

ORDINANCE NO. 2021-02

**ORDINANCE REGULATING APPLICATIONS TO ALTER U.S. ARMY CORPS OF ENGINEERS CIVIL WORKS
PROJECTS PURSUANT TO 33 USC 408**

WHEREAS, THIS ORDINANCE REPLACES ORDINANCE 1-2007 executed at the regular meeting of the Board of Commissioners on the 4th day of September 2007; and

WHEREAS, the Wood River Levee System (the "Levee System"), in Madison County, Illinois was constructed and authorized by Section 4 of the Flood Control Act of 1938, Public Law 75-761, as modified by Section 204 of the Flood Control Act of 1965, Public Law 89-298, as well as Section 1001(20) of the Water Resources Development act of 2007, Public Law 110-114; and

WHEREAS, the Wood River Drainage and Levee District ("District") acknowledges that certain segments and features of "Levee System" were constructed on lands owned by entities other than the District and easements exist for the operation, maintenance, inspection, and to construct improvements; and

WHEREAS, it has come to the attention of the District that corporations, municipalities, individuals or other entities may from time to time request to alter a portion of the federally-constructed and locally owned and operated Levee System, or to perform other work which may impact the Levee System; and

WHEREAS, Federal law requires that individuals making alterations to, or temporarily or permanently occupying or using any US Army Corps of Engineers ("USACE") federally-authorized Civil Works project under 33 U.S.C. Section 408 ("Section 408"), submit documents the USACE for approval; and

WHEREAS, it is necessary for the District to provide for a process of suitable controls, so that the District may know and ascertain the type of alteration or work requested, as well as products which will be transmitted or use made as a result of the said activities, as well as the construction area necessary for the same together with the damage, inconvenience and other elements to the land of the Levee System and the inhabitants thereof, as well as the length of time that shall be involved. As a result, the Commissioners have ascertained that it is necessary to provide a uniform process and procedure for the permitting of all work **within 500 linear feet of the landside and riverside toes of the Levee System.**

Requests for such permits are necessary for alterations made to the federal project whether the alteration is on property owned by the District or a private entity;

NOW THEREFORE, BE IT ORDAINED BY THE WOOD RIVER DRAINAGE AND LEVEE DISTRICT,
AS FOLLOWS:

- A.** That each entity, be it a corporation, municipality, individual or otherwise, that seeks to alter a portion of the Levee System or perform work that involves any encroachment of or easement petition to any land owned, controlled, or operated by the District, shall first submit an application to the District, including, but not limited to the following information:

 - i.** A detailed description of the proposed alteration or work
 - ii.** The purpose/need for the work.
 - iii.** A written statement of whether the applicant will require the use of District-owned real estate
 - iv.** The anticipated start date and anticipated duration of work
 - v.** Engineering plans, plats, figures and/or specifications
 - vi.** .kmz or GIS file of the project area
 - vii.** Each application shall be accompanied by payment from the applicant in the amount of **\$500.00**. This non-refundable fee will compensate the District for reviews performed by engineering and legal professionals as well as the District’s administrative staff.




- B.** If or when such work is approved by the District, and a permit is granted, all alterations or work must be completed within one (1) year of the permit date. If the alteration is not complete in this timeframe, an additional, non-refundable fee of **\$500.00** will be assessed to the applicant to renew the permit.


- C.** Any alteration or work that results in a permanent encroachment such as a structure, pipeline, cable, overhead wire or any other feature not previously permitted under 33 USC 408 will require an annual inspection fee of **\$1,000.00** per year. Said annual fee shall be due on the anniversary date of the original permit approving the work on or near the Levee System, and will be required throughout the life of the feature until the feature is abandoned. Note: Abandonment of permitted alterations or encroachments will require a new permit application, fee, and review by the District and the USACE.

- D. Any alteration or work that necessitates a permanent or temporary easement to be granted to the applicant (including but not limited to easements for encroachments described in paragraph C, above, easements for access, ingress or egress, or any other easement) will be negotiated separately based on the value of parcels in question. An annual fee may be required by the District for the granting of such easement, and that fee will be an additional fee, over and above the application fees and annual inspection fees described above.
- E. Following an application for alterations or work as described in this ordinance, and at the conclusion of the District's review, if the District agrees to allow the work or alteration, permission will be provided via a Statement of No Objection (SNO) that the applicant must then forward to the USACE for review. The following documents are incorporated into this Ordinance and will be forwarded to applicant upon request.
- i. Section 408 Submittal Package Guide, published by the St. Louis District, April 2019
 - ii. EC 1165-2-220 - POLICY AND PROCEDURAL GUIDANCE FOR PROCESSING REQUESTS TO ALTER US ARMY CORPS OF ENGINEERS CIVIL WORKS PROJECTS PURSUANT TO 33 USC 408
 - iii. ER 1110-1-1-1807 – DRILLING IN EARTH EMBANKMENT DAMS AND LEVEES
- F. The District reserves the right to waive any and all fees mandated by this ordinance.

PASSED BY ACTION OF THE WOOD RIVER DRAINAGE AND LEVEE DISTRICT BOARD OF COMMISSIONERS, at its regular meeting on _____

This 5th day of March 2021.

<u>NAME OF COMMISSIONER</u>	<u>AYE</u>	<u>NAY</u>
<u></u>	<u>X</u>	<u>—</u>
<u></u>	<u>X</u>	<u>—</u>
<u></u>	<u>✓</u>	<u>—</u>



President, Board of Commissioners
Wood River Drainage and Levee District

ATTEST:



Secretary

Wood River Drainage and Levee District

WOOD RIVER DRAINAGE AND LEVEE DISTRICT
APPLICATION TO ALTER, OCCUPY OR PERFORM WORK WHICH MAY EFFECT
U.S. ARMY CORPS OF ENGINEERS CIVIL WORKS PROJECTS
PURSUANT TO 33 USC 408

Date: _____ Application No. (Office Use): _____

Applicant Information

Legal Name of Organization: _____

State of Incorporation: _____

Street Address: _____

City, State, Zip: _____

Contact Person and Title: _____

Telephone: _____

Email: _____

Insurance Agent Name, Address, Telephone: _____

Contractor Information (If different from Applicant)

Legal Name of Organization: _____

State of Incorporation: _____

Street Address: _____

City, State, Zip: _____

Contact Person and Title: _____

Telephone: _____

Email: _____

Insurance Agent Name, Address, Telephone: _____

Description of the Proposed Alteration / Work

Purpose/Need for the Proposed Alteration / Work

Additional Project Information

Entity for whom the proposed work is being performed: _____

Anticipated start date: _____

Anticipated duration of the project: _____

Will the project be constructed / performed on District property: _____

Will excavation occur as part of this project: _____

If so, will this be by hand or machine: _____

If excavation will occur, provide the JULIE Dig Number: _____

Will any overhead electric lines, underground electric lines, electric sub-stations or other electric facilities be installed? If yes, then fully describe voltage, and indicate whether poles or guy wires shall be installed and/or whether the proposed installation is near a street or road crossing:

Will any overhead telecommunications line or cable, underground telecommunications line or cable, switch or junction boxes, or other telecommunication facilities be installed? If yes, then fully describe facilities, and indicate whether poles or guy wires shall be installed and/or whether the proposed installation is near a street or road crossing:

Will an underground or over-ground pipeline be installed? If yes, fully describe the pipeline facilities, and indicate whether any surface appurtenances shall be installed, the material to be conveyed with the pipeline, and whether the proposed installation is near a street or road crossing:

Will a permanent encroachment exist when the project is complete? _____

General Terms and Conditions

Any Application to Alter U.S. Army Corps of Engineers Civil Works Projects Pursuant to 33 USC 408 is subject to the following terms and conditions, and by submitting this application, the Applicant expressly acknowledges these terms and conditions, and understands and acknowledges that any permit granted will be subject to these terms and conditions.

Section 1 – DEFINITIONS

- A.** "Applicant" means the entity, company, agency or municipality submitting this Application, and their officers, directors, agents, and employees.
- B.** "Owner" means the Wood River Drainage and Levee District, and its officers, directors, agents and employees, but only if the application is granted.
- C.** "Permit" means an alteration permit granted by the U.S. Army Corps of Engineers through the non-federal sponsor, the Wood River Drainage and Levee District. Permits shall not be transmitted to another entity without the express written consent of the District.
- D.** "Owner", "WRDLD" or "District" means the Wood River Drainage and Levee District.
- E.** "USACE" means the U.S. Army Corps of Engineers.
- F.** "Facilities" means equipment placed on the Property, including but not limited to, electric and communication line or lines consisting of towers, poles, guys, anchors, wires, cables, conduits, fixtures and other appurtenances thereto, including transformers, and natural gas piping, hardware, valves, and other appurtenances thereto, pipes and or lines of any kind, rails and or roads or driveways of any kind, and all related equipment, structures, materials and work.

Section 2 – LIMITATION AND SUBORDINATION OF RIGHTS GRANTED

- A.** Any permit granted is subject and subordinate to the prior and continuing right and obligation of Owner to use and maintain its entire property including the right and power of Owner to construct, maintain, repair, renew, use, operate, change, modify or relocate real property or equipment, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by Owner without liability to Applicant or to any other party for compensation or damages.
- B.** Any Permit granted is also subject to all outstanding superior rights (including those in favor of applicants and lessees of District property) and the right of Owner to renew and extend the same, and is made without covenant of title or for quiet enjoyment. It shall be Applicant's sole obligation to obtain such additional permission, license and grants necessary on account of any such existing rights.
- C.** Any Permit may be revoked or modified at any time, with or without cause, by Owner. Owner maintains the sole right and ability to remove anyone from Owner's property, for any behavior, acts, omissions or other condition deemed by Owner to merit removal from the property.

Section 3 – ENGINEERING REQUIREMENTS; PERMITS

- A.** Applicant's facilities and work will be designed, constructed, operated, maintained, repaired, renewed, modified, reconstructed, removed, or abandoned in place on District property by Applicant or its contractor to Owner's satisfaction and in strict conformity with: (i) Owner's

current engineering standards and specifications, (ii) such other additional safety standards as Owner, in its sole discretion, elects to require, and (iii) all applicable laws, rules, and regulations, including any applicable USACE regulations and enactments (collectively, "Laws"). If there is any conflict between any applicable laws or regulations, the most restrictive will apply.

- B.** Applicant shall keep the soil over Applicant's Facilities thoroughly compacted and maintain the grade over and around Applicant's Facilities even with the surface of the adjacent ground.
- C.** If needed, Applicant shall secure, at Applicant's sole cost and expense, any and all necessary permits required to perform any work on Applicant's Facilities.
- D.** Applicant acknowledges that Owner follows OSHA and IDOL safety standards, and will document issues and/or contact relevant authorities if Owner suspects violations of those standards by Applicant's employees or agents.

Section 4 – NOTICE OF COMMENCEMENT OF WORK; EMERGENCIES

- A.** Applicant and its contractors are strictly prohibited from commencing any work associated with Applicant's Facilities and work without a permit. Upon Owner's approval, Applicant shall contact Owner at least one calendar week before commencement of any work on Applicant's Facilities.
- B.** If, at any time, an emergency arises involving Applicant's Facilities, Applicant or its contractor shall immediately contact the District and advise them of same.

Section 5 – SAFETY

- A.** Safety of personnel, property, and the public is of paramount importance in the prosecution of any work on District property performed by Applicant or its contractor. Applicant shall be responsible for initiating, maintaining and supervising all safety operations and programs in connection with any work on Applicant's Facilities.
- B.** Applicant shall keep the job site on District Property free from safety and health hazards and ensure that their employees are competent and adequately trained in all safety and health aspects of the work.
- C.** Applicant represents and warrants that all parts of Applicant's Facilities within and outside of the limits of District Property will not interfere whatsoever with the constant, continuous, and uninterrupted use of the property, and facilities of Owner, and nothing shall be done or suffered to be done by Applicant at any time that would in any manner impair the safety thereof. Included in this provision is the understanding that Applicant will not block any roadway such as to impair emergency vehicle access.
- D.** Owner's operations and work performed by Owner's personnel may cause delays in Applicant's or its contractor's work on Applicant's Facilities. Applicant accepts this risk and agrees that Owner shall have no liability to Applicant or any other person or entity for any such delays. Applicant must coordinate any work on District Property by Applicant or any third party with Owner's Field Representatives in strict compliance with the "NOTICE OF COMMENCEMENT OF WORK; EMERGENCIES" Section of this Ordinance.
- E.** Applicant may use unmanned aircraft systems ("UAS") to inspect Applicant's Facilities only upon the prior authorization from and under the direction of Owner. Applicant represents and warrants that its use of UAS on District Property will comply with all applicable laws, rules and regulations,

including any applicable Federal Aviation Administration regulations and enactments pertaining to UAS.

Section 6 – PROTECTION OF THIRD-PARTY UTILITIES AND FACILITIES

- A.** Other parties' utility equipment and/or Facilities, such as gas lines, electrical lines, or fiber optic cable systems may be buried on District Property, placed on the property, or passing over the property. (Collectively, "Third Party Utilities and Facilities.") Protection of the Third Party Utilities and Facilities is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits.
- B.** In addition to, and notwithstanding the foregoing, Applicant shall not commence any work on District property until Applicant has contacted Illinois' Joint Utility Locating Information for Excavators ("JULIE") system, and confirmed that all work may be conducted without endangering any other utilities in the area.

Section 7 – APPLICANT'S PAYMENT OF EXPENSES

- A.** Applicant shall bear the entire cost and expense of the design, construction, maintenance, modification, reconstruction, repair, renewal, revision, relocation, or removal of Applicant's Facilities.

Section 8 – MODIFICATIONS TO APPLICANT'S FACILITIES

- A.** This grant of a Permit is subject to Owner's safe and efficient operation of its property, and continued use and improvement of District Property (collectively, "District Use"). Accordingly, Applicant shall, at its sole cost and expense, modify, reconstruct, repair, renew, revise, relocate, or remove (individually, "Modification", or collectively, "Modifications") all or any portion of Applicant's Facilities as Owner may designate or identify, in its sole discretion, in the furtherance of Owner's Use.
- B.** Upon any Modification of all or any portion of Applicant's Facilities to another location on District Property, Owner and Applicant shall execute a Supplemental Agreement to the original Permit to document the Modification(s) to Applicant's Facilities on District Property. If the Modifications result in Applicant's Facilities moving off of District Property, this Agreement will terminate upon Applicant's completion of such Modification(s). Any such Modification(s) off of District Property will not release Applicant from any liability or other obligation of Applicant arising prior to and upon completion of any such Modifications to the Applicant's Facilities.

Section 9 – RESTORATION OF WRDLD PROPERTY

- A.** In the event Applicant, in any manner moves or disturbs any property of Owner in connection with the construction, maintenance, modification, reconstruction, repair, renewal, revision, relocation, or removal of Applicant's Facilities, then, Applicant shall, as soon as possible and at Applicant's sole cost and expense, restore Owner's property to the same condition as the same were before such property was moved or disturbed.

Section 10 – INDEMNITY

A. Additional Definitions. As used in this Section:

- i. "Loss" includes claims, suits, taxes, loss, damages (including punitive damages, statutory damages, and exemplary damages), costs, charges, assessments, judgments, settlements, liens, demands, actions, causes of action, fines, penalties, interest, and expenses of any nature, including court costs, reasonable attorneys' fees and expenses, investigation costs, and appeal expenses.

B. Applicant shall release, defend, indemnify, and hold harmless Owner from and against any and all Loss, even if groundless, fraudulent, or false, that directly or indirectly arises out of or is related to Applicant's construction, maintenance, modification, reconstruction, repair, renewal, revision, relocation, removal, presence, use, or operation of Applicant's Facilities, including, but not limited to, any actual or alleged:

- i. Bodily harm or personal injury (including any emotional injury or disease) to, or the death of, any person(s), including, but not limited to, Applicant, Owner, any telecommunications company, or the agents, contractors, subcontractors, sub-subcontractors, or employees of the foregoing;
- ii. Damage to or the disturbance, loss, movement, or destruction of District Property, including loss of use and diminution in value, including, but not limited to, any telecommunications system(s) or fiber optic cable(s) or electrical line(s) or pipe(s) on or near District Property, any property of Applicant or Owner, or any property in the care, custody, or control of Applicant or Owner;
- iii. Removal of person(s) from District Property;
- iv. Any delays or interference with track or District's Use caused by Applicant's activity(ies) on District Property, including without limitation the construction, maintenance, modification, reconstruction, repair, renewal, revision, relocation, or removal of Applicant's Facilities or any part thereof, any activities, labor, materials, equipment, or machinery in conjunction therewith;
- v. Right(s) or interest(s) granted pursuant to this Agreement;
- vi. Contents escaping from Applicant's Facilities, including without limitation any actual or alleged pollution, contamination, breach, or environmental Loss;
- vii. Applicant's breach of this Agreement or failure to comply with its provisions, including, but not limited to, any violation or breach by Applicant of any representations and warranties Applicant has made in this Agreement; and
- viii. Violation by Applicant of any law, statute, ordinance, governmental administrative order, rule, or regulation, including without limitation all applicable federal rules and statutes relating to the U.S. Army Corps of Engineers.

C. THE FOREGOING OBLIGATIONS SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW FOR THE BENEFIT OF OWNER TO LOSSES CAUSED BY, ARISING FROM, RELATING TO, OR RESULTING FROM, IN WHOLE OR IN PART, THE NEGLIGENCE OF OWNER, AND SUCH NEGLIGENCE OF OWNER SHALL NOT LIMIT, DIMINISH, OR PRECLUDE APPLICANT'S OBLIGATIONS TO OWNER IN ANY RESPECT. NOTWITHSTANDING THE FOREGOING, SUCH OBLIGATION TO INDEMNIFY OWNER SHALL NOT APPLY TO THE EXTENT THE LOSS IS CAUSED BY THE SOLE, ACTIVE AND DIRECT NEGLIGENCE, GROSS NEGLIGENCE, OR WILLFUL MISCONDUCT OF OWNER AS DETERMINED IN A FINAL JUDGMENT BY A COURT OF COMPETENT JURISDICTION.

Section 11 – LONG-TERM RIGHT OF ENTRY; TERMINATION; REMOVAL OF APPLICANT’S FACILITIES

- A. Applicant acknowledges that the Permit granted by approval of this Application shall be only for the duration of the work / use described in the application, and shall not constitute a long-term license, or property interest, that survives after the duration of that project. Applicant acknowledges that if any Facility or other operation is to be installed or constructed which will require a long-term right of entry (such as, for example, a permanent power transmission or cable crossing, or a permanent pipeline or encroachment), then the long-term license to operate such a facility or operation over, under, through, across or upon District property will be separately-negotiated and bargained for, and will carry with it a separate, yearly fee. **Applicant expressly acknowledges that the grant of this Permit DOES NOT constitute or guarantee such a long-term right of entry.**
- B. If Applicant does not use the Permit herein granted on Applicant's Facilities for one (1) year, or if Applicant continues in default in the performance of any provision of the Permit for a period of thirty (30) days after written notice from Owner to Applicant specifying such default, Owner may, at its sole discretion, terminate the Permit by written notice to Applicant at the address provided in the applicant.
- C. Following Applicant's completion of the Restoration Work, Applicant shall provide a written certification letter to Owner which certifies that the Restoration Work has been completed in accordance with the Consent Document. Applicant shall report to governmental authorities, if required by law, and notify Owner immediately if any environmental contamination is discovered during Applicant's performance of the Restoration Work. Upon discovery, the Applicant shall initiate any and all removal, remedial and restoration actions that are necessary to restore the property to its original, uncontaminated condition. Applicant shall provide written certification to Owner that environmental contamination has been remediated and the property has been restored in accordance with Owner's requirements. Upon Owner's receipt of Applicant's restoration completion certifications, this Agreement will terminate.
- D. In the event that Applicant fails to complete any of the Restoration Work, Owner may, but is not obligated, to perform the Restoration Work. Any such work actually performed by Owner will be at the cost and expense of Applicant. In the event that Owner performs any of the Restoration Work, Applicant shall release Owner from any and all Loss (defined in the "INDEMNITY" Section of this document) arising out of or related to Owner's performance of the Restoration Work.
- E. Termination of this Agreement for any reason will not affect any of rights or obligations of the parties which may have accrued, or liabilities or Loss (defined in the "INDEMNITY" Section of this document), accrued or otherwise, which may have arisen prior to such termination.

Section 12 – INSURANCE REQUIREMENTS

- A. Applicant acknowledge and agree that Applicant will (1) procure and maintain at its sole cost and expense, or (2) require its Contractor(s) to procure and maintain, at their sole cost and expense, the following insurance coverage:
 - i. Commercial General Liability Insurance. Commercial General Liability Insurance must contain broad form contractual liability covering the indemnification provision contained in this Agreement and broad form property damage coverage with a combined single limit

of a minimum of \$5,000,000 each occurrence and an aggregate limit of at least \$10,000,000 applying to each annual period. If the aforementioned required minimum limits can only be met when applying an umbrella/excess liability policy, the umbrella/excess liability policy must follow the form of the underlying policy and be extended to “drop down” to become primary in the event the primary limits are reduced or the aggregate limits are exhausted. Coverage must be purchased on a post-2013 ISO occurrence form or equivalent and include coverage for, but not limited to the following:

- i. Bodily Injury (including death) and Property Damage; ii. Personal Injury and Advertising Injury; iii. Fire legal liability; iv. Products and completed operations; and v. Terrorism coverage. WRDLD must be named as an additional insured on the CGL liability insurance policy.
- ii. Business Automobile Coverage Insurance. Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a limit of not less \$2,000,000 for each accident, and coverage must include liability arising out of any auto (including owned, hired, and non-owned autos).
- iii. Workers' Compensation and Employers' Liability Insurance. Coverage must include but not be limited to:
 - Applicant’s statutory liability under the workers' compensation laws of the state(s) affected by this Agreement.
 - Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.
 - If Applicant is self-insured, evidence of state approval and excess workers' compensation coverage must be provided.
- iv. Environmental Liability Insurance. Environmental Legal Liability Insurance (ELL) applicable to bodily injury, property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed, cleanup costs, and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims, or compliance with statute, all in connection with any loss arising from the insured’s performance under this Agreement. Except with respect to the limits of insurance, and any rights or duties specifically assigned to the first named insured, this insurance must apply as if each named insured were the only named insured; and separately to the additional insured against which claim is made or suit is brought. Coverage shall be maintained in an amount of at least \$2,000,000 per loss, with an annual aggregate of at least \$4,000,000.
- v. Applicant warrants that any retroactive date applicable to ELL insurance coverage under the policy is the same as or precedes the Effective Date of this Agreement, and that continuous coverage will be maintained for a period of five (5) years beginning from the time the work under this Agreement is completed or if coverage is cancelled for any reason the policies extended discovery period, if any, will be exercised for the maximum time allowed.
- vi. “All Risk” Property Insurance. Standard “all-risk” property insurance, insuring Contactor’s property of every kind and description and of persons claiming by or through Contractor against those risks normally encompassed in an “all-risk” policy, including, but not limited

to, (i) loss or damage by fire; (ii) loss or damage from such other risks or hazards now or hereafter embraced by an "Extended Coverage Endorsement;" (iii) loss for flood if the area/property upon which Contractor is working is a designated flood or flood insurance area; and (iv) such other risks as a reasonably prudent owner of similar property in the locality where the work area is located would normally insure against. Such insurance shall provide for the payment of full replacement cost in the event of a total destruction of Contractor's property.

- vii.** Umbrella or Excess Insurance. If Applicant utilizes umbrella or excess policies, and these policies must "follow form" and afford no less coverage than the primary policy.

B. Other Requirements

- i.** All policy(ies) required above (except business automobile, workers' compensation and employers' liability) must include Owner as "Additional Insured" using ISO Additional Insured Endorsement CG 20 26 (or substitute form(s) providing equivalent coverage). The coverage provided to Owner as additional insured shall not be limited by Applicant's liability under the indemnity provisions of this Agreement. BOTH OWNER AND APPLICANT EXPECT THAT OWNER WILL BE PROVIDED WITH THE BROADEST POSSIBLE COVERAGE AVAILABLE BY OPERATION OF LAW UNDER ISO ADDITIONAL INSURED FORM CG 20 26.
- ii.** Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this Agreement, or (b) all punitive damages are prohibited by all states in which this Agreement will be performed.
- iii.** Applicant waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Owner and its agents, officers, directors and employees for damages covered by the workers' compensation and employers' liability or commercial umbrella or excess liability obtained by Applicant required in this Agreement, where permitted by law. This waiver must be stated on the certificate of insurance.
- iv.** All insurance policies must be written by a reputable insurance company acceptable to Owner or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the work is to be performed.
- v.** The fact that insurance is obtained by Applicant will not be deemed to release or diminish the liability of Applicant, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Owner from Applicant or any third party will not be limited by the amount of the required insurance coverage.