(1)Update – Section 4.2 Added Environmental Prequalification Categories for environmental permitting. The DBT will be responsible for acquiring all necessary environmental permits if impacts are greater than shown in Appendix F for the project.

(2)Update – Section 10 Environmental Permitting Requirements

(3)Update – Section 12 Utilities – See Appendix O for guidelines

(4)Added – Section Appendix F-Nationwide Permit Requirements

(5)Added - Section Appendix O – Utility Relocation Information – Utility Relocation added if DBT determines better value for relocating the Gas Lines

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4.2 Professional Services Prequalification

The DBT shall provide all necessary services to design and construct all permanent and temporary portions of the project. Work shall conform to current KYTC, federal, and AASHTO standards, practices, policies, guidelines and specifications where applicable. Additional documents identified within the scope of work will be provided under separate cover as part of the contract documents. KYTC standards, practices, policies, guidelines and specifications shall control in case of a conflict. The standard of care for all such services performed or furnished under this Agreement shall be the care and skill ordinarily used by members of the engineering profession practicing under similar conditions at the same time and locality.

Design firms prequalified shall perform only those tasks which they are prequalified to complete. The design team will need to have KYTC prequalifications in a variety of disciplines in order to perform. KYTC prequalifications shall include but not be limited to:

Structure Design	Spans Under 500 Ft
Geotechnical	Laboratory Testing Services
Geotechnical	Drilling Services
Geotechnical	Engineering Services
Roadway Design	Rural Roadway Design
Roadway Design	Surveying
Traffic Engineering	Electrical Engineering Roadway Lighting Services
Environmental	Fisheries
Environmental	Macroinvertebrates
Environmental	Botany
Environmental	Zoology
Environmental	Water Quality
Environmental	Wetlands
Environmental	Prehistoric
Environmental	Historic
Environmental	Cultural-Historic Analysis

Design firms shall be sufficiently staffed and capable of performing the required work on this contract. These design firms may be subcontractors responsible for the design and engineering of the project.

There may be multiple consultants working on the DBT, however one consultant shall be designated as the Lead Designer. The DBT shall include qualified engineers and surveyors to be in direct responsible charge of engineering and surveying endeavors and who are professionally registered in the state of Kentucky. Designs prepared for the project shall be signed and stamped by a licensed Kentucky Professional Engineer. To qualify for selection, interested DBTs shall be prequalified through KYTC for the performance of the work. Prequalification requirements pertaining to licensure will be required prior to submission of the Technical Proposal. Services that require prequalification may only be performed by firms that are prequalified for those services at the time of performance of the services.

10. ENVIRONMENTAL

10.1 NEPA Document

A Categorical Exclusion Level 3 has been completed by the KYTC for this project. This environmental document assumes that all construction will be within the designated right of way. If this is not what is proposed, the DBT shall be responsible for any additional environmental work for areas outside the existing right of way. Any significant changes from the scope may invalidate the NEPA CE Level 3 approval, and therefore would not be acceptable.

10.2 Permits:

KYTC has completed the permitting based on preliminary engineering as shown in Appendix F. If the DBT's final engineering exceeds those impacts shown, then it shall be their responsibility to obtain all necessary permits per the following sections. If these limits are exceeded the DBT shall be responsible for obtaining all required permits from the appropriate Federal, State, and Local Government agencies having jurisdiction over all work related to the project.

10.3 Waterway Permits

The DBT shall be aware of Clean Water Act permits issued by the US Army Corps of Engineers (USACE) and the Kentucky Division of Water (KDOW) as may apply to the Work. This shall include both Nationwide and Individual USACE Section 404 permits, KDOW section 401 Individual Water Quality Certifications and KDOW Individual Kentucky Point Source Elimination System (KPDES) Section 402 permits. The level of permit required, either a Nationwide or Individual 404, 401, or 402 is determined by the amount of impact to "waters of the US", (i.e., acreage of fill activities in a stream or wetland or linear feet of work in a stream) and in some cases the KDOW designation of waters impacted. All individual 404 Permits require 401 Water Quality Certification. 404 Nationwide Permits are activity specific permits used to authorize specific types of project activities having only minor impacts. Projects with more than minor impacts require individual review by the USACE and the KDOW.

The DBT shall minimize water impacts to meet the requirements of USACE Nationwide permits and KDOW General Certifications and avoid the need for Individual 404 Permits and 401 Water Quality Certification, if practicable. A description of the various Nationwide Permits for the State of Kentucky can be found at the USACEs' web site. The DBT shall also be aware of the Kentucky Division of Water (KDOW) Special Use designations listed in the Kentucky Administrative Regulations. Impacts to such designated waters may require an Individual Section 402 Kentucky Pollution Discharge Elimination System (KPDES) permit.

The DBT is advised that coordination and approval of Individual waterway permits may take 9 to 12 months. Therefore, it is imperative that the DBT identify permit needs at the earliest stages of project development. The development of all Section 401, 402 and 404 permitting documents, as appropriate, shall be the responsibility of the DBT. The

applicant for all permits shall be the "Kentucky Transportation Cabinet." The DBT shall submit permit applications to the KYTC Division of Environmental Analysis (DEA), for review and submittal to the appropriate permitting agency. DEA shall review all DBT submittals within 14 days after receiving the information. At no time, shall the DBT coordinate waterway permit issues directly with the permitting agencies unless directed to do so by KYTC's Project Manager. The DBT shall be responsible for complying with all provisions set forth in the Permits. This shall include any costs or in-lieu fees associated with the permits. Please see Appendix C for additional information regarding Nationwide permit conditions.

10.4 TREE CLEARING RESTRICTIONS

The DBT will only be allowed to clear trees on the project between October 15th thru March 31st without entering into a Indian Bat Consvervation Memorandum of Agreement (IBCMOA) with USFW. If the DBT wishes to clear trees outside of these limitation it is their responsibility to coordinate with USFW and pay any fees associated with this clearing.

10.5 Kentucky Pollutant Discharge Elimination System Permit (KYR10) and Best Management Practices (BMP) Plan

Projects that are not required to have a Section 402 Individual KPDES permit, must request coverage under the program's General Construction Storm Water Permit (KYR10). The DBT must submit to KYTC's project manager a BMP plan for the project and receive approval prior to beginning work. All temporary erosion control is the responsibility of the DBT. The DBT will be responsible for filing the Notice of Intent (NOI) with the Kentucky Division of Water requesting coverage under the KYR10 permit.

12. UTILITIES

KYTC will provide utility relocation for all utilities with the exception of a waterline along Cates Road which will be the DBTs responsibility. DBT shall adapt schedule per the impact notes identified below:

PROTECTION OF UTILITIES

The location of utilities provided in the contract documents has been furnished by the facility owners and/or by reviewing record drawings and may not be accurate. It will be the roadway contractor's responsibility to locate utilities before excavating by calling the various utility owners and by examining any supplemental information supplied by the KYTC. If necessary, the roadway contractor shall determine the exact location and elevation of utilities by hand digging to expose utilities before excavating in the area of a utility. The cost of repair and any other associated costs for any damage to utilities caused by the roadway contractor's operations shall be borne by the roadway contractor.

The DBT is advised to contact the **BUD one-call system at 1-800-752-6007** at least two working days prior to excavating. DBT should be aware that owners of underground facilities are not required to be members of the BUD one-call system. It may be necessary for the DBT to contact the County Court Clerk to determine what utility companies have facilities in the project area.

Special Utility Coordination Requirements Note:

This project is being bid with some degree of utility relocation underway, as defined within this Utility Impact Note. The KYTC has fully reviewed the ongoing relocation activities and is satisfied that the road contract can be awarded while said utility work is active. By bidding, the DBT concurs with this assessment and has defined work zones and phasing that will not conflict with the ongoing utility relocation work. The DBT will be given the opportunity to monitor the progress of the respective utility work. At any time between the date the DBT is placed on the Pending Awards List and January 10, 2014, the DBT may request that the award for the contract be given, to finalize the contract, and issue the work order. By requesting the award at any time, the DBT understands and agrees that he shall indemnify and save harmless the KYTC, the Department, the Federal Highway Administration, and all their officers, agents and employees from all suits, actions or claims of any character brought on by delays, inefficiencies, inconveniences, or damages associated with scheduling and completing any/or all utility relocations that are or become associated with the project. By requesting that the contract be awarded, the Department contends, and the DBT agrees, that no additional compensation for delays, inconvenience, inefficiencies, or any other damages sustained by the DBT and his Subcontractors due to any interference from the utility appurtenances or due to the operation of moving them. The DBT also agrees to cooperate with the KYTC, FHWA, pertinent Utility Companies, and associated project partners to facilitate the completion of the road project, which includes cooperative efforts such as; phasing work to avoid conflict with the active utility work, utilizing BUD and utility companies as appropriate to identify utility locations, consider the active utility work when scheduling construction activities, and any other cooperative efforts necessary to allow the release of the work zones occupied by said utilities. The Utility Clearance Dates defined within this note are not warranted and are subject to variation due to typical construction scheduling issues such as; weather, material availability, natural disaster and the like. These issues are not recognized as appropriate justification for claims.

Existing Utilities:

The existing LGE/KU overhead transmission lines will be relocated by LGE/KU contractors prior to May 30, 2014.

The two existing gas transmission lines (Atmos & Orbit) will remain in their existing location and the DBT will be required to place additional fill material over the lines within right of way limits to assure that 42-in of cover is established. The existing topo provides elevations of the existing gas transmission lines within the right of way limits. Atmos &Orbit will relocate vent pipes outside of right of way prior to May 30, 2014.

AT&T was identified as having underground telephone within the project area. Field investigations confirmed that the underground lines were previously abandoned and will not require relocation.

The DBT will be required to relocate the 3" waterline along Cate Road as identified on the plans provided to the DBT (Appendix C).

It is the DBT responsibility to coordinate and certify coordination with each company that exact locations of the utility lines and if the DBT chooses to relocate any utility it is the DBT responsibility to coordinate, reimburse, and schedule the relocation. (See Appendix O for relocation guidelines)

The District Utility Agent has determined that at a minimum, the following utilities are located in the area of the project:

Atmos Energy Corporation
638 W. Broadway Street
Madisonville, KY 42431
Tim Tompkins
270-836-4538
Timothy.tompkins@atmosenergy.com

Orbit Gas
PO Box 2100
600 Barret Rd
Henderson, KY 42420
Jim Martin
270-827-2093 (O)
270-302-6431 (C)
jim.f.martin@orbitgas.com

AT&T Communications
Mike Wilson
270-825-7808

LGE/KU Transmission
Terry Moore
270-383-6011
Terry.moore@lge-ku.com

South Hopkins Water District
129 S Main St
Dawson Springs, KY 42408
Jon Blalok
(270) 797-5760
southhopkinswate@bellsouth.com

Appendix F

Nationwide Permit #14 –Linear Transportation Projects

Activities required for the construction, expansion, modification, or improvement of linear transportation projects (e.g., roads, highways, railways, trails, airport runways, and taxiways) in waters of the United States. For linear transportation projects in non-tidal waters, the discharge cannot cause the loss of greater than 1/2-acre of waters of the United States. For linear transportation projects in tidal waters, the discharge cannot cause the loss of greater than 1/3-acre of waters of the United States. Any stream channel modification, including bank stabilization, is limited to the minimum necessary to construct or protect the linear transportation project; such modifications must be in the immediate vicinity of the project.

This NWP also authorizes temporary structures, fills, and work necessary to construct the linear transportation project. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

This NWP cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) the loss of waters of the United States exceeds 1/10-acre; or (2) there is a discharge in a special aquatic site, including wetlands. (See general condition 31.) (Sections 10 and 404)

Note: Some discharges for the construction of farm roads or forest roads, or temporary roads for moving mining equipment, may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4).

Nationwide Permit General Conditions

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP. Every person who may wish to obtain permit authorization under one or more NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of 33 CFR §§ 330.1 through 330.6 apply to every NWP authorization. Note especially 33 CFR § 330.5 relating to the modification, suspension, or revocation of any NWP authorization.

1. Navigation. (a) No activity may cause more than a minimal adverse effect on

navigation.

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. Aquatic Life Movements. No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species.

3. Spawning Areas. Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. Migratory Bird Breeding Areas. Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. Shellfish Beds. No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

6. Suitable Material. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

7. Water Supply Intakes. No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

8. Adverse Effects From Impoundments. If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

9. Management of Water Flows. To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. Fills Within 100-Year Floodplains. The activity must comply with applicable FEMA- approved state or local floodplain management requirements.

11. Equipment. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

12. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.

13. Removal of Temporary Fills. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

14. Proper Maintenance. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

15. Single and Complete Project. The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

16. Wild and Scenic Rivers. No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the

appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

17. Tribal Rights. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

18. Endangered Species. (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address ESA compliance for the NWP activity, or whether additional ESA consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed work or that utilize the designated critical habitat that might be affected by the proposed work. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete pre-construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have "no effect" on listed species or critical habitat, or until Section 7 consultation has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific regional endangered species conditions to the NWPs.

(e) Authorization of an activity by a NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g.,

an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the
U.S. FWS or the NMFS, The Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their world wide web pages at http://www.fws.gov/ or http://www.fws.gov/ipac and http://www.noaa.gov/fisheries.html respectively.

19. Migratory Birds and Bald and Golden Eagles. The permittee is responsible for obtaining any "take" permits required under the U.S. Fish and Wildlife Service's regulations governing compliance with the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act. The permittee should contact the appropriate local office of the U.S. Fish and Wildlife Service to determine if such "take" permits are required for a particular activity.

20. Historic Properties. (a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address section 106 compliance for the NWP activity, or whether additional section 106 consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of Section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field

investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties on which the activity may have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

(d) The district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR §800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

21. Discovery of Previously Unknown Remains and Artifacts. If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

22. Designated Critical Resource Waters. Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage

sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with general condition 31, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

23. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse effects of the proposed activity are minimal, and provides a project-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in minimal adverse effects on the aquatic environment.

(2) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

(3) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) – (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)).

(4) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number of credits to be provided.

(5) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream rehabilitation, enhancement, or preservation, to ensure that the activity results in minimal adverse effects on the aquatic environment.

(e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any project resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWPs.

(f) ompensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the restoration or establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to establish a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or establishing a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(g) Permittees may propose the use of mitigation banks, in-lieu fee programs, or separate permittee-responsible mitigation. For activities resulting in the loss of marine or estuarine resources, permittee-responsible compensatory mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland

to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse effects of the project to the minimal level.

24. Safety of Impoundment Structures. To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

25. Water Quality. Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

26. Coastal Zone Management. In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

27. Regional and Case-By-Case Conditions. The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

28. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

29. Transfer of Nationwide Permit Verifications. If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

"When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

_____ _____

(Transferee) (Date)

30. Compliance Certification. Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

(a) A statement that the authorized work was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;

(b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and

(c) The signature of the permittee certifying the completion of the work and mitigation.

31. Pre-Construction Notification. (a) Timing. Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

(1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

(2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or in the vicinity of the

project, or to notify the Corps pursuant to general condition 20 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or Section 106 of the National Historic Preservation (see 33 CFR 330.4(g)) has been completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) Contents of Pre-Construction Notification: The PCN must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed project;

(3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause, including the anticipated amount of loss of water of the United States expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

(4) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many waters of the United States. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;

(5) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse effects are minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(6) If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, for non-Federal applicants the PCN must include the name(s) of those endangered or threatened species that

might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act; and

(7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act.

(c) Form of Pre-Construction Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this general condition. A letter containing the required information may also be used.

(d) Agency Coordination: (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

(2) For all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States, for NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300 linear feet of intermittent and ephemeral stream bed, and for all NWP 48 activities that require pre-construction notification, the district engineer will immediately provide (e.g., via e- mail, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure the net adverse environmental effects to the aquatic environment of the proposed activity are minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(3) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(4) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

District Engineer's Decision

1. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. For a linear project, this determination will include an evaluation of the individual crossings to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings authorized by NWP. If an applicant requests a waiver of the 300 linear foot limit on impacts to intermittent or ephemeral streams or of an otherwise applicable limit, as provided for in NWPs 13, 21, 29, 36, 39, 40, 42, 43, 44, 50, 51 or 52, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in minimal adverse effects. When making minimal effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns.
2. If the proposed activity requires a PCN and will result in a loss of greater than 1/10- acre of wetlands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for projects with smaller impacts. The district engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed activity are minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, after considering mitigation, the district engineer will notify the permittee and include any activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). The district engineer must approve the final mitigation plan before the permittee commences work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the proposed compensatory

mitigation plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the district engineer to be minimal, the district engineer will provide a timely written response to the applicant. The response will state that the project can proceed under the terms and conditions of the NWP, including any activity-specific conditions added to the NWP authorization by the district engineer.

3. f the district engineer determines that the adverse effects of the proposed work are more than minimal, then the district engineer will notify the applicant either: (a) that the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (b) that the project is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level; or (c) that the project is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse effects occur to the aquatic environment, the activity will be authorized within the 45-day PCN period, with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation or a requirement that the applicant submit a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level. When mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

Further Information

- District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
- NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
- NWPs do not grant any property rights or exclusive privileges.
- NWPs do not authorize any injury to the property or rights of others.
- NWPs do not authorize interference with any existing or proposed Federal project.

Definitions

Best management practices (BMPs): Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

Compensatory mitigation: The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Currently serviceable: Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

Direct effects: Effects that are caused by the activity and occur at the same time and place.

Discharge: The term "discharge" means any discharge of dredged or fill material. Enhancement: The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Ephemeral stream: An ephemeral stream has flowing water only during, and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.

Establishment (creation): The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area.

High Tide Line: The line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

Historic Property: Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR part 60).

Independent utility: A test to determine what constitutes a single and complete non-linear project in the Corps regulatory program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

Indirect effects: Effects that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

Intermittent stream: An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow.

Loss of waters of the United States: Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to

jurisdictional waters for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. The loss of stream bed includes the linear feet of stream bed that is filled or excavated. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities eligible for exemptions under Section 404(f) of the Clean Water Act are not considered when calculating the loss of waters of the United States.

Non-tidal wetland: A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. The definition of a wetland can be found at 33 CFR 328.3(b). Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

Open water: For purposes of the NWPs, an open water is any area that in a year with normal patterns of precipitation has water flowing or standing above ground to the extent that an ordinary high water mark can be determined. Aquatic vegetation within the area of standing or flowing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. Examples of "open waters" include rivers, streams, lakes, and ponds.

Ordinary High Water Mark: An ordinary high water mark is a line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding areas (see 33 CFR 328.3(e)).

Perennial stream: A perennial stream has flowing water year-round during a typical year. The water table is located above the stream bed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.

Practicable: Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Pre-construction notification: A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Pre-construction notification may be required by the terms and conditions of a nationwide permit, or by regional conditions. A pre-construction notification may be voluntarily submitted in cases where pre-construction notification is not required and the project proponent wants confirmation that the activity is authorized by nationwide permit.

Preservation: The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Re-establishment: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.

Rehabilitation: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource.

Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

Restoration: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

Riffle and pool complex: Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a course substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

Riparian areas: Riparian areas are lands adjacent to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects riverine, lacustrine, estuarine, and marine waters with their adjacent wetlands, non-wetland waters, or uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 23.)

Shellfish seeding: The placement of shellfish seed and/or suitable substrate to increase shellfish production. Shellfish seed consists of immature individual shellfish or individual shellfish attached to shells or shell fragments (i.e., spat on shell). Suitable substrate may consist of shellfish shells, shell fragments, or other appropriate materials placed into waters for shellfish habitat.

Single and complete linear project: A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations. The term "single and complete project" is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

Single and complete non-linear project: For non-linear projects, the term "single and complete project" is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility (see definition of "independent utility"). Single and complete non-linear projects may not be "piecemealed" to avoid the limits in an NWP authorization.

Stormwater management: Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

Stormwater management facilities: Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

Stream bed: The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

Stream channelization: The manipulation of a stream's course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. A channelized stream remains a water of the United States.

Structure: An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

Tidal wetland: A tidal wetland is a wetland (i.e., water of the United States) that is inundated by tidal waters. The definitions of a wetland and tidal waters can be found at 33 CFR 328.3(b) and 33 CFR 328.3(f), respectively. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line, which is defined at 33 CFR 328.3(d).

Vegetated shallows: Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

Waterbody: For purposes of the NWPs, a waterbody is a jurisdictional water of the United States. If a jurisdictional wetland is adjacent – meaning bordering, contiguous, or neighboring – to a waterbody determined to be a water of the United States under 33 CFR 328.3(a)(1)-(6), that waterbody and its adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)). Examples of "waterbodies" include streams, rivers, lakes, ponds, and wetlands.

STEVEN L. BESHEAR
GOVERNOR

LEONARD K. PETERS
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General Certification--Nationwide Permit # 14
Linear Transportation Projects

This General Certification is issued March 19, 2012, in conformity with the requirements of Section 401 of the Clean Water Act of 1977, as amended (33 U.S.C. §1341), as well as Kentucky Statute KRS 224.16-050.

For this and all nationwide permits, the definition of surface water is as per 401 KAR 10:001 Chapter 10, Section 1(80): Surface Waters means those waters having well-defined banks and beds, either constantly or intermittently flowing; lakes and impounded waters; marshes and wetlands; and any subterranean waters flowing in well-defined channels and having a demonstrable hydrologic connection with the surface. Lagoons used for waste treatment and effluent ditches that are situated on property owned, leased, or under valid easement by a permitted discharger are not considered to be surface waters of the commonwealth.

Agricultural operations, as defined by KRS 224.71-100(1) conducting activities pursuant to KRS 224.71-100 (3), (4), (5), (6), or 10 are deemed to have certification if they are implementing an Agriculture Water Quality Plan pursuant to KRS 224.71-145.

For all other operations, the Commonwealth of Kentucky hereby certifies under Section 401 of the Clean Water Act (CWA) that it has reasonable assurances that applicable water quality standards under Kentucky Administrative Regulations Title 401, Chapter 10, established pursuant to Sections 301, 302, 304, 306 and 307 of the CWA, will not be violated for the activity covered under NATIONWIDE PERMIT 14, namely Linear Transportation Projects, provided that the following conditions are met:

1. The activity will not occur within surface waters of the Commonwealth identified by the Kentucky Division of Water as Outstanding State or National Resource Water, Cold Water Aquatic Habitat, or Exceptional Waters.

2. The activity will not occur within surface waters of the Commonwealth identified as perpetually-protected (e.g. deed restriction, conservation easement) mitigation sites.

3. The activity will impact less than 1/2 acre of wetland/marsh.

4. The activity will impact less than 300 linear feet of surface waters of the Commonwealth. Stream realignment greater than 100 feet is not covered under this general water quality certification.

5. For a single and complete linear transportation project, the cumulative length of impacts less than 300 linear feet of surface waters within each Hydrologic Unit Code (HUC) 14 watershed will not exceed 500 linear feet.

6. Stream impacts covered under this General Water Quality Certification and undertaken by those persons defined as an agricultural operation under the Agricultural Water Quality Act must be completed in compliance with the Kentucky Agricultural Water Quality Plan (KWQP).

7. The Kentucky Division of Water may require submission of a formal application for an individual certification for any project if the project has been determined to likely have a significant adverse effect upon water quality or degrade the waters of the Commonwealth so that existing uses of the water body or downstream waters are precluded.

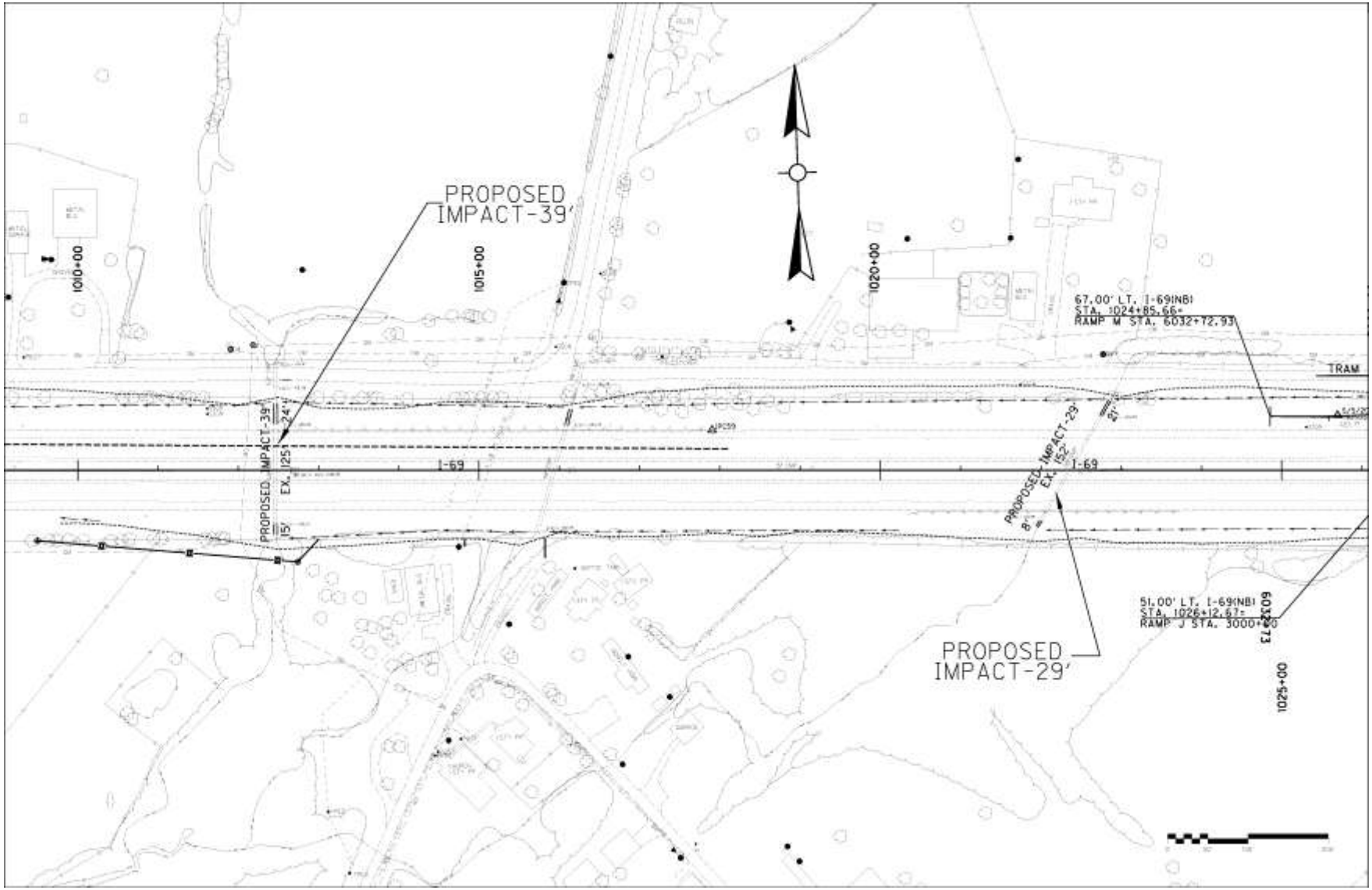
8. Activities that do not meet the conditions of this General Water Quality Certification require an Individual Section 401 Water Quality Certification.

9. Activities qualifying for coverage under this General Water Quality Certification are subject to the following conditions:

    - Erosion and sedimentation pollution control plans and Best Management Practices must be designed, installed, and maintained in effective operating condition at all times during construction activities so that violations of state water quality standards do not occur (401 KAR 10:031 Section 2 and KRS 224.70-100).
    - Sediment and erosion control measures, such as check-dams constructed of any material, silt fencing, hay bales, etc., shall not be placed within surface waters of the Commonwealth, either temporarily or permanently, without prior approval by the Kentucky Division of Water's Water Quality Certification Section. If placement of sediment and erosion control measures in surface waters is unavoidable, design and placement of temporary erosion control measures shall not be conducted in such a manner that may result in instability of streams that are adjacent to, upstream, or downstream of the structures. All sediment and erosion control devices shall be removed and the natural grade restored within the completion timeline of the activities.
    - Measures shall be taken to prevent or control spills of fuels, lubricants, or other toxic materials used in construction from entering the watercourse.
    - Removal of riparian vegetation in the utility line right-of-way shall be limited to that necessary for equipment access.
    - To the maximum extent practicable, all in-stream work under this certification shall be performed under low-flow conditions.

- Heavy equipment, e.g. bulldozers, backhoes, draglines, etc., if required for this project, should not be used or operated within the stream channel. In those instances in which such in-stream work is unavoidable, then it shall be performed in such a manner and duration as to minimize turbidity and disturbance to substrates and bank or riparian vegetation.
- Any fill shall be of such composition that it will not adversely affect the biological, chemical, or physical properties of the receiving waters and/or cause violations of water quality standards. If rip-rap is utilized, it should be of such weight and size that bank stress or slump conditions will not be created because of its placement.
- If there are water supply intakes located downstream that may be affected by increased turbidity and suspended solids, the permittee shall notify the operator when such work will be done.
- Should evidence of stream pollution or jurisdictional wetland impairment and/or violations of water quality standards occur as a result of this activity (either from a spill or other forms of water pollution), the KDOW shall be notified immediately by calling (800) 928-2380.

Non-compliance with the conditions of this general certification or violation of Kentucky state water quality standards may result in civil penalties.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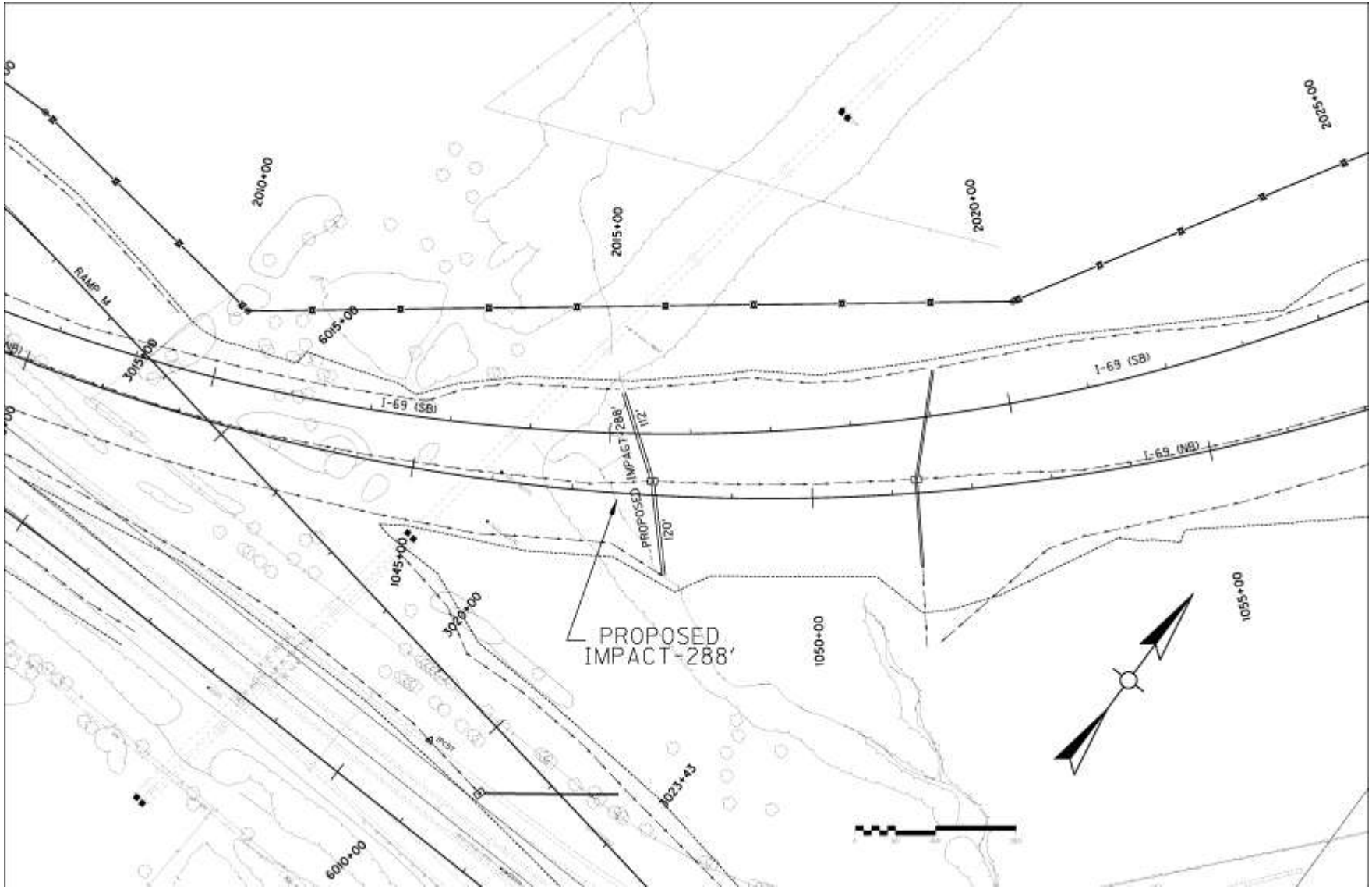
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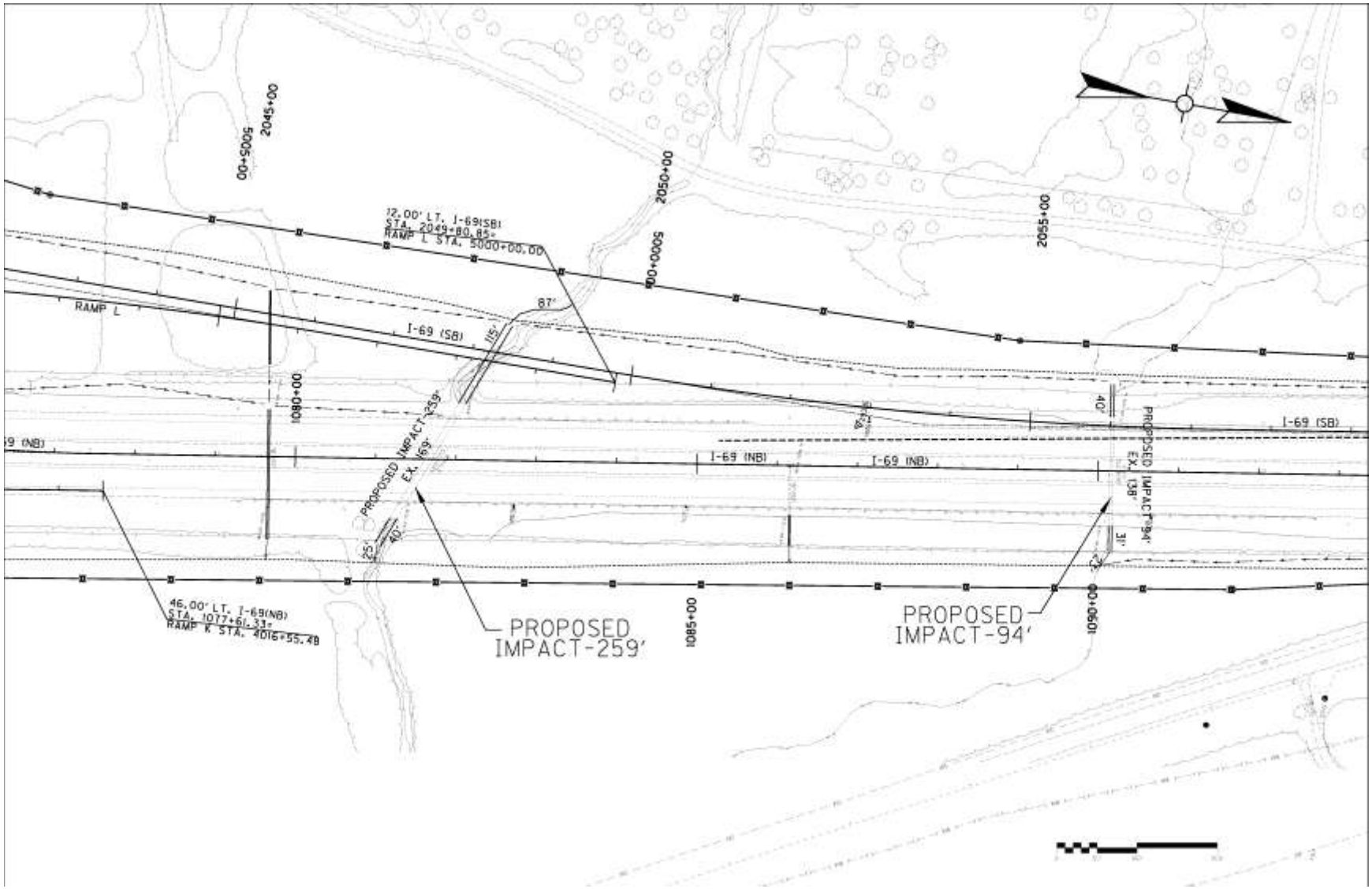
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Appendix O

UTILITY RELOCATION

12.1 GENERAL REQUIREMENTS

This Section establishes procedures and requirements for adjusting utilities, if deemed necessary, including such processes as coordination with utility owners, administration of the engineering, construction, and other activities necessary for utility adjustments, and required documentation.

The DBT may choose to relocate utilities if they determine that it would be of greater value to KYTC. The DBT shall be responsible for preparing and executing all agreements with the utility owners impacted by the project. Some utility adjustments may be performed by the utility owner with its own forces and/or contractors and consultants (i.e., utility owner-managed); all others shall be performed by the DBT with its own forces and/or contractors and consultants (subject to any approval rights required by the utility owner for those working on its facilities) (i.e., DBT-managed). The allocation of responsibility for the utility adjustment work between DBT and the utility owners shall be specified in the Utility Agreements executed by the DBT with the respective utility owner. All costs associated with the design, right-of-way (utility easement) and relocation of utilities for this project shall be the responsibility of the DBT. The DBT shall clearly demonstrate in the schedule prepared for the project how the utility relocation work is to be accomplished. No contract time extensions shall be granted to the DBT due to relocation of utilities for the project.

The DBT's obligations regarding reimbursement to utility owners for all costs of utility adjustment work shall be as set forth in the Utility Agreements prepared for the project by the DBT and in conformance with FHWA's *Program Guide for Utility Relocation and Accommodation for Federal-Aid Projects.* However, as per FHWA's *Program Guide for Utility Relocation and Accommodation for Federal-Aid Project,* any "betterments" to the utilities made as part of the relocation work are not eligible project expenses and shall not be included in the project costs. The DBT and the respective utility owner shall clearly demonstrate in the agreements prepared for the project how any "betterments" planned for the Utility facilities during the relocation work are paid for using non-project funds. The DBT shall be responsible for strictly adhering to this requirement. Should it be determined that project funds have been used for betterment of the utility facilities without prior approval by KYTC, an amount equal to the cost determined to be expended upon betterment of the utility facilities relocated for the project shall be deducted from the DBT's contract amount.

This Section does not address utility services to the project. Utility services to the project shall be the subject of separate agreements between the DBT and utility owners.

12.1.1 When Utility Adjustment is Required

A utility adjustment may be necessary to accommodate the project for either or both of the following reasons: (a) a physical conflict between the project and the utility; and/or (b) an incompatibility between the project and the utility based on constructability, future operation, safety, and maintenance. The physical limits of all utility adjustments shall extend as necessary to functionally replace the existing utility, whether inside or outside of the project right-of-way. Section 12.2.4.2 contains provisions that address the acquisition of easements for utilities to be installed outside of the project right-of-way.

Utilities may remain in their existing locations within the project right-of-way if the existing location shall not adversely affect the construction, operation, safety, maintenance and/or use of the project.

12.1.2 Certain Components of the Utility Adjustment Work

12.1.2.1 Coordination

The DBT shall communicate, cooperate, and coordinate with KYTC, the utility owners, and potentially affected third parties, as necessary for performance of the utility adjustment work. The DBT shall be responsible for preparing and securing execution of all necessary agreements.

Please be advised that the utility owner, as part of the review and comment for the Utility Agreement by KYTC, shall be responsible for obtaining an *Encroachment Permit* for all utility relocation work to be done within the public right-of-way. The DBT shall be responsible for all coordination needed to ensure that the *Encroachment Permits* and any other approvals needed from the appropriate regulatory agencies are received and approved by the proper authority prior to any utility relocation work within the public right-of-way taking place.

12.1.2.2 Betterments

The utility owner shall be reimbursed only for the cost of constructing the most economical type of facilities that satisfactorily meet the service requirements of the former facilities unless the utility owner specifies a lesser replacement. Please see KYTC Policy Manuals and FHWA's *Program Guide for Utility Relocation and Accommodation for Federal-Aid Projects* for additional requirements in this regard. If the utility owner proposes to include enhancements or "betterment," all costs associated with the betterment are the responsibility of the utility owner and shall not be included in the project cost. The DBT shall perform all coordination necessary to ensure that any utility betterment planned for the project by the utility owner is

adequately addressed in the utility agreement and properly documented in the encroachment permit prior to beginning the relocation.

12.1.2.3 Protection in Place

The DBT shall be responsible for Protection in Place of all utilities impacted by the project as necessary for their continued safe operation and structural integrity.

12.1.2.4 Abandonment and Removal

As applicable to work being performed by the DBT, the DBT shall make all arrangements and perform all work necessary to complete each abandonment or removal (and disposal) of a utility in accordance with the approved utility agreement. The DBT shall obtain governmental approvals and consent from the affected utility owner and any affected landowner(s) or shall confirm that the utility owner has completed these tasks.

12.1.2.5 Service Lines and Utility Appurtenances

As applicable to work being performed by the DBT, whenever required to accommodate construction, operation, maintenance, and/or use of the project, the DBT shall cause Service Line Adjustments and Utility Appurtenance Adjustments. On completion of these, the DBT shall cause full reinstatement of the roadway, including reconstruction of curb, gutter, sidewalks, and landscaping, whether the utility adjustment work is performed by the Utility Owner or by the DBT.

12.1.2.6 Early Adjustments (Not Applicable)

12.1.2.7 Agreements between the DBT and Utility Owners

Except as otherwise stated in this Section or in the Agreement, each utility adjustment shall be specifically addressed in a utility agreement. The DBT is responsible for preparing, negotiating, and obtaining execution by the utility owners, of all utility agreements (including preparing all necessary exhibits and information about the project, such as reports, plans, and surveys). A utility agreement is not required for any utility adjustment consisting solely of protection in place in the utility's original location within the project right-of-way, unless the utility owner is being reimbursed for costs incurred by it on account of such protection in place.

12.1.2.8 Utility Agreements

The DBT shall enter into one or more utility agreements with each affected utility owner to define the design, material,

construction, inspection, and acceptance standards and procedures necessary to complete utility adjustments, as well as to define the DBT's and the utility owner's respective responsibilities for utility adjustment costs and utility adjustment activities such as design, material procurement, construction, inspection, and acceptance. A utility agreement may address more than one utility adjustment for the same utility owner. Additional adjustments may be added to an existing utility agreements by a utility agreement amendment.

The DBT shall prepare each utility agreement using KYTCs standard form or a similar document approved by KYTC. Promptly following issuance of a notice to proceed, the DBT shall begin negotiations with each affected utility wwner to reach agreement on one or more utility agreements. The DBT shall use good faith efforts to finalize a utility agreement with each affected utility wwner within a reasonable time period after issuance of NTP. Each utility agreement (including the utility adjustment plans attached thereto) shall be subject to KYTC review and comment as part of the utility agreement /encroachment permit approval process.

12.1.2.9 Utility Agreement Amendments

Modification of an executed utility agreements or any component thereof shall be addressed using a utility agreement amendment. A utility agreement amendment may be used only when the allocation of responsibility for the utility adjustment work covered by that utility agreement amendment is the same as in the underlying utility agreement; otherwise, an additional utility agreement and new encroachment permit shall be required.

Each utility agreement amendment (including any utility adjustment alans attached thereto) shall be subject to KYTC approval as an amendment to the original encroachment permit.

12.1.3 Recordkeeping

The DBT shall maintain construction and inspection records in order to ascertain that utility adjustment work is accomplished in accordance with the terms and in the manner proposed on the approved utility adjustment plans and otherwise as required by the applicable utility agreement(s). The DBT may use the modified KYTC Utility Relocation Progress Report.

12.2 ADMINISTRATIVE REQUIREMENTS

12.2.1 Standards

All utility adjustment work shall comply with all applicable laws, agency *Encroachment Permit* requirements, this RFP, regulatory agency approvals, the applicable utility adjustment standards, and the requirements as set forth in the utility company standards and specifications.

12.2.2 Communications

12.2.2.1 Communication with Utility Owners: Meetings and Correspondence

The DBT is responsible for holding meetings and otherwise communicating with each utility owner as necessary to accomplish in a timely manner the utility adjustments necessary to construct the project. KYTC will participate in these meetings if requested by the utility owner or the DBT, or otherwise as deemed appropriate in order to facilitate the progress on the project.

At least five business days in advance of each scheduled meeting, the DBT shall provide notice and an agenda for the meeting separately to KYTC and the appropriate utility owner. The DBT shall prepare minutes of all meetings with utility owners and shall keep copies of all correspondence between the DBT and any utility owner. Copies of these meeting minutes shall be forwarded to KYTC for the project files within one week following the respective meeting.

12.2.3 Utility Adjustment Manager

The DBT shall provide a utility adjustment manager with appropriate qualifications and experience for the utility adjustment work required for this project.

The utility adjustment manager's (UM) primary work responsibility shall be the performance of all the DBT's obligations with respect to utility adjustments. The UM shall be authorized by the DBT to approve all financial and technical modifications associated with utility adjustments and modifications to the utility agreement.

12.2.4 Real Property Matters

The DBT shall provide the services described below in connection with existing and future occupancy of property by utilities.

12.2.4.1 Documentation of Existing Utility Property Interests

It shall be the DBT's responsibility to determine **all** existing utility property interest within the project right-of-way claimed by any utility owner.

12.2.4.2 Acquisition of Replacement Utility Property Interests

The DBT shall be responsible for working with each utility owner for acquiring any replacement utility property interests that are necessary for its utility adjustments. The DBT shall have the following responsibilities for each acquisition:

A. The DBT shall coordinate with, and provide all project information needed to each utility owner as necessary for the utility owner to identify any replacement utility property interests required for its utility adjustments.
B. If the DBT and/or DBT subcontractors assists a utility owner in acquiring a replacement utility property interest, the DBT shall ensure that the following requirements are met:
    a. The files and records must be kept separate and apart from all acquisition files and records for the project right-of-way.
    b. The items used in acquisition of replacement utility property interests (e.g., appraisals, written evaluations, and owner contact reports) must be separate from the purchase of the project right-of-way.
C. The DBT shall reimburse the utility owner for all replacement utility property interests required for its utility adjustments. No betterment in terms of property interest shall be paid for using project funds.

12.2.5 Documentation of Requirements

The DBT shall prepare, and obtain execution by the utility owner of (and record in the appropriate jurisdiction, if applicable), all agreements including all necessary exhibits and information concerning the project (e.g., reports, plans, and surveys). Each agreement shall identify the subject utility(ies) by the applicable *Encroachment Permit Number* and shall also identify any real property interests by parcel number or highway station number or by other identification acceptable to KYTC.

12.3 DESIGN

12.3.1 DBT's Responsibility for Utility Identification

The DBT bears sole responsibility for ascertaining, at its own expense, all pertinent details of utilities located within the project right-of-way or otherwise

affected by the project, whether located on private property or within an existing public right-of-way, and including all service lines.

12.3.2 Technical Criteria and performance Standards

All design plans for utility adjustment work, whether furnished by the DBT or by the utility owner, shall be consistent and compatible with the following:

A. The project as designed and constructed
B. Any utilities remaining in, or being installed in, the same vicinity
C. All applicable governmental approvals/permits
D. Private approvals of any third parties necessary for such work
E. KYTC Policies and Procedures as set forth in Kentucky's State Utility and Rail Guidance Manual and as specified in the approved utility agreement.

The DBT shall be responsible for validating that all utility adjustments performed as part of this project adhere to these criteria.

12.3.3 Utility Adjustment Plans

Utility adjustment plans, whether furnished by the DBT or by the utility owner, shall be signed and sealed by a registered Professional Engineer (PE), if required by the utility owner, regulatory agencies, or KYTC.

12.3.3.1 Plans Prepared by DBT

Where the DBT and the utility owner have agreed that the DBT shall furnish a utility adjustment design, the DBT shall prepare and obtain the utility owner's approval of plans, specifications, and cost estimates for the utility adjustment (collectively, "Utility Adjustment Plans") by having an authorized representative of the utility owner sign the plans as "reviewed and approved for construction." The Utility Adjustment Plans (as approved by the utility owner) shall be attached to the applicable utility agreement and estimate, which shall serve as the appropriate *Encroachment Permit* application submitted for KYTC approval. Please be advised that the utility company is ultimately responsible for execution of the utility agreement, regardless of who prepares the plans. The DBT is responsible for facilitating this process in a manner such that all requirements are adequately addressed and commitments fulfilled in accordance with all provisions set forth in the contract documents.

Unless otherwise specified in the applicable utility agreement(s), all changes to utility adjustment plans previously approved by the utility owner (excluding estimates, if the utility owner is not responsible for any costs) shall require written utility owner approval. The DBT shall transmit any KYTC comments to the

utility owner and shall coordinate any modification, re-approval by the utility owner, and re-submittal to KYTC as necessary to obtain KYTC approval, as applicable.

12.3.3.2 Plans Prepared by the Utility Owner

For all Utility Adjustment Plans to be furnished by a utility owner, the DBT shall coordinate with the utility owner as necessary to confirm compliance with the project plans, including possible changes being proposed by the DBT. Those utility adjustment plans shall be attached to the applicable utility agreement and estimate, which shall serve as the appropriate *Encroachment Permit* for KYTC approval. The DBT shall be responsible for coordination with the utility company to ensure that all KYTC comments to the utility owner are adequately addressed in the design and construction of the project, including, any modification, re-approval by the utility owner and re-submittal to KYTC as necessary to obtain KYTC approval.

12.3.3.3 Design Documents

Each proposed utility adjustment shall be shown in the design documents, regardless of whether the utility adjustment plans are prepared by the DBT or by the utility owner.

12.3.3.4 Certain Requirements for Underground Utilities

Casing as specified in accordance with the KYTC Permits Manual and the KYTC Utilities Manual shall be required for use on the project, where applicable.

12.3.3.5 Utility Agreement Submittals

Each utility adjustment shall be addressed in a utility agreement prepared jointly by the DBT and the utility owner and submitted to KYTC for review and comment. The DBT shall coordinate with the utility owner to prepare all components of each utility agreement. Completion of the review and approval process for the applicable utility agreement, as well as issuance of any required KYTC approvals, shall be required before the start of construction for the affected utility adjustment work.

In its sole discretion, KYTC has the authority to approve the placement of utilities within project right-of-way. It shall be the responsibility of the DBT to work with the utility owner to prepare all required documentation to be included with each subsequent utility agreement submittal.

The DBT shall arrange for the utility owner to execute each utility agreement and subsequent *Encroachment Permit* required to do the work on the Project.

Provisions governing the procedure for and timing of utility agreement submittals are in Section 12.5 (Deliverables).

All utility adjustments covered by the same initial utility agreement may be addressed in a single *Encroachment Permit.* Please refer to the KYTC Encroachment Permit Manual for additional information. In general, the utility agreement *package* required for each utility relocation shall include*:*

A. *Encroachment Permit* application (KYTC).
B. Utility agreement (executed between the DBT and the Utility Owner).
C. Utility adjustment plans and specifications as referenced in the utility agreement.
D. Roadway plans and profile and/or structure plans and X-sections clearly indicating existing and proposed utility location. For utilities deemed acceptable to remain in place by the utility owner and the DBT, the location of the utility, both horizontally and vertically, along with any special construction requirements or protection needed to prevent damage to the facility during construction of the project, must be clearly defined.
E. Utility relocation cost estimate as defined in the utility agreement including definition and separation of any betterment proposed.
F. Six complete utility agreement *packages* as described herein or as directed by KYTC. Once review and comment is complete, three copies shall be returned to the DBT and utility company for their use.

12.4 CONSTRUCTION

12.4.1 General Construction Criteria

All utility adjustment construction performed by the DBT shall conform to the requirements listed below. In addition, the DBT is responsible for verifying that all utility adjustment construction performed by each utility owner conforms to the requirements described below. In case of nonconformance, the DBT shall cause the utility owner (and/or its contractors, as applicable) to complete all necessary corrective work or to otherwise take such steps as are necessary to conform to these requirements.

A. All criteria identified in Section 12.3 (DESIGN).

B. The utility adjustment plans and agency requirements included in the *Encroachment Permit* approved by KYTC.
C. Approved utility agreement amendments.
D. All project safety and environmental requirements.
E. Erosion prevention and sediment control requirements.
F. Easement acquisition procedures.

12.4.2 Inspection of Utility Owners Construction

The DBT shall set forth procedures for inspection of all utility adjustment work performed by utility owners (and/or their contractors) to verify compliance with the applicable requirements described in Section 12.4.1 (General Construction Criteria). The inspection shall validate that the utility work adheres to the above criteria, is as designed, and conforms to the approved utility agreement and any approved amendments.

12.4.2 Scheduling Utility Adjustment Work

The utility adjustment work (other than construction) may begin at any time following issuance of an encroachment permit number. The DBT shall not arrange for any utility owner to begin any demolition, removal, or other construction work for any utility adjustment until all of the following conditions are satisfied:

A. The utility adjustment is covered by an executed utility agreement (and any conditions to commencement of such activities that are included in the utility agreement have been satisfied);
B. Availability and access to affected replacement utility property interests or public right-of-way have been obtained.
C. If any part of the construction work for the utility adjustment shall affect the project right-of-way, then approvals from the KYTC shall be received.
D. The review and comment process has been completed and required approvals have been obtained for the *Encroachment Permit* covering the utility adjustment.
E. All governmental and permitting approvals necessary for the utility adjustment construction have been obtained, and any pre-construction requirements contained in those approvals have been satisfied.
F. The DBT has verified that all utility adjustments address the project needs and are not in conflict with one another.
G. The DBT has conducted a preconstruction joint utility meeting to schedule and plan all utility owner adjustments. KYTC shall be invited to attend this meeting.
H. All other conditions to that work stated in the RFP have been satisfied.

12.4.3 Standard of Care Regarding Utilities

The DBT shall carefully and skillfully carry out all work impacting utilities and shall mark, support, secure, exercise care, and otherwise act to avoid damage to

utilities. At the completion of the work, the condition of all utilities shall be equivalent to their use and function prior to construction.

12.4.4 Emergency Procedures

The DBT shall provide emergency procedures with respect to utility adjustment work. The DBT shall obtain emergency contact information from, and establish emergency procedures with, each utility owner.

12.4.5 Utility Adjustment Field Modifications

The DBT shall establish a procedure to be followed if a utility adjustment field modification is proposed by either the DBT or a utility owner, after the utility agreement (which includes the utility adjustment plans) has been approved. The procedure shall contain, at minimum, the following processes:

A. The utility owner's review and approval of a utility adjustment field modification proposed by the DBT, or the DBT's review and approval of a utility adjustment field modification proposed by the Utility Owner.
B. Submittal of plans for the proposed utility adjustment field modification to KYTC for its approval.
C. Transmittal of utility adjustment field modifications to the appropriate construction field personnel.
D. Inclusion of any utility adjustment field modifications in the record drawings for the Project.

The DBT shall cause the procedure to be followed for all utility adjustment field modifications, whether the construction is performed by the DBT or by the utility owner.

12.4.6 Switchover to New Facilities

After a newly adjusted utility has been accepted by the utility owner and is otherwise ready to be placed in service, the DBT shall coordinate with the utility owner regarding the procedure and timing for placing the newly adjusted utility into service and terminating service at the utility being replaced.

12.4.7 Record Drawings

The DBT shall provide record drawings to each utility owner for utilities adjusted by the DBT, in accordance with the applicable utility agreement(s).

The DBT shall provide As-Built Record Drawings to KYTC (regardless of whether design and/or construction of the subject utilities was furnished or performed by the DBT or by the utility owner). These drawings shall show the location of, and label as such, all abandoned utilities and shall show and label all other utilities, whether remaining in place or relocated, located within the project right-of-way, or otherwise impacted by the project. The DBT shall provide the record drawings for each adjustment to KYTC not later than 90 days after the utility owner accepts the adjustment.

12.4.8 Maintenance of Utility Service

All utilities shall remain fully operational during all phases of construction, except as specifically allowed and approved in writing by the utility owner. The DBT shall schedule utility adjustment work in order to minimize any interruption of service, while at the same time meeting the project schedule and taking into consideration seasonal demands.

12.4.9 Traffic Control

The DBT shall be responsible for the coordination of all traffic control made necessary by the utility adjustment work, whether performed by the DBT or by the utility owner. Traffic control for utility adjustments shall be coordinated with, and subject to approval by, the local agency(ies) with jurisdiction. Traffic control shall comply with the guidelines of the MUTCD and of Section 14 (Maintenance of Traffic) of this RFP document. Delegation of responsibilities regarding who performs the traffic control operations during the utility adjustment work shall be included in the utility agreement.

12.4.10 Unknown Utilities

If during construction, the DBT uncovers a utility facility that the respective utility company did not know existed, the DBT is to bring this to KYTC's attention immediately. KYTC will review the situation with the respective utility company and the DBT to determine the best course of action to minimize impacts to the utility facility and the project schedule. If it is determined by KYTC that establishing the presence of the unknown utility was not possible by the DBT during the procurement phase, KYTC will consider this a changed condition and work with the DBT and the utility company to make the appropriate adjustments for cost as part of a change order. The project schedule shall only be revised if it can be demonstrated to the satisfaction of the KYTC that the unknown utility conflict has materially affected the critical path for the project.

12.5 DELIVERABLES

The DBT shall provide all submittals described in this section to meet the project schedule, taking into account KYTC-designated review and response time. For this Project, KYTC requires 10 business days for review, comment, or approval of Encroachment Permits, provided that all required documentation is included with the *Encroachment Permit* submittal. At the sole discretion of KYTC, if it is determined that additional information is required in order to review and process the *Encroachment Permit* for approval, the DBT shall revise the encroachment permit application to include the required revisions or missing information as identified by KYTC, and said agency shall have 10 business days from the date of re-submittal for review and comment.

12.5.1 DBT's Utility Tracking Report and Project Coordination Requirements

The DBT shall maintain a utility tracking report in tabular form, listing all utilities located within the project right-of-way or otherwise potentially affected

by the project. The utility tracking report shall include sufficient information regarding all factors needed to reasonably determine the status of each utility to be relocated as part of the project. The DBT shall submit the utility tracking report to KYTC and update it monthly. The DBT shall facilitate, at a minimum, quarterly utility company status meetings to discuss any project issues and to update KYTC on the progress being made on the project.