(1)	Jul 2013
52.232-39	Unenforceability of Unauthorized Obligations	FAR 32.706-3	Jun 2013
52.232-40	Providing Accelerated Payments to Small Business Subcontractors	FAR 32.009-2	Dec 2013
52.233-1	Disputes <i>Alternate I</i>	FAR 33.215	May 2014 Alt I Dec 1991
52.233-3	Protest after Award	FAR 33.106(b)	Aug 1996
52.233-4	Applicable Law for Breach of Contract Claim	FAR 32.215(b)	Oct 2004
52.237-2	Protection of Government Buildings, Equipment, and Vegetation	FAR 37.110(b)	Apr 1984
52.237-3	Continuity of Services	FAR 37.110(c)	Jan 1991
52.242-13	Bankruptcy	FAR 42.903	Jul 1995
52.243-1	Changes – Fixed-Price <i>Alternate I</i>	FAR 43.205(a)(2)	Aug 1987 Alt I Apr 1984
52.243-7	Notification of Changes	FAR 43.107	Jan 2017
52.244-6	Subcontracts for Commercial Items	FAR 44.403	Jul 2018
52.246-25	Limitation of Liability – Services	FAR 46.805(a)(4)	Feb 1997
52.248-1	Value Engineering	FAR 48.201	Oct 2010
52.249-2	Termination for Convenience of the Government (Fixed-Price)	FAR 49.502(b)(1)(i)	Apr 2012
52.249-8	Default (Fixed-Price Supply and Service)	FAR 49.504(a)(1)	Apr 1984
52.252-6	Authorized Deviations in Clauses	FAR 52.107(f)	Apr 1984
52.253-1	Computer Generated Forms	FAR 53.111	Jan 1991

I.2.1 Disputes

The requirements of the Disputes clause at FAR 52.233-1 are supplemented to provide that in regard to the interpretation of retail rates, rate schedules and items directly related to rates and rate schedules provided under this contract, the parties agree to accept as authoritative the interpretation of any statewide public utility regulatory authority with jurisdiction over the contractor. The Government shall not be bound to accept as authoritative interpretations that conflict with Federal law or regulation or that are found by any administrative or judicial forum to: 1) result in discrimination against the Installation; 2) have resulted from abuse of discretion; or 3) have directly or indirectly resulted from any failure on the part of the regulatory authority or its members to comply with applicable laws and regulations.

I.3 DFARS Clauses Incorporated by Reference

The use in this contract of any Defense Federal Acquisition Regulation Supplement (48 CFR Chapter 2) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

The following DFARS clauses are incorporated by reference:

DFARS Paragraph	Clause Title	IAW	Date
252.203-7000	Requirements Relating to Compensation of Former DoD Officials	DFARS 203.171-4(a)	Sep 2011
252.203-7001	Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies	DFARS 203.570-3	Dec 2008
252.203-7002	Requirement to Inform Employees of Whistleblower Rights	DFARS 203.970	Sep 2013
252.203-7003	Agency Office of the Inspector General	DFARS 203.1004(a)	Dec 2012
252.203-7004	Display of Hotline Posters	DFARS 203.1004(b)(2)(ii)	Oct 2016
252.204-7000	Disclosure of Information	DFARS 204.404-70(a)	Oct 2016
252.204-7003	Control of Government Personnel Work Product	DFARS 204.404-70(b)	Apr 1992
252.205-7000	Provision of Information to Cooperative Agreement Holders	DFARS 205.470	Dec 1991
252.209-7004	Subcontracting with Firms that Are Owned or Controlled by the Government of a Country that is a State Sponsor of Terrorism	DFARS 209.409	Oct 2015
252.215-7000	Pricing Adjustments	DFARS 215.408(1)	Dec 2012
252.219-7003	Small Business Subcontracting Plan (DoD Contracts)	DFARS 219.708(b)(1)(A)	Mar 2016
252.223-7001	Hazard Warning Labels	DFARS 223.303	Dec 1991
252.223-7004	Drug-Free Work Force	DFARS 223.570-2	Sep 1988
252.223-7006	Prohibition on Storage and Disposal of Toxic and Hazardous Materials	DFARS 223.7103(a)	Sep 2014

DFARS Paragraph	Clause Title	IAW	Date
252.223-7008	Prohibition of Hexavalent Chromium	DFARS 223.7306	Jun 2013
252.225-7012	Preference for Certain Domestic Commodities	DFARS 225.7002-3(a)	Dec 2016
252.225-7048	Export Controlled Items	DFARS 225.7901-4	Jun 2013
252.226-7001	Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns	DFARS 226.104	Sep 2004
252.231-7000	Supplemental Cost Principles	DFARS 231.100-70	Dec 1991
252.232-7003	Electronic Submission of Payment Requests and Receiving Reports	DFARS 232.7004	Jun 2012
252.232-7010	Levies on Contract Payments	DFARS 232.7102	Dec 2006
252.235-7003	Frequency Authorization –Basic	DFARS 235.072(b)	Mar 2014
252.236-7005	Airfield Safety Precautions	DFARS 236.570(b)(3)	Dec 1991
252.243-7001	Pricing of Contract Modifications	DFARS 243.205-70	Dec 1991
252.243-7002	Requests for Equitable Adjustment	DFARS 243.205-71	Dec 2012
252.244-7000	Subcontracts for Commercial Items and Commercial Components (DOD Contracts)	DFARS 244.403	Jun 2013
252.247-7023	Transportation of Supplies by Sea—Basic	DFARS 247.574(b)(1)	Apr 2014

I.4 Utility Services Clauses Incorporated by Reference

The following Utility Services FAR and DFARS clauses are incorporated herein by reference.

Paragraph	Clause Title	IAW	Date
52.241-4	Change in Class of Service	FAR 41.501(c)(3)	Feb 1995
52.241-5	Contractor's Facilities	FAR 41.501(c)(4)	Feb 1995
52.241-11	Multiple Service Locations	FAR 41.501(d)(5)	Feb 1995
252.241-7001	Government Access	DFARS 241.501-70(b)	Dec 1991

I.5 Reserved

I.6 Clauses Incorporated by Reference: Construction Wage Rates Requirements

The following FAR clauses are incorporated by reference and may apply to Initial System Deficiency Corrections, subsequent System Deficiency Corrections, and new connections that involve construction, alteration, or repair (including painting or decorating).

Paragraph	Clause Title	IAW	Date
52.222-5	Construction Wage Rate Requirements—Secondary Site of the Work	FAR 22.407(h)	May 2014
52.222-6	Construction Wage Rate Requirements	FAR 22.407(a)	May 2014
52.222-7	Withholding of Funds	FAR 22.407(a)	May 2014
52.222-8	Payrolls and Basic Records	FAR 22.407(a)	May 2014
52.222-9	Apprentices and Trainees	FAR 22.407(a)	Jul 2005
52.222-10	Compliance with Copeland Act Requirements	FAR 22.407(a)	Feb 1988
52.222-11	Subcontracts (Labor Standards)	FAR 22.407(a)	May 2014
52.222-12	Contract Termination – Debarment	FAR 22.407(a)	May 2014
52.222-13	Compliance with Construction Wage Rate Requirements and Related Regulations	FAR 22.407(a)	May 2014
52.222-14	Disputes Concerning Labor Standards	FAR 22.407(a)	Feb 1988
52.222-15	Certification of Eligibility	FAR 22.407(a)	May 2014

I.7 Other Clauses

FAR 52.241-2: Order of Precedence—Utilities (FEB 1995)

In the event of any inconsistency between the terms of this contract (including the specifications) and any rate schedule, rider, or exhibit incorporated in this contract by reference or otherwise, or any of the Contractor's rules and regulations, Section C.1, *Precedence*, of this contract shall control.

(End of clause)

FAR 52.241-3: Scope and Duration of Contract (FEB 1995)

(a) For the period identified in F.2, *Commencement of Service*, the Contractor agrees to furnish and the Government agrees to purchase the utility services as set forth in the contract.

(b) It is expressly understood that neither the Contractor nor the Government is under any obligation to continue any service under the terms and conditions of this contract beyond the expiration date.

(End of clause)

FAR 52.241-6: Service Provisions (FEB 1995)

(a) Measurement of service.

- (1) If required under the terms of the contract, the Contractor shall provide suitable metering equipment of standard manufacture, to be furnished, installed, maintained, repaired, calibrated, and read by the Contractor at its expense.
- (2) When applicable, the Contractor shall read all meters at periodic intervals of approximately 30 days unless otherwise identified in this contract.

(b) Meter test.

- (1) The Contractor, at its expense, shall periodically inspect and test Contractor-installed meters, if any, at intervals identified in this contract. The Government has the right to have representation during the inspection and test.
 - (2) At the written request of the Contracting Officer, the Contractor shall make additional tests of any or all such meters in the presence of Government representatives. The cost of such additional tests may be grounds for a request for equitable adjustment.
- (c) Change in volume or character. Reasonable notice shall be given by the Contracting Officer to the Contractor regarding any material changes anticipated in the volume or characteristics of the utility service required at each location.
- (d) Continuity of service and consumption. The Contractor shall use reasonable diligence to provide a regular and uninterrupted supply of service at each service location, and, unless otherwise stated in this contract, shall not be liable for damages, breach of contract or otherwise, to the Government for failure, suspension, diminution, or other variations of service occasioned by or in consequence of any cause beyond the control of the Contractor, including but not limited to acts of God or of the public enemy, fires, floods, earthquakes, or other catastrophe, strikes, or failure or breakdown of transmission or other facilities.

(End of clause)

FAR 52.241-7: Change in Rates or Terms and Conditions of Service for Regulated Services (FEB 1995)

(a) This clause applies to the extent services furnished under this contract are subject to regulation by a regulatory body. The Contractor agrees to give the Contracting Officer written notice of

- (1) the filing of an application for change in rates or terms and conditions of service concurrently with the filing of the application and
- (2) any changes pending with the regulatory body as of the date of contract award. Such notice shall fully describe the proposed change. If, during the term of this contract, the regulatory body having jurisdiction approves any changes, the Contractor shall forward to the Contracting Officer a copy of such changes within 15 days after the effective date thereof. The Contractor agrees to continue furnishing service under this contract in accordance with the amended tariff, and the Government agrees to pay for such service at the higher or lower rates as of the date when such rates are made effective.

(b) The Contractor agrees that throughout the life of this contract the applicable published and unpublished rate schedule(s) shall not be in excess of the lowest cost published and unpublished rate schedule(s) available to any other customers of the same class under similar conditions of use and service.

(c) In the event that the regulatory body promulgates any regulation concerning matters other than rates which affects this contract, the Contractor shall immediately provide a copy to the Contracting Officer. The Government shall not be bound to accept any new regulation inconsistent with Federal laws or regulations.

(d) Any changes to rates or terms and conditions of service, if in accordance with the terms of this contract, will become effective upon the issuance of a contract modification (unless otherwise specified in the contract). The effective date of the change shall be the effective date by the regulatory body. Any factors not governed by the regulatory body will have an effective date as agreed to by the parties.

(End of Clause)

FAR 52.204-21 Basic Safeguarding of Covered Contractor Information Systems (Jun 2016)

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

“Covered contractor information system” means an information system that is owned or operated by a contractor that processes, stores, or transmits Federal contract information.

“Federal contract information” means information, not intended for public release, that is provided by or generated for the Government under a contract to develop or deliver a product or service to the Government, but not including information provided by the Government to the public (such as on public Web sites) or simple transactional information, such as necessary to process payments.

“Information” means any communication or representation of knowledge such as facts, data, or opinions, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual (Committee on National Security Systems Instruction (CNSSI) 4009).

“Information system” means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information (44 U.S.C. 3502).

“Safeguarding” means measures or controls that are prescribed to protect information systems.

(b) Safeguarding requirements and procedures.

(1) The Contractor shall apply the following basic safeguarding requirements and procedures to protect covered contractor information systems. Requirements and procedures for basic safeguarding of covered contractor information systems shall include, at a minimum, the following security controls:

(i) Limit information system access to authorized users, processes acting on behalf of authorized users, or devices (including other information systems).

(ii) Limit information system access to the types of transactions and functions that authorized users are permitted to execute.

(iii) Verify and control/limit connections to and use of external information systems.

(iv) Control information posted or processed on publicly accessible information systems.

(v) Identify information system users, processes acting on behalf of users, or devices.

- (vi) Authenticate (or verify) the identities of those users, processes, or devices, as a prerequisite to allowing access to organizational information systems.
- (vii) Sanitize or destroy information system media containing Federal Contract Information before disposal or release for reuse.
- (viii) Limit physical access to organizational information systems, equipment, and the respective operating environments to authorized individuals.
- (ix) Escort visitors and monitor visitor activity; maintain audit logs of physical access; and control and manage physical access devices.
- (x) Monitor, control, and protect organizational communications (i.e., information transmitted or received by organizational information systems) at the external boundaries and key internal boundaries of the information systems.
- (xi) Implement subnetworks for publicly accessible system components that are physically or logically separated from internal networks.
- (xii) Identify, report, and correct information and information system flaws in a timely manner.
- (xiii) Provide protection from malicious code at appropriate locations within organizational information systems.
- (xiv) Update malicious code protection mechanisms when new releases are available.
- (xv) Perform periodic scans of the information system and real-time scans of files from external sources as files are downloaded, opened, or executed.

(2) *Other requirements.* This clause does not relieve the Contractor of any other specific safeguarding requirements specified by Federal agencies and departments relating to covered contractor information systems generally or other Federal safeguarding requirements for controlled unclassified information (CUI) as established by Executive Order 13556.

(c) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (c), in subcontracts under this contract (including subcontracts for the acquisition of commercial items, other than commercially available off-the-shelf items), in which the subcontractor may have Federal contract information residing in or transiting through its information system.

(End of clause)

DFARS 252.204-7012 Safeguarding Covered Defense Information and Cyber Incident Reporting.

SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING (OCT 2016)

(a) *Definitions.* As used in this clause—

“Adequate security” means protective measures that are commensurate with the consequences and probability of loss, misuse, or unauthorized access to, or modification of information.

“Compromise” means disclosure of information to unauthorized persons, or a violation of the security policy of a system, in which unauthorized intentional or unintentional disclosure, modification, destruction, or loss of an object, or the copying of information to unauthorized media may have occurred.

“Contractor attributional/proprietary information” means information that identifies the contractor(s), whether directly or indirectly, by the grouping of information that can be traced back to the contractor(s) (e.g., program description, facility locations), personally identifiable information, as well as trade secrets, commercial or financial information, or other commercially sensitive information that is not customarily shared outside of the company.

“Controlled technical information” means technical information with military or space application that is subject to controls on the access, use, reproduction, modification, performance, display, release, disclosure, or dissemination. Controlled technical information would meet the criteria, if disseminated, for distribution statements B through F using the criteria set forth in DoD Instruction 5230.24, Distribution Statements on Technical Documents. The term does not include information that is lawfully publicly available without restrictions.

“Covered contractor information system” means an unclassified information system that is owned, or operated by or for, a contractor and that processes, stores, or transmits covered defense information.

“Covered defense information” means unclassified controlled technical information or other information, as described in the Controlled Unclassified Information (CUI) Registry at <http://www.archives.gov/cui/registry/category-list.html>, that requires safeguarding or dissemination controls pursuant to and consistent with law, regulations, and Government wide policies, and is—

(1) Marked or otherwise identified in the contract, task order, or delivery order and provided to the contractor by or on behalf of DoD in support of the performance of the contract; or

(2) Collected, developed, received, transmitted, used, or stored by or on behalf of the contractor in support of the performance of the contract.

“Cyber incident” means actions taken through the use of computer networks that result in a compromise or an actual or potentially adverse effect on an information system and/or the information residing therein.

“Forensic analysis” means the practice of gathering, retaining, and analyzing computer-related data for investigative purposes in a manner that maintains the integrity of the data.

“Information system” means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.

“Malicious software” means computer software or firmware intended to perform an unauthorized process that will have adverse impact on the confidentiality, integrity, or availability of an information system. This definition includes a virus, worm, Trojan horse, or other code-based entity that infects a host, as well as spyware

and some forms of adware.

“Media” means physical devices or writing surfaces including, but is not limited to, magnetic tapes, optical disks, magnetic disks, large-scale integration memory chips, and printouts onto which covered defense information is recorded, stored, or printed within a covered contractor information system.

“Operationally critical support” means supplies or services designated by the Government as critical for airlift, sealift, intermodal transportation services, or logistical support that is essential to the mobilization, deployment, or sustainment of the Armed Forces in a contingency operation.

“Rapidly report” means within 72 hours of discovery of any cyber incident.

“Technical information” means technical data or computer software, as those terms are defined in the clause at DFARS 252.227-7013, Rights in Technical Data—Noncommercial Items, regardless of whether or not the clause is incorporated in this solicitation or contract. Examples of technical information include research and engineering data, engineering drawings, and associated lists, specifications, standards, process sheets, manuals, technical reports, technical orders, catalog-item identifications, data sets, studies and analyses and related information, and computer software executable code and source code.

(b) *Adequate security*. The Contractor shall provide adequate security on all covered contractor information systems. To provide adequate security, the Contractor shall implement, at a minimum, the following information security protections:

(1) For covered contractor information systems that are part of an Information Technology (IT) service or system operated on behalf of the Government, the following security requirements apply:

(i) Cloud computing services shall be subject to the security requirements specified in the clause 252.239-7010, Cloud Computing Services, of this contract.

(ii) Any other such IT service or system (i.e., other than cloud computing) shall be subject to the security requirements specified elsewhere in this contract.

(2) For covered contractor information systems that are not part of an IT service or system operated on behalf of the Government and therefore are not subject to the security requirement specified at paragraph (b)(1) of this clause, the following security requirements apply:

(i) Except as provided in paragraph (b)(2)(ii) of this clause, the covered contractor information system shall be subject to the security requirements in National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171, “Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations” (available via the internet at <http://dx.doi.org/10.6028/NIST.SP.800-171>) in effect at the time the solicitation is issued or as authorized by the Contracting Officer.

(ii)(A) The Contractor shall implement NIST SP 800-171, as soon as practical, but not later than December 31, 2017. For all contracts awarded prior to October 1, 2017, the Contractor shall notify the DoD Chief Information Officer (CIO), via email at osd.dibesia@mail.mil, within 30 days of contract award, of any security requirements specified by NIST SP 800-171 not implemented at the time of contract award.

(B) The Contractor shall submit requests to vary from NIST SP 800-171 in writing to the Contracting Officer, for consideration by the DoD CIO. The Contractor need not implement any security requirement adjudicated by an authorized representative of the DoD CIO to be no applicable or to have an alternative, but equally effective, security measure that may be implemented in its place.

(C) If the DoD CIO has previously adjudicated the contractor’s requests indicating that a requirement is not applicable or that an alternative security measure is equally effective, a copy of that approval shall be provided to the Contracting Officer when requesting its recognition under this contract.

(D) If the Contractor intends to use an external cloud service provider to store, process, or transmit any covered defense information in performance of this contract, the Contractor shall require and ensure that the cloud service provider meets security requirements equivalent to those established by the Government for the Federal Risk and Authorization Management Program (FedRAMP) Moderate baseline (<https://www.fedramp.gov/resources/documents/>) and that the cloud service provider complies with requirements in paragraphs (c) through (g) of this clause for cyber incident reporting, malicious software, media preservation and protection, access to additional information and equipment necessary for forensic analysis, and cyber incident damage assessment.

(3) Apply other information systems security measures when the Contractor reasonably determines that information systems security measures, in addition to those identified in paragraphs (b)(1) and (2) of this clause, may be required to provide adequate security in a dynamic environment or to accommodate special circumstances (e.g., medical devices) and any individual, isolated, or temporary deficiencies based on an assessed risk or vulnerability. These measures may be addressed in a system security plan.

(c) Cyber incident reporting requirement.

(1) When the Contractor discovers a cyber incident that affects a covered contractor information system or the covered defense information residing therein, or that affects the contractor's ability to perform the requirements of the contract that are designated as operationally critical support and identified in the contract, the Contractor shall—

(i) Conduct a review for evidence of compromise of covered defense information, including, but not limited to, identifying compromised computers, servers, specific data, and user accounts. This review shall also include analyzing covered contractor information system(s) that were part of the cyber incident, as well as other information systems on the Contractor's network(s), that may have been accessed as a result of the incident in order to identify compromised covered defense information, or that affect the Contractor's ability to provide operationally critical support; and

(ii) Rapidly report cyber incidents to DoD at <http://dibnet.dod.mil>.

(2) *Cyber incident report.* The cyber incident report shall be treated as information created by or for DoD and shall include, at a minimum, the required elements at <http://dibnet.dod.mil>.

(3) *Medium assurance certificate requirement.* In order to report cyber incidents in accordance with this clause, the Contractor or subcontractor shall have or acquire a DoD-approved medium assurance certificate to report cyber incidents. For information on obtaining a DoD-approved medium assurance certificate, see <http://iase.disa.mil/pki/eca/Pages/index.aspx>.

(d) *Malicious software.* When the Contractor or subcontractors discover and isolate malicious software in connection with a reported cyber incident, submit the malicious software to DoD Cyber Crime Center (DC3) in accordance with instructions provided by DC3 or the Contracting Officer. Do not send the malicious software to the Contracting Officer.

(e) *Media preservation and protection.* When a Contractor discovers a cyber incident has occurred, the Contractor shall preserve and protect images of all known affected information systems identified in paragraph (c)(1)(i) of this clause and all relevant monitoring/packet capture data for at least 90 days from the submission of the cyber incident report to allow DoD to request the media or decline interest.

(f) *Access to additional information or equipment necessary for forensic analysis.* Upon request by DoD, the Contractor shall provide DoD with access to additional information or equipment that is necessary to conduct a forensic analysis.

(g) *Cyber incident damage assessment activities.* If DoD elects to conduct a damage assessment, the

Contracting Officer will request that the Contractor provide all of the damage assessment information gathered in accordance with paragraph (e) of this clause.

(h) *DoD safeguarding and use of contractor attributional/proprietary information.* The Government shall protect against the unauthorized use or release of information obtained from the contractor (or derived from information obtained from the contractor) under this clause that includes contractor attributional/proprietary information, including such information submitted in accordance with paragraph (c). To the maximum extent practicable, the Contractor shall identify and mark attributional/proprietary information. In making an authorized release of such information, the Government will implement appropriate procedures to minimize the contractor attributional/proprietary information that is included in such authorized release, seeking to include only that information that is necessary for the authorized purpose(s) for which the information is being released.

(i) *Use and release of contractor attributional/proprietary information not created by or for DoD.* Information that is obtained from the contractor (or derived from information obtained from the contractor) under this clause that is not created by or for DoD is authorized to be released outside of DoD—

- (1) To entities with missions that may be affected by such information;
- (2) To entities that may be called upon to assist in the diagnosis, detection, or mitigation of cyber incidents;
- (3) To Government entities that conduct counterintelligence or law enforcement investigations;
- (4) For national security purposes, including cyber situational awareness and defense purposes (including with Defense Industrial Base (DIB) participants in the program at 32 CFR part 236); or
- (5) To a support services contractor (“recipient”) that is directly supporting Government activities under a contract that includes the clause at 252.204-7009, Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information.

(j) *Use and release of contractor attributional/proprietary information created by or for DoD.* Information that is obtained from the contractor (or derived from information obtained from the contractor) under this clause that is created by or for DoD (including the information submitted pursuant to paragraph (c) of this clause) is authorized to be used and released outside of DoD for purposes and activities authorized by paragraph (i) of this clause, and for any other lawful Government purpose or activity, subject to all applicable statutory, regulatory, and policy based restrictions on the Government’s use and release of such information.

(k) The Contractor shall conduct activities under this clause in accordance with applicable laws and regulations on the interception, monitoring, access, use, and disclosure of electronic communications and data.

(l) *Other safeguarding or reporting requirements.* The safeguarding and cyber incident reporting required by this clause in no way abrogates the Contractor’s responsibility for other safeguarding or cyber incident reporting pertaining to its unclassified information systems as required by other applicable clauses of this contract, or as a result of other applicable U.S. Government statutory or regulatory requirements.

(m) *Subcontracts.* The Contractor shall—

(1) Include this clause, including this paragraph (m), in subcontracts, or similar contractual instruments, for operationally critical support, or for which subcontract performance will involve covered defense information, including subcontracts for commercial items, without alteration, except to identify the parties. The Contractor shall determine if the information required for subcontractor performance retains its identity as covered defense information and will require protection under this clause, and, if necessary, consult with the Contracting Officer; and

(2) Require subcontractors to—

(i) Notify the prime Contractor (or next higher-tier subcontractor) when submitting a request to vary from a NIST SP 800-171 security requirement to the Contracting Officer, in accordance with paragraph (b)(2)(ii)(B) of this clause; and

(ii) Provide the incident report number, automatically assigned by DoD, to the prime Contractor (or next higher-tier subcontractor) as soon as practicable, when reporting a cyber incident to DoD as required in paragraph (c) of this clause.

(End of clause)

DFARS 252.232-7007: Limitation of Government's Obligation (APR 2014)

(a) Contract line item(s) 0001 through 0050 are incrementally funded. For these item(s), the sum of \$0.00 of the total price is presently available for payment and allotted to this contract. An allotment schedule is set forth in paragraph (j) of this clause.

(b) For item(s) identified in paragraph (a) of this clause, the Contractor agrees to perform up to the point at which the total amount payable by the Government, including reimbursement in the event of termination of those item(s) for the Government's convenience, approximates the total amount currently allotted to the contract. The Contractor is not authorized to continue work on those item(s) beyond that point. The Government will not be obligated in any event to reimburse the Contractor in excess of the amount allotted to the contract for those item(s) regardless of anything to the contrary in the clause entitled "Termination for Convenience of the Government." As used in this clause, the total amount payable by the Government in the event of termination of applicable contract line item(s) for convenience includes costs, profit, and estimated termination settlement costs for those item(s).

(c) Notwithstanding the dates specified in the allotment schedule in paragraph (j) of this clause, the Contractor will notify the Contracting Officer in writing at least ninety days prior to the date when, in the Contractor's best judgment, the work will reach the point at which the total amount payable by the Government, including any cost for termination for convenience, will approximate 85 percent of the total amount then allotted to the contract for performance of the applicable item(s). The notification will state (1) the estimated date when that point will be reached and (2) an estimate of additional funding, if any, needed to continue performance of applicable line items up to the next scheduled date for allotment of funds identified in paragraph (j) of this clause, or to a mutually agreed upon substitute date. The notification will also advise the Contracting Officer of the estimated amount of additional funds that will be required for the timely performance of the item(s) funded pursuant to this clause, for a subsequent period as may be specified in the allotment schedule in paragraph (j) of this clause or otherwise agreed to by the parties. If after such notification additional funds are not allotted by the date identified in the Contractor's notification, or by an agreed substitute date, the Contracting Officer will terminate any item(s) for which additional funds have not been allotted, pursuant to the clause of this contract entitled "Termination for Convenience of the Government."

(d) When additional funds are allotted for continued performance of the contract line item(s) identified in paragraph (a) of this clause, the parties will agree as to the period of contract performance which will be covered by the funds. The provisions of paragraphs (b) through (d) of this clause will apply in like manner to the additional allotted funds and agreed substitute date, and the contract will be modified accordingly.

(e) If, solely by reason of failure of the Government to allot additional funds, by the dates indicated below, in amounts sufficient for timely performance of the contract line item(s) identified in paragraph (a) of this clause, the Contractor incurs additional costs or is delayed in the performance of the work under this contract and if additional funds are allotted, an equitable adjustment will be made in the

price or prices (including appropriate target, billing, and ceiling prices where applicable) of the item(s), or in the time of delivery, or both. Failure to agree to any such equitable adjustment hereunder will be a dispute concerning a question of fact within the meaning of the clause entitled "Disputes."

(f) The Government may at any time prior to termination allot additional funds for the performance of the contract line item(s) identified in paragraph (a) of this clause.

(g) The termination provisions of this clause do not limit the rights of the Government under the clause entitled "Default." The provisions of this clause are limited to the work and allotment of funds for the contract line item(s) set forth in paragraph (a) of this clause. This clause no longer applies once the contract is fully funded except with regard to the rights or obligations of the parties concerning equitable adjustments negotiated under paragraphs (d) and (e) of this clause.

(h) Nothing in this clause affects the right of the Government to terminate this contract pursuant to the clause of this contract entitled "Termination for Convenience of the Government."

(i) Nothing in this clause shall be construed as authorization of voluntary services whose acceptance is otherwise prohibited under 31 U.S.C. 1342.

(j) The parties contemplate that the Government will allot funds to this contract in accordance with Section B.3, *Schedule*.

(End of clause)

I-0001 I.I28.01 FEDERAL, STATE, AND LOCAL TAXES (DLA Energy NOV 2011) (DEVIATION)

(a) As used in this contract provision—

(1) **After-imposed tax** means any new or increased Federal, State, or local tax that the Contractor is required to pay or bear the burden of as the result of legislative, judicial, or administrative action taking effect after the contract date.

(2) **After-relieved tax** means any amount of Federal, State, or local tax that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear the burden of, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

(3) **All applicable Federal and State taxes** means all excise taxes that the taxing authority is imposing and collecting on the transactions or property covered by this contract pursuant to written ruling or regulation in effect on the contract date.

(4) **Contract date** means the date set for bid opening or, if this is a negotiated contract or a modification, the date set for final revised prices.

(5) **Local taxes** means taxes levied by the political subdivisions of the States, District of Columbia, or outlying areas of the United States, e.g., cities and counties.

(6) **Outlying areas** means—

(i) **Commonwealths.** Puerto Rico and the Northern Mariana Islands;

(ii) **Territories.** American Samoa, Guam, and the U.S. Virgin Islands; and

(iii) Minor outlying islands. Baker Island; Howland Island, Jarvis Island; Johnston Atoll; Kingman Reef; Midway Islands; Navassa Island; Palmyra Atoll; and Wake Atoll.

(7) **State taxes** means taxes levied by the States, the District of Columbia, or outlying areas of the United States.

(8) **Tax** means taxes, duties and environmental or inspection fees, except social security or other employment taxes.

(b) The contract price includes all applicable Federal, State, and local taxes, except as otherwise provided.

(c) The contract price shall be increased by the amount of any after-imposed tax if the Contractor states in writing that the contract price does not include any contingency for such tax.

(d) The contract price shall be decreased by the amount of any after-relieved tax.

(e) The contract price shall also be decreased by the amount of any tax that the Contractor is required to pay or bear the burden of, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer.

(f) The Contractor shall promptly notify the Contracting Officer of all matters relating to any tax that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs.

(g) The Government shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Contractor requests such evidence and a reasonable basis exists to sustain the exemption.

(End of clause)

SECTION J

List of Attachments, Exhibits and References

TABLE J.1-1, List of Attachments, Exhibits, and Reference Documents

Attachments = Government Issued Documents/Provisions Made Part of the Contract

Exhibits = Contractor Proposal Documents Made Part of the Contract

References = Documents Not Part of the Contract But Included for Ease of Reference

Attachments		Title
JA1		Reserved
JA2		Fort Riley, KS – Natural Gas Distribution System
JA3		Reserved
JA4		Reserved
JA5		Wage Determinations
JA6		Federal Equivalents
Exhibits		Title
JE1		Vol. I – Service Interruption/Contingency and Catastrophic Loss Plan (February 28, 2018)
JE2		Vol. I – Operations and Maintenance Plan/Quality Management Plan (February 28, 2018)
JE3		Vol. I – Initial System Deficiency Corrections/Upgrades/Connections and Renewals and Replacements Plan (February 28, 2018)
JE4		Vol. I – Operational Transition Plan (February 28, 2018)
JE5		Vol. III – Socioeconomic Plan (February 28, 2018)
JE6		Vol. III – Subcontracting Plan (August 1, 2014)
JE7		Vol. IV – Price Proposal (February 28, 2018)
JE8		Contract Rate Charge Template
Reference Documents		Title
JR1		Bill of Sale No. XXXX (Natural Gas Distribution System, Fort Riley, KS)