PERFORMANCE CONTRACTING INC
16047 West 110th Street, Lenexa, Kansas 66219
Telephone: 913-928-2801 Fax: 913-928-2901

U.S. Nuclear Regulatory Commission
ATTN: Document Control Desk
Washington, DC 20555-0001

March 25, 2009
Document ID: PCI-6016-02.01

Subject: **REQUEST FOR WITHHOLDING PROPRIETARY INFORMATION FROM PUBLIC DISCLOSURE PURSUANT TO 10 CFR 2.390**
Performance Contracting, Inc.
Suction Flow Control Device (SFCD) Technology Documents and Related Reports

Dear Sir:

Performance Contracting Inc. (PCI) is submitting the attached, revised documents and reports for the US Nuclear Regulatory Commission's (USNRC) use when referenced by U.S. Licensees as part of their preparation of and responses to the Generic Letter 2004-02.

It should be noted that PCI previously submitted these same documents and reports to the USNRC June 8, 2007 by PCI Document ID: PCI-6016-02.00 dated June 8, 2007. PCI's previous submittal as well as this submittal of the subject revised documents and reports were and are being submitted pursuant to 10 CFR 2.390.

The purpose of submitting the subject documents is to generically address USNRC issues (if any) regarding PCI's patented Sure-Flow® Strainer (SFS) that integrates suction flow control device (SFCD) technology , to specifically address related issues associated with closure of Generic Letter 2004-02, and to support various aspects of the SFS Testing Protocol. It should be noted that PCI provides this submittal to the USNRC for the specific purpose of assisting our clients in the resolution of Generic Letter 2004-02. All of our clients will be notified of this distribution to the USNRC so that each PCI Sure-Flow® Strainer client may utilize and/or reference the subject attached documents and reports as appropriate.

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PCI requests these revisions to our previously submitted documents and reports also be withheld from public disclosure, because they contain Performance Contracting's intellectual property developed at considerable expense by the company. Public release of this material would allow this material to be used by others, resulting in commercial detriment to Performance Contracting, Inc. Accordingly, we have attached an affidavit pursuant to 10 CFR 2.390 to this letter. We note that these documents have never been disclosed to the public. The following attachments are provided:

Attachment 1: **PROPRIETARY DOCUMENT** *Sure-Flow® Suction Strainer – Suction Flow Control Device (SFCD) Principles and Clean Strainer Head Loss Design Procedures* (PCI Document No. SFSS-TD-2007-002, Revision 1)

Principal Change: General revision of the document including specific additional information to address Staff inquiries and assist in the closure of Generic Letter 2004-02.

Attachment 2: **PROPRIETARY DOCUMENT** *Sure-Flow® Suction Strainer – Vortex Issues* (PCI Document No. SSFS-TD-2007-003, Revision 1)

Principal Change: General revision of the document including specific additional information to address Staff inquiries and assist in the closure of Generic Letter 2004-02.

Attachment 3: **PROPRIETARY DOCUMENT** *Sure-Flow® Suction Strainer – Testing Debris Preparation & Surrogates* (PCI Document No. SSFS-TD-2007-004, Revision 4)

Principal Change: General revision of the document including specific additional information to address Staff inquiries and assist in the closure of Generic Letter 2004-02.

Attachment 4: Affidavit Pursuant to 10 CFR 2.390 - Affidavit requesting that **Attachments 1**, **2**, and **3** be withheld from public disclosure.

I am the PCI authorized officer responsible for executing the **Attachment 4** Affidavit and I am located at:

Performance Contracting, Inc.
Engineered Systems Group
16047 West 110th Street
Lenexa, KS 66219

We greatly appreciate the USNRC's effort, specifically as it relates to the Safety Issues Resolution Branch's attention to the review of PCI's documents and reports.

Sincerely,

James M. Bleigh
PCI / Engineered Systems Group Manager

cc: Joe Golla; Project Manager, DPR/PGCB, or

Mr. Michael L. Scott, Branch Chief
Safety Issues Resolution Branch
Division of Safety Systems
Office of Nuclear Reactor Regulation

U.S. Nuclear Regulatory Commission
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AFFIDAVIT PURSUANT TO 10 CFR 2.390

I, James M. Bleigh, being duly sworn, depose and state as follows:

(1) I am the Performance Contracting, Inc. (PCI), Manager PCI Engineered Systems Division (ESD) and have reviewed the information described in paragraph (2) which is sought to be withheld, and am authorized to apply for its withholding.

(2) The information sought to be withheld is Attachment 1, Attachment 2, and Attachment 3 to PCI letter Document ID: PCI-6028-01 containing design and operational performance documents and attachments developed by Performance Contracting, Inc. in support of PCI's patented Sure-Flow® Strainer (SFS) that integrates suction flow control device (SFCD) technology. This information is considered proprietary to Performance Contracting, Inc. as is appropriately annotated as such.

(3) In making this application for withholding of proprietary information of which it is the owner, Performance Contracting, Inc. relies upon the exemption from disclosure set forth in the Freedom of Information Act ("FOIA"), 5 USC Sec. 552(b)(4) and the Trade Secrets Act, 18 USC Sec. 1905, and NRC regulations I0CFR Part 9.17(a)(4), 2.390(a)(4), and 2.390(b)(1) for "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (Exemption 4). The material for which exemption from disclosure is here sought is all "confidential commercial information", and some portions also qualify under the narrower definition of "trade secret", within the meanings assigned to those terms for purposes of FOIA Exemption 4 in, respectively, Critical Mass Energy Project v. Nuclear Regulatory Commission, 975F2d871 (DC Cir. 1992), and Public Citizen Health Research Group v. FDA, 704F2d1280 (DC Cir. 1983).

AFFIDAVIT PURSUANT TO 10 CFR 2.390

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(4) Some examples of categories of information which fit into the definition of proprietary information are:

a. Information that discloses a process, method, or apparatus, including supporting data and analyses, where prevention of its use by Performance Contracting, Inc.'s competitors without license from Performance Contracting, Inc. constitutes a competitive economic advantage over other companies;

b. Information which, if used by a competitor, would reduce his expenditure of resources or improve his competitive position in the design, manufacture, shipment, installation, assurance of quality, or licensing of a similar product.

c. Information which reveals cost or price information, production, capacities, budget levels, or commercial strategies of Performance Contracting, Inc., its customers, or its suppliers;

d. Information which reveals aspects of past, present, or future Performance Contracting customer-funded development plans and programs of potential commercial value to Performance Contracting, Inc.;

e. Information which discloses patentable subject matter for which it may be desirable to obtain patent protection.

The information sought to be withheld is considered to be proprietary for the reasons set forth in paragraphs 4.a and 4.b, above.

(5) The information sought to be withheld is being submitted to the NRC in confidence. The information (including that compiled from many sources) is of a sort customarily held in confidence by Performance Contracting, Inc., and is in fact so held. The information sought to be withheld has, to the best of my knowledge and belief, consistently been held in confidence by Performance Contracting, Inc. No public disclosure has been made, and it is not available in public sources. All disclosures to third parties, including any required transmittals to the NRC, have

been made, or must be made, pursuant to regulatory provisions or proprietary agreements which provide for maintenance of the information in confidence. Its initial designation as proprietary information, and the subsequent steps taken to prevent its unauthorized disclosure, are as set forth in paragraphs (6) and (7) following.

(6) Initial approval of proprietary treatment of a document is made by the manager of the originating component, the person most likely to be acquainted with the value and sensitivity of the information in relation to industry knowledge. Access to such documents within Performance Contracting, Inc. is limited on a "need to know" basis.

(7) The procedure for approval of external release of such a document typically requires review by the staff manager, project manager, principal scientist or other equivalent authority, by the manager of the cognizant marketing function (or his designee), and by the Legal Operation, for technical content, competitive effect, and determination of the accuracy of the proprietary designation. Disclosures outside Performance Contracting, Inc. are limited to regulatory bodies, customers, and potential customers, and their agents, suppliers, and licensees, and others with a legitimate need for the information, and then only in accordance with appropriate regulatory provisions or proprietary agreements.

(8) The information classified as proprietary was developed and compiled by Performance Contracting, Inc. at a significant cost to Performance Contracting, Inc. This information is classified as proprietary because it contains detailed descriptions of analytical approaches and methodologies not available elsewhere. This information would provide other parties, including competitors, with information from Performance Contracting, Inc.'s technical database and the results of evaluations performed by Performance Contracting, Inc. A substantial effort has been expended by Performance Contracting, Inc. to develop this information. Release of this information would improve a competitor's position because it would enable Performance Contracting, Inc.' s competitor to copy our technology and offer it for sale in competition with our company, causing us financial injury.

AFFIDAVIT PURSUANT TO 10 CFR 2.390

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(9) Public disclosure of the information sought to be withheld is likely to cause substantial harm to Performance Contracting, Inc.'s competitive position and foreclose or reduce the availability of profit-making opportunities. The information is part of Performance Contracting, Inc.'s comprehensive Sure-Flow® Strainer technology base, and its commercial value extends beyond the original development cost. The value of the technology base goes beyond the extensive physical database and analytical methodology, and includes development of the expertise to determine and apply the appropriate evaluation process. The research, development, engineering, and analytical costs comprise a substantial investment of time and money by Performance Contracting, Inc.

The precise value of the expertise to devise an evaluation process and apply the correct analytical methodology is difficult to quantify, but it clearly is substantial.

Performance Contracting, Inc.'s competitive advantage will be lost if its competitors are able to use the results of the Performance Contracting, Inc. experience to normalize or verify their own process or if they are able to claim an equivalent understanding by demonstrating that they can arrive at the same or similar conclusions.

The value of this information to Performance Contracting, Inc. would be lost if the information were disclosed to the public. Making such information available to competitors without their having been required to undertake a similar expenditure of resources would unfairly provide competitors with a windfall, and deprive Performance Contracting, Inc. of the opportunity to exercise its competitive advantage to seek an adequate return on its large investment in developing these very valuable analytical tools.

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STATE OF KANSAS)
) ss:
COUNTY OF JOHNSON)

Mr. James M. Bleigh, being duly sworn, deposes and says:

That he has read the foregoing affidavit and the matters stated therein are true and correct to the best of his knowledge, information, and belief.

Executed at Lenexa, Kansas, this 25th day of March, 2009.

ALICIA J. HAYES
NOTARY PUBLIC
STATE OF KANSAS
My Appt Exp.: 8-10-2010

James M. Bleigh
PCI / Engineered Systems Group Manager

Subscribed and sworn before me this 25th day of March, 2009.