



STANDARD SPECIFICATIONS  
and  
CONTRACT DOCUMENTS  
For

OPAL STREET  
WATER AND STREET IMPROVEMENT PROJECT  
CITY OF KANNAPOLIS

AWCK PROJECT NO. 25501/24541



MARCH 2025

SET NO. \_\_\_\_\_



**alley, williams, carmen, & king, inc.**  
**CONSULTING ENGINEERS**  
**120 SOUTH MAIN STREET**      **P. O. BOX 1248**  
**KANNAPOLIS, NC 28082**      **704/938-1515**

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**SECTION B - SPECIFICATIONS** - Unless otherwise noted, all roadway work shall be in accordance with NCDOT Standard Specifications for Roads and Structures (English) dated July 2024 and, all Utility Work shall be in accordance with the Standard Specifications for Wastewater Collection and Water Distribution Construction for Cabarrus County (WSACC), latest revision and The City of Kannapolis Water & Sewer Standards and Policies.

INVITATION TO BIDDATE: March 29, 2025Sealed Bids will be received by the City of Kannapolis (OWNER)

at the office of Alley, Williams, Carmen and King, Inc. 120 S. Main Street, Kannapolis, North Carolina, 28081 until 2:00 PM, local time, Tuesday, April 29, 2025 for Opal Street Water and Street Improvement Project.

At said place and time, and promptly thereafter, all Bids that have been duly received will be publicly opened and read aloud.

The proposed Work is generally described as follows:

**Opal Street Water and Street Improvement Project – Replacement of approximately 1,000 LF of 6” PVC & DIP water main, street repair, and paving or other work necessary or as directed by the City Engineer.**

Female and minority firms are encouraged to submit bids for this project.

Bidders are advised that the City of Kannapolis has established a goal of 10 percent (10%) minority business enterprises as mandated by GS 136-28.4. The bidder shall identify in the bid documents the minority business participation it will use on the project. Forms are included in the bid documents for this purpose.

Wages and Salaries

Federal Labor Standards Provisions- Davis Bacon Act

Bidders will be required to comply with all the provisions of the US Department of Labor Regulations 29 CFR Part 5. See Instructions and wage determinations contained in these documents.

**An optional pre-bid conference will be held at the offices of Alley, Williams, Carmen and King, Inc. at 120 S Main Street on Tuesday, April 15, 2025, at 2 PM.**

All Bids must be in accordance with the Bidding Documents on file with The City of Kannapolis (Owner) and at the office of Alley, Williams, Carmen & King, Inc., 120 South Main Street, Kannapolis, NC 28081.

Copies of the Bidding Documents may be obtained from Alley, Williams, Carmen & King, Inc. at the address stipulated above at a charge of **\$50.00**. No refunds will be made.

Contractors must be licensed contractors with either “Unclassified” or “Public Utilities” or “Highway” license in the State of North Carolina prior to being awarded this contract. Utility work must be performed by a licensed “Public Utility” or “Unclassified” contractor, roadway work must be performed by a licensed “Highway” or “Unclassified” contractor. All Subcontractors must also be licensed contractors in the State of North Carolina if in accordance with NC General Statute the work subcontracted requires licensure.

Bids will be received on a unit price basis.

Bid security in an amount of 5% of the Bidder’s maximum Bid must accompany each Bid.

The Successful Bidder will be required to furnish a Construction Performance Bond and a Construction Payment Bond as security for the faithful performance and the payment of all bills and obligations arising from

the performance of the Contract.

Contractor and all Subcontractors will be required to conform to the labor standards employment requirements set forth in the Contract Documents.

North Carolina Department of Transportation Standard Specifications for Roads and Structures, dated January 2024, by reference, shall be used on this project.

The City of Kannapolis Water & Sewer Standards and Policies and the Standard Specifications for wastewater collection and water distribution for Cabarrus County shall be used on this project. Contractor shall obtain standard specifications, latest revision from Water and Sewer Authority of Cabarrus County (WSACC) at 232 Davidson Highway, Concord, North Carolina 28027.

Owner reserves the right to reject any or all Bids, including without limitation the rights to reject any or all nonconforming, non-responsive, unbalanced, or conditional Bids, and will award to lowest responsible Bidder taking into consideration quality, performance, and time specified in Bid Form for performance of Work. Owner also reserves the right to waive informalities.

If the Contract is to be awarded, Owner will give the Successful Bidder a Notice of Award within the number of days set forth in the Bid Form for acceptance of the Bid.

Wilmer Melton, III

Assistant City Manager



## INSTRUCTIONS TO BIDDERS

### 1. DEFINED TERMS.

1.01 Terms used in these Instructions to Bidders shall have the meanings assigned to them in the General Conditions and the Supplementary Conditions. Additional terms used in these Instructions to Bidders shall have the meanings indicated below, which are applicable to both the singular and plural thereof, is defined as follows:

- A. Bidder - the individual or entity who submits a Bid directly to Owner.
- B. Issuing Office - The office from which the Bidding Documents are to be issued and where the bidding procedures are to be administered.
- C. Successful Bidder - The lowest qualified, responsible, and responsive Bidder to whom Owner (on the basis of Owner's evaluation as herein provided) makes an award.
- D. North Carolina Department of Transportation – Whenever the term “North Carolina Department of Transportation”, “NCDOT”, or “Department” is used within the Contract Documents, it is also understood that these terms are synonymous with the “Owner”.

### 2. COPIES OF BIDDING DOCUMENTS.

2.01 Bidding Documents which include all front-end documents may be obtained from Owner at address indicated on Invitation to Bid and from

\_\_\_\_\_ Alley, Williams, Carmen & King, Inc.  
at \_\_\_\_\_ 120 S. Main Street, Kannapolis, North Carolina 28081

The charge for bidding documents will be as indicated in the Invitation to Bid. No refund will be made.

Partial sets of Bidding Documents will not be issued in response to requests by subject matter.

- 2.02 North Carolina Department of Transportation Standard Specifications for Roads and Structures, dated January 2024, by reference, shall be used on this project.

The City of Kannapolis Water & Sewer Standards and Polices and the Standard Specifications for wastewater collection and water distribution for Cabarrus County shall be used on this project. Contractor shall obtain standard specifications, latest revision from Water and Sewer Authority of Cabarrus County (WSACC) at 232 Davidson Highway, Concord, North Carolina 28027.

2.03 Complete sets of Bidding Documents must be used in preparing Bids; neither Owner nor Engineer assumes any responsibility for errors or misrepresentations resulting from the use of incomplete sets of Bidding Documents.

2.04 Owner and Engineer, in making copies of Bidding Documents available on the above terms, do so only for the purpose of obtaining Bids for the Work and do not confer a license or grant for any other use.

### 3. QUALIFICATIONS OF BIDDERS.

3.01 To demonstrate qualifications to perform the Work, Bidder may be required to submit within 5 days after Owner's request, written evidence on financial data, previous experience, present commitments, and other such data as may be requested by Owner or Engineer. Each Bid must contain evidence of Bidder's qualification to do business in the state where the Project is located, or Bidder must agree to obtain such qualification prior to award of the Contract.

#### 4. EXAMINATION OF CONTRACT DOCUMENTS, OTHER RELATED DATA, AND SITE.

4.01 Subsurface and Physical Conditions: The Contractor shall make his/her own subsurface investigations. There are no reports of explorations and tests of subsurface conditions at or contiguous to the Site. Any information obtained by the City as a result of its own subsurface investigations will be made available upon request. This information is provided for informational purposes only and shall not relieve the Contractor of responsibility for making its own investigations.

4.02 Underground Facilities: Information and data reflected in the Bidding Documents with respect to the site are based upon information and data furnished to Owner and Engineer by Owners of such underground facilities or others, and Owner and Engineer disclaim responsibility for the accuracy or completeness thereof, unless it is expressly provided otherwise in the Supplementary Conditions.

4.03 Hazardous Environmental Condition: There are no reports and drawings relating to a Hazardous Environmental Condition identified at the site.

4.04 Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to subsurface conditions, other physical conditions, and underground facilities, and possible changes in the Bidding Documents due to differing or unanticipated conditions appear in Paragraphs 4.02, 4.03 and 4.04 of the General Conditions. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to a hazardous environmental condition at the site, if any, and possible changes in the Contract Documents due to any hazardous environmental condition uncovered or revealed at the site which was not shown or indicated in the Bidding Documents or identified in the Contract Documents to be within the scope of the Work appear in Paragraph 4.06 of the General Conditions.

4.05 Before submitting a Bid, each Bidder may, at Bidder's own expense, make or obtain any additional examinations, investigations, explorations, tests and studies and obtain any additional information and data which pertain to physical conditions (surface, subsurface, and underground facilities) at or contiguous to the site or otherwise, which may affect cost, progress, performance, or furnishing of the Work and which Bidder deems necessary to determine its Bid for performing and furnishing the Work in accordance with the time, price, and other terms and conditions of the Contract Documents.

On request 24 hours in advance, Owner will provide each Bidder access to the site to conduct such explorations and tests as each Bidder deems necessary for submission of a Bid. Bidder shall fill all holes and clean up and restore the site to its former condition upon completion of such explorations. Arrangements for site visits shall be made by calling Mark McGregor at 704-938-1515.

4.06 Reference is made to the Supplementary Conditions for the identification of the general nature of other work that is to be performed at the site by Owner or others (such as utilities or other prime contractors) that relate to the Work for which a Bid is to be submitted. On request, Owner will provide to Bidder for examination access to or copies of Contract Documents (other than portions thereof related to price) for such other work.

4.07 It is the responsibility of each Bidder, before submitting a Bid, to:

- A. Thoroughly examine and carefully study the Bidding Documents, including any Addenda and other related data identified in the Bidding Documents;
- B. Visit the site to become familiar with and satisfy Bidder as to the general, local, and site conditions that may affect cost, progress, performance, or furnishing of the Work;
- C. Become familiar with and satisfy Bidder as to all federal, state, and local Laws and Regulations that may affect cost, progress, performance, or furnishing of the Work;
- D. Carefully study all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except underground facilities) which have been identified in the Supplementary Conditions as provided in Paragraph 4.02 of the General Conditions, and carefully study all reports and drawings of a hazardous environmental condition, if any, at the site which have been identified in the Supplementary Conditions as provided in Paragraph 4.06 of the General Conditions.
- E. Obtain and carefully study (or assume responsibility for doing so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and underground facilities) at or contiguous to the site which may affect cost, progress, or performance of the Work or which related to any aspect of the means, methods, techniques, sequences, and other procedures of construction to be employed by Bidder, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents and safety precautions and programs incident thereto;
- F. Agree at the time of submitting its Bid that no further examinations, investigations, explorations, tests, studies or data are necessary for the determination of its Bid for performance of the Work at the price bid and within the times and in accordance with the other terms and conditions of the Bidding Documents.
- G. Become aware of the general nature of the work to be performed by Owner or others at the site that relates to the Work indicated in the Bidding Documents;
- H. Correlate the information known to Bidder, information and observations obtained from visits to the site, reports and drawings identified in the Bidding Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Bidding Documents;
- I. Promptly give Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder discovers in the Bidding Documents and confirm that the written resolution thereof by Engineer is acceptable to Bidder; and
- J. Determine that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work.

4.08 The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement concerning examination of the Contract Documents and the site, that without exception the Bid is premised upon performing and furnishing the Work required by the Bidding Documents and applying any specific means, methods, techniques, sequences, and procedures of construction that may be shown or indicated or expressly required by the Bidding Documents, that Bidder

has given Engineer written notice of all conflicts, errors, ambiguities, and discrepancies that Bidder has discovered in the Bidding Documents and the written resolutions thereof by Engineer are acceptable to

Bidder, and that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

## 5. SITE AND OTHER AREAS

5.01 The lands upon which the Work is to be performed, rights-of-way and easements for access thereto, and other lands designated for use by Contractor in performing the Work are identified in the Bidding Documents. All additional lands and access thereto required for temporary construction facilities or storage of materials and equipment are to be provided by Contractor. Easements for permanent structures or permanent changes in existing structures are to be obtained and paid for by Owner unless otherwise specified in the Bidding Documents.

## 6. INTERPRETATIONS AND ADDENDA

6.01 All questions about the meaning or intent of the Bidding Documents shall be submitted to Engineer in writing. Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda mailed or delivered to all parties recorded by Engineer as having received the Bidding Documents. Questions received less than 10 days prior to the date for opening of Bids may not be answered. Only answers issued by Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

## 7. BID SECURITY

7.01 Each Bid must be accompanied by bid security made payable without condition to Owner in an amount of **5 percent of the Bidder's maximum Bid** and in the form of a certified or bank check or a bid bond issued by a surety meeting the requirements set forth in the Supplementary Conditions. **See Supplementary Conditions Sections 5.01 A for Surety bond rating requirements.**

7.02 The bid security of the Successful Bidder will be retained until such Bidder has executed the Agreement, furnished the required contract security, and met the other conditions of the Notice of Award, whereupon the bid security will be returned. If the Successful Bidder fails to execute and deliver the Agreement and furnish the required contract security within the number of days set forth in the Bid Form, Owner may annul the Notice of Award and the bid security of that Bidder will be forfeited. The bid security of other Bidders whom Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of 7 days after the Effective Date of the Agreement or the day after the last day the Bids remain subject to acceptance as set forth in the Bid Form, whereupon bid security furnished by such Bidders will be returned.

7.03 Bid security of other Bidders whom Owner believes do not have a reasonable chance of receiving the award will be returned within 7 days after the Bid opening.

## 8. CONTRACT TIMES.

8.01 The numbers of calendar days within which, or the dates by which, the Work is to be substantially completed and also completed and ready for final payment (the Contract Times) are set forth in the Bid Form.

## 9. LIQUIDATED DAMAGES.

9.01 Provisions for liquidated damages, if any, are set forth in the Agreement.

## 10. SUBSTITUTE OR "OR-EQUAL" ITEMS.

10.01 Bidder's attention is directed to Article 6.05 of the General Conditions concerning substitutes and "or-equal" items. Where an item or material is specified by a proprietary name, it is done for the purpose of establishing a basis of quality and not for the purpose of limiting competition. The Engineer's intent is to consider alternative products which have the desired essential characteristics; the Engineer will consider any such products offered. Requests for acceptance of alternative products shall be made through Bidders bidding as Prime Contractors. Acceptances for substitutions will not be granted directly to suppliers, distributors, or subcontractors. Pursuant to Section 133-3, General Statutes of North Carolina, the following procedures shall be used:

Bidders desiring to submit alternative product proposals for prior acceptance of the Engineers shall submit, in writing, such proposals from April 14, 2025, until April 18, 2025. Applications received after this time will not be reviewed. Each such request shall include the name of the material or equipment for which it is to be substituted and a complete description of the proposed substitute, including drawings, cuts, performance and test data, and other information necessary for an evaluation. A statement setting forth any changes in other materials, equipment, or other work that incorporation of the substitute would require shall be included. The Engineer shall consider and either accept or reject all alternative product proposals submitted.

If, by the close of the fifth day prior to the deadline for receiving Bids, the Engineer has accepted any alternative product proposals, the Bidding Documents shall be modified to include the alternative products. The Engineer shall publish the modification in an Addendum at least 5 days prior to the deadline for receiving Bids. The Engineer's decision of acceptance or rejection of a proposed substitute shall be final.

## 11. MINORITY BUSINESS PARTICIPATION.

The City of Kannapolis has adopted a 10% Minority Business Goal (MBE) on this project in accordance with North Carolina General Statute 136-28.4. The document, Requirements for Recruitment and Selection of Historically Underutilized Businesses for Participation in the City of Kannapolis Building Construction Contracts including Affidavits and Appendix E are hereby incorporated into and made a part of this contract.

## 12. DISPUTE RESOLUTION.

North Carolina General Statute requires a mandatory dispute resolution process to be incorporated into Municipal construction projects. The document, *Rules Implementing Mediated Settlement Conferences*, pages IMS-1 to IMS-7, is incorporated into and made a part of this contract.

## 13. SUBCONTRACTORS, SUPPLIERS, AND OTHERS.

13.01 If the Bidding Documents require the identity of certain Subcontractors, Suppliers, and other individuals or entities to be submitted to Owner in advance of a specified date prior to the Effective Date of

the Agreement, the apparent Successful Bidder, and any other Bidder so requested, shall within 3 days after the bid opening submit to Owner the List of Subcontractors completed with names all such Subcontractors, Suppliers, and other individuals and entities proposed for those portions of the Work for which such identification is required. The list shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor, Supplier, person, or organization, if requested by Owner. If, after due investigation, Owner or Engineer has reasonable objection to any proposed Subcontractor, Supplier, or other individual or entity, Owner may, before the Notice of Award is given, request the apparent Successful Bidder to submit an acceptable substitute without an increase in the Bid.

13.02 If the apparent Successful Bidder declines to make any such substitution, Owner may award the Contract to the next lowest Bidder that proposes to use acceptable Subcontractors, Suppliers, and other individuals and entities. Declining to make requested substitutions will not constitute grounds for sacrificing the bid security of any Bidder. Any Subcontractor, Supplier, or other individual or entity listed and to whom Owner or Engineer does not make written objection prior to the giving of the Notice of Award will be deemed acceptable to Owner and Engineer, subject to revocation of such acceptance after the Effective Date of the Agreement as provided in Paragraph 6.06 of the General Conditions.

13.03 Contractor shall not be required to employ any Subcontractor, individual, or entity against whom Contractor has a reasonable objection.

13.04 All Subcontractors shall be a licensed contractor in the State of North Carolina if in accordance with NC General Statute the work subcontracted required licensure.

#### 14. PRE-BID CONFERENCE.

**An optional pre-bid conference will be held at the offices of Alley, Williams, Carmen and King, Inc. at 120 S Main Street on Tuesday, April 15, 2025, at 2 PM.**

#### 15. PREPARATION OF BIDS.

15.01 The Bid Forms indicated in the Table of Contents are bound in the Bidding Documents and shall not be removed therefrom unless otherwise specified. Bid Forms must be completed in ink.

15.02 All blanks in the Bid Form shall be filled. A bid price shall be indicated for each unit price item listed therein, or the words "No Bid", "No Charge", "No Change", or other appropriate phrase shall be entered.

15.03 Bids by corporations shall be executed in the corporate name by the president or vice-president or by another corporate officer, accompanied by evidence of authority to sign for the corporation.

15.04 A Bid by partnerships shall be executed in the partnership name and signed by a partner accompanied by evidence of authority to sign.

15.05 A Bid by a limited liability company shall be executed in the name of the firm by a member and accompanied by evidence of authority to sign. The state of formation of the firm shall be shown below the signature.

15.06 A Bid by an individual shall show the Bidder's name.

15.07 A Bid by a joint venture shall be executed by each joint venturer in the manner indicated on the Bid Form.

15.08 The names of all persons signing shall be legibly printed below their signature. A Bid by a person who affixes to his signature the word "president", "secretary", "agent", or other designation without disclosing its principal may be held to be the Bid of the individual signing. When requested by Owner, evidence of the authority of the person signing shall be furnished.

15.09 The Bid shall contain an acknowledgment of receipt of all Addenda, the numbers and dates of which shall be filled in on the Bid Form.

15.10 Bidders are instructed to execute and submit with their Bid Form the following: Bid Security, Debarment Statement, and the Listing of DBE Subcontractors (See Disadvantaged Business Enterprise).

15.11 No alterations in Bids by erasures, interpolations, or otherwise will be acceptable unless each such alteration is signed or initialed by Bidder; if initialed, Owner may require Bidder to identify any alteration so initialed.

#### 16. BASIS OF BID; EVALUATION OF BIDS.

16.01 Bidder shall complete the schedule of unit prices included in the Bid Form and shall accept all fixed unit prices listed therein.

The total Bid will be determined as the sum of the products of the estimated quantity of each item and the unit price bid for the item. The final quantities and Contract Price will be determined in accordance with Paragraph 11.03 of the General Conditions and the Notice to Bidders found on each bid form.

Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. Discrepancies between words and figures will be resolved in favor of the words.

16.02. The Contingency is to be added to the Bid Price and is to be used for minor change order items. If the Contingency is to be used, a scope of work and price would be negotiated. The Contingency is for the sole use of Owner. A change order will be issued to delete any unauthorized portion of the Contingency .

#### 17. SUBMISSION OF BIDS.

17.01 Bids shall be submitted at the time and place indicated in the Invitation to Bid, or at the modified time and place indicated by Addendum. Bids shall be enclosed in an opaque, sealed envelope or wrapping, addressed to:

**Alley Williams Carmen & King, Inc.  
120 S. Main St.  
Kannapolis, North Carolina, 28081**

17.02 Bids shall be marked with the name, license number, and address of the Bidder and shall be accompanied by the Bid security and other required documents. If the Bid is sent through the mail or other delivery system, the sealed envelope shall be enclosed in a separate envelope with the notation "BID ENCLOSED" on the face of it.

17.03 Each Bid envelope shall be identified on the outside with the words "Bid Opal Street Water and Sewer Improvement Project".

17.04 Bidder shall assume full responsibility for timely delivery at the location designated for receipt of Bids. Bids received after the time and date for receipt of Bids will be returned unopened.

**17.05 One copy of the original Project Manual that contains the Bid Form received from Alley, Williams, Carmen & King, Inc. that contains the Bid Form must be submitted with the Bid. Photo copied Bid Documents will not be accepted.**

17.06 Oral, telephone, facsimile, or telegraph Bids are invalid and will not receive consideration.

17.07 No Bidder may submit more than one Bid. Multiple Bids under different names will not be accepted from one firm or association.

17.08 A conditional or qualified bid will not be accepted.

**18. MODIFICATION AND WITHDRAWAL OF BIDS.**

18.01 A Bid may be modified or withdrawn by an appropriate document duly executed in the manner that a Bid must be executed and delivered to the place where Bids are to be submitted prior to the date and time for the opening of Bids.

18.02 If, within 72 hours after Bids are opened, any Bidder files a duly signed, written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of its Bid, that Bidder may withdraw its Bid and the Bid security will be returned. Thereafter, if the Work is re-bid, that Bidder will be disqualified from further bidding on the Work.

**19. OPENING OF BIDS.**

19.01 Bids will be publicly opened at the time and place indicated in the Invitation to Bid and, unless obviously non-responsive, read aloud. An abstract of the amounts of the Base Bids and major alternatives (if any) will be made available to Bidders after the opening of Bids.

19.02 The procedure for opening Bids will follow guidelines issued by the State Building Commission dated December 10, 1990, and endorsed by the Consulting Engineers Council of North Carolina.

**20. BIDS TO REMAIN SUBJECT TO ACCEPTANCE.**

20.01 All Bids shall remain subject to acceptance for the number of days set forth in the Bid Form, but Owner may, in its sole discretion, release any Bid and return the Bid security prior to the end of that period.

**21. AWARD OF CONTRACT.**

21.01 Owner reserves the right to reject any or all Bids, including without limitation the rights to reject any or all non-conforming, non-responsive, unbalanced, or conditional Bids. Owner further reserves the right to reject the Bid of any Bidder whom it finds, after reasonable inquiry and evaluation, to be non-responsible. Owner may also reject the Bid of any Bidder if Owner believes that it would not be in the best interest of the Project to make an award to that Bidder. Owner also reserves the right to waive all informalities not involving price, time, or changes in the Work, and to negotiate contract terms with the Successful Bidder.

21.02 More than one Bid for the same Work from an individual or entity under the same or different names will not be considered. Reasonable grounds for believing that any Bidder has an interest in more than one Bid for the Work may be cause for disqualification of that Bidder and the rejection of all Bids in which that Bidder has an interest.



21.03 In evaluating Bids, Owner will consider whether or not the Bids comply with the prescribed requirements, and such alternatives, unit prices, and other data, as may be requested in the Bid Form or prior to the Notice of Award.

21.04 In evaluating Bidders, Owner will consider the qualifications of Bidders and may consider the qualifications and experience of Subcontractors, Suppliers, and other individuals or entities proposed for those portions of the Work for which the identity of Subcontractors, Suppliers, and other individuals or entities must be submitted as provided in the Bidding Documents including the Minority Business Contract Provisions. Owner also may consider the operating costs, maintenance requirements, performance data, and guarantees of major items of materials and equipment proposed for incorporation in the Work when such data are required to be submitted prior to the Notice of Award.

21.05 Owner may conduct such investigations as Owner deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications, and financial ability of Bidders, proposed Subcontractors, Suppliers, and other individuals or entities to perform and furnish the Work in accordance with the Contract Documents.

21.06 If the Contract is to be awarded, it will be awarded to the lowest Bidder whose evaluation by Owner indicates to Owner that the award will be in the best interests of Owner.

21.07 The evaluation of Suppliers' or manufacturers' data submitted with the Bid, or submitted upon request prior to the Notice of Award, will include consideration of the following:

Owner-required inventory of spare parts.

Building design changes which would be required to accommodate the proposed materials and equipment.

Installation requirements and related engineering, training, and operating costs.

Experience and performance record of the Supplier or the manufacturer.

Maintenance and frequency of inspections required to assure reliable performance of the equipment.

The Suppliers' or manufacturers' service facilities and availability of qualified field service personnel.

Efficiency and related operating expense during the anticipated useful life of the equipment.

## 22. CONTRACT SECURITY AND INSURANCE.

22.01 The Supplementary Conditions set forth Owner's requirements as to Performance and Payment Bonds and insurance. When the Successful Bidder delivers the executed Agreement to Owner, it shall be accompanied by such Bonds and insurance.

## 23. SIGNING OF AGREEMENT.

23.01 When Owner gives a Notice of Award to the Successful Bidder, it shall be accompanied by four

unsigned counterparts of the Agreement, with all other Contract Documents which are identified in the Agreement as attached thereto. Within the number of days set forth in the Bid Form, the Successful Bidder shall sign, leaving the dates blank, and deliver the required number of counterparts of the Agreement and attached documents to Owner with the required Bonds and power of attorney. Within 30 days thereafter,

Owner shall execute all copies of the Agreement and other Contract Documents submitted by Contractor (Successful Bidder); shall insert the date of contract on the Agreement, Bonds, and power of attorney; and shall distribute signed copies as Stipulated in the Agreement. Each counterpart is to be accompanied by a complete set of the Drawings, with appropriate identification.

24. SALES AND USE TAXES.

24.01 Provisions for sales and use taxes, if any, are set forth in the Supplementary Conditions.

25. RETAINAGE. Provisions concerning retainage are set forth in the Agreement.

26. LAWS AND REGULATIONS.

26.01 Modifications, if any, to the General Conditions concerning Laws and Regulations are set forth in the Supplementary Conditions. Additional provisions, if any, concerning Laws and Regulations are set forth in the Agreement.

26.02. In accordance with Section 112(c) of Title 23 USC, and G.S. 75-5(b)(7) of the State of North Carolina, the Contractor (Bidder), by submission and execution of this bid, certifies that he has not entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with his bid on this project.

26.03. Bidder shall complete and submit with the bid the certification pertaining to debarment included with the Bid Forms. Debarment certification requirements are set forth in the Supplementary Conditions.

27. CONFLICTS BETWEEN CITY AND FEDERAL GENERAL CONDITIONS:

Conflicts between the City of Kannapolis General Standards and Specifications and the State and/or Federal General Standards and Specifications shall be resolved in favor of the more stringent Standards.

End of Section

## **REQUIREMENTS FOR RECRUITMENT AND SELECTION OF HISTORICALLY UNDERUTILIZED BUSINESSES FOR PARTICIPATION IN THE CITY OF KANNAPOLIS BUILDING CONSTRUCTION CONTRACTS**

In accordance with G.S. 143-128.2 (effective January 1, 2002, as amended) and G.S. 143-128.4 these requirements establish goals for minority participation and historically underutilized business (HUB) participation in single-prime bidding, separate-prime bidding, construction manager at risk, and alternative contracting methods on The City of Kannapolis (the “City”) construction projects. The Outreach Plan shall also be applicable to the selection process of architectural, engineering and Construction Manager-at-Risk services.

The city of Kannapolis is financing this project and they have set a 10% HUB/MBE goal on this project.

### **SECTION A: INTENT**

It is the intent of these guidelines that the City, as awarding authority for construction projects, and the contractors and subcontractors performing the construction contracts awarded shall cooperate and in good faith do all things legal, proper and reasonable to achieve the statutory goal of ten percent (10%) for participation by historically underutilized businesses in each construction project as mandated by GS 143-128.4. Nothing in these guidelines shall be construed to require contractors or awarding authorities to award contracts or subcontracts to or to make purchases of materials or equipment from minority- business contractors or minority-business subcontractors who do not submit the lowest responsible, responsive bid or bids.

### **SECTION B: DEFINITIONS**

1. *Minority Person*- a person who is a citizen or lawful permanent resident of the United States and who is:
  - a. Black, that is, a person having origins in any of the black racial groups in Africa;
  - b. Hispanic, that is, a person of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race;
  - c. Asian American, that is, a person having origins in any of the original peoples of the Far East, Southeast Asia and Asia, the Indian subcontinent, the Pacific Islands;
  - d. American Indian, that is, a person having origins in any of the original peoples of North America;
  - e. Female;
  - f. Disabled, that is, a person with a disability as defined in G.S. 168 1 or G.S. 168A 3; or
  - g. Disadvantaged, that is, a person who is socially and economically disadvantaged as defined in 15 U.S.C. § 637.

As used in this Contract, the term “minority” means a member of a group that has been historically underutilized as defined in G.S. 143-128.4.

2. *Historically Underutilized Business* - means a business:

- a. In which at least fifty-one percent (51%) is owned by one or more persons who are members of at least one of the groups set forth in subsection (1) of this section, or in the case of a corporation, in which at least fifty-one percent (51%) of the stock is owned by one or more persons who are members of at least one of the groups set forth in subsection 1 of this section; and
- b. Of which the management and daily business operations are controlled by one or more owners of the business who are members of at least one of the groups set forth in subsection 1 of this section.

As used in this Contract, the term “minority business” means a historically underutilized business.

3. *Socially and economically disadvantaged individual* - means the same as defined in 15 U.S.C. 637. "Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities". "Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged".
4. *Public Entity* - means State and all public subdivisions and local governmental units.
5. *Owner* – City of Kannapolis.
6. *Designer* - Any person, firm, partnership, or corporation, which has contracted with the City to perform architectural or engineering, work.
7. *Bidder* - Any person, firm, partnership, corporation, association, or joint venture seeking to be awarded a public contract or subcontract.
8. *Contract* – A mutually binding legal relationship or any modification thereof obligating the seller to furnish equipment, materials or services, including construction, and obligating the buyer to pay for them.
9. *Contractor* - Any person, firm, partnership, corporation, association, or joint venture which has contracted with the City to perform construction work or repair.
10. *Subcontractor* - A firm under contract with the prime contractor or construction manager at risk for supplying materials or labor and materials and/or installation. The subcontractor may or may not provide materials in his subcontract.

## **SECTION C: MINORITY AND SMALL BUSINESS PARTICIPATION OUTREACH PLAN**

1. Work with minority-focused and small business groups that support HUB and small business inclusion in the solicitation of bids.
2. Place more emphasis on the importance of soliciting certified HUB firms and small businesses for subcontracting opportunities at pre-bid conferences and in the bid documents. Examine specifications to identify special subcontracting opportunities and strongly encourage prime contractors to solicit bids for subcontracts from HUB firms.
3. Provide detailed information to majority contractors concerning the Guidelines for Recruitment and Selection of Historically underutilized Business and Outreach Plan and provide information on N.C.G.S. 143-129 by holding meetings with the contractors.
4. Assess the effectiveness of the HUB Program, and identify opportunities to enhance it, by evaluating HUB participation and compliance and reviewing the “good faith efforts” provided in bid packages.
5. Identify subcontracting opportunities unique to each construction contract and project and concentrate heavily on targeting certified HUB firms and small businesses that have expressed an interest in City of Kannapolis projects. Identify these opportunities and contact interested businesses no later than 10 days prior to the bid opening and provide a list of prime contractors plan to participate in the project.
6. Build new business relationships through networking and continue networking with other North Carolina cities and counties to find out how their Outreach Program and HUB program is working and sharing “best practices” and ideas to improve the program.
7. Participate in education opportunities throughout the community as they become available and offer training sessions to share the City’s Outreach Plan with interested businesses and organizations.
8. Be visible through participation in trade shows and business organizations of interest to HUB firms, majority contractors and small businesses, and provide information to the general public about the HUB Program, and continue outreach efforts to the business community.
9. Enhance the City’s web page by including the Outreach Plan and Guidelines, listing good faith efforts, and creating links to HUB resources, and creating awareness of specific subcontracting opportunities.
10. Make available to minority-focused agencies, a list of subcontracting opportunities when they are identified, no later than 10 days prior to the bid opening, and a list of prime bidders that subcontractors may wish to contact for subcontracting consideration.
11. Verify that projects have contractors that are listed on the Department of Administration database of certified HUB firms and contractors.

12. Advertise upcoming bid opportunities in minority-focused media.
13. Work with architects and engineers to make subcontracting opportunities more noticeable and more easily understood by potential contractors and subcontractors.

#### **SECTION D: RESPONSIBILITIES**

##### **1. *Designer***

Under the single-prime bidding, separate prime bidding, construction manager at risk, or alternative contracting method, the designer will:

- a. Attend the scheduled prebid conference to explain historically underutilized business requirements to the prospective bidders.
- b. Assist the owner to identify and notify prospective historically underutilized business prime and subcontractors of potential contracting opportunities.
- c. Maintain documentation of any contacts, correspondence, or conversation with historically underutilized business firms made in an attempt to meet the goals.
- d. Review jointly with the owner, all requirements of G.S. 143-128.2(c) (i.e. bidders' proposals for identification of the historically underutilized businesses that will be utilized with corresponding total dollar value of the bid and affidavit listing Good Faith Efforts, or affidavit of self-performance of work, if the contractor will perform work under contract by its own workforce) - prior to recommendation of award.
- e. During construction phase of the project, review "HUB Documentation for Contract Payment" - (Appendix E) for compliance with historically underutilized business utilization commitments. Submit Appendix E form with monthly pay applications to the owner and forward copies to the State Construction Office.
- f. Make documentation showing evidence of implementation of Designer's responsibilities available for review by State Construction Office and HUB Office, upon request.

##### **2. *Prime Contractor(s), CM at Risk, and Its First-Tier Subcontractors***

Under the single-prime bidding, the separate-prime bidding, construction manager at risk and alternative contracting methods, contractor(s) will:

- a. Attend the scheduled prebid conference.
- b. Identify or determine those work areas of a subcontract where historically underutilized businesses may have an interest in performing subcontract work.
- c. At least ten (10) days prior to the scheduled day of bid opening, notify historically underutilized businesses of potential subcontracting opportunities listed in the proposal. The notification will include the following:
  - (1) A description of the work for which the subbid is being solicited.
  - (2) The date, time and location where subbids are to be submitted.
  - (3) The name of the individual within the company who will be available to answer questions about the project.

- (4) Where bid documents may be reviewed.
- (5) Any special requirements that may exist, such as insurance, licenses, bonds and financial arrangements.

If there are more than three (3) historically underutilized businesses in the general locality of the project who offer similar contracting or subcontracting services in the specific trade, the contractor(s) shall notify three (3), but may contact more, if the contractor(s) so desires.

- d. During the bidding process, comply with the contractor(s) requirements listed in the proposal for historically underutilized business participation.
- e. Identify on the bid, the historically underutilized businesses that will be utilized on the project with corresponding total dollar value of the bid and affidavit listing good faith efforts as required by G.S. 143-128.2(c) and G.S. 143-128.2(f).
- f. Make documentation showing evidence of implementation of PM, CM-at-Risk and First-Tier Subcontractor responsibilities available for review by State Construction Office and HUB Office, upon request.
- g. Upon being named the apparent low bidder, the Bidder shall provide one of the following: (1) an affidavit (Affidavit C) that includes a description of the portion of work to be executed by historically underutilized businesses, expressed as a percentage of the total contract price, which is equal to or more than the applicable goal; (2) if the percentage is not equal to the applicable goal, then documentation of all good faith efforts taken to meet the goal. Failure to comply with these requirements is grounds for rejection of the bid and award to the next lowest responsible and responsive bidder.
- h. The contractor(s) shall identify the name(s) of historically underutilized business subcontractor(s) and corresponding dollar amount of work on the schedule of values. The schedule of values shall be provided as required in Article 31 of the General Conditions of the Contract to facilitate payments to the subcontractors.
- i. The contractor(s) shall submit with each monthly pay request(s) and final payment(s), "HUB Documentation for Contract Payment" - (Appendix E), for designer's review.
- j. During the construction of a project, at any time, if it becomes necessary to replace a historically underutilized business subcontractor, immediately advise the owner, State Construction Office, and the Director of the HUB Office in writing, of the circumstances involved. The prime contractor shall make a good faith effort to replace a historically underutilized business subcontractor with another historically underutilized business subcontractor.
- k. If during the construction of a project additional subcontracting opportunities become available, make a good faith effort to solicit subbids from historically underutilized businesses.
- l. It is the intent of these requirements apply to all contractors performing as prime contractor and first tier subcontractor under construction manager at risk on state projects.

### 3. *Minority Business Responsibilities*

While minority businesses are not required to become certified in order to participate in City of Kannapolis construction projects, it is recommended that they become certified and should take advantage of the appropriate technical assistance that is made available.

The use of any minority businesses that are not certified as a HUB will not be counted towards meeting the participation goals of the Contract. Historically underutilized businesses who are contacted by owners or bidders must respond promptly whether or not they wish to submit a bid.

A copy of these guidelines will be issued with each bid package for City of Kannapolis building construction projects. These guidelines shall apply to all contractors regardless of ownership.

### **SECTION E: HISTORICALLY UNDERUTILIZED BUSINESS SUBCONTRACT GOALS**

The goals for participation by historically underutilized businesses as subcontractors on this project have been set at 10%.

The bidder must identify on its bid, the historically underutilized businesses, that will be utilized on the project with corresponding total dollar value of the bid and affidavit (Affidavit A) listing good faith efforts or affidavit (Affidavit B) of self-performance of work, if the bidder will perform work under contract by its own workforce, as required by G.S. 143-128.2(c) and G.S. 143-128.2(f).

The lowest responsible, responsive bidder must provide Affidavit C, that includes a description of the portion of work to be executed by historically underutilized businesses, expressed as a percentage of the total contract price, which is equal to or more than the applicable goal.

OR

Provide Affidavit D, that includes a description of the portion of work to be executed by historically underutilized businesses, expressed as a percentage of the total contract price, with documentation of Good Faith Effort, if the percentage is not equal to the applicable goal.

OR

Provide Affidavit B, which includes sufficient information for the City to determine that the bidder does not customarily subcontract work on this type project.

The above information must be provided as required. Failure to submit these documents is grounds for rejection of the bid.



**SECTION F: MINIMUM COMPLIANCE REQUIREMENTS**

All written statements, affidavits or intentions made by the Bidder shall become a part of the agreement between the Contractor and City of Kannapolis for performance of this contract. Failure to comply with any of these statements, affidavits or intentions, or with the historically underutilized business guidelines shall constitute a breach of the contract. A finding by the City that any information submitted either prior to award of the contract or during the performance of the contract is inaccurate, false or incomplete, shall also constitute a breach of the contract. Any such breach may result in termination of the contract in accordance with the termination provisions contained in the contract. It shall be solely at the option of the City whether to terminate the contract for breach.

In determining whether a contractor has made Good Faith Efforts, the City will evaluate all efforts made by the Contractor and will determine compliance in regard to quantity, intensity, and results of these efforts. Good Faith Efforts include:

- (1) Contacting historically underutilized businesses that reasonably could have been expected to submit a quote at least 10 days before the bid or proposal date and notifying them of the nature and scope of the work to be performed. *Approved Historically Underutilized Businesses* are those which appear on the HUB Office list of Historically Underutilized Businesses. This list may be accessed from the HUB Office home web page ([www.doa.state.nc.us/hub](http://www.doa.state.nc.us/hub)).
- (2) Making the construction plans, specifications and requirements available for review by prospective historically underutilized businesses, or providing these documents to them at least 10 days before the bid or proposals are due.
- (3) Breaking down or combining elements of work into economically feasible units to facilitate minority participation.
- (4) Working with minority trade, community, or contractor organizations identified by the Office for Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of historically underutilized businesses.
- (5) Attending any prebid meetings scheduled by the public owner.
- (6) Providing assistance in getting required bonding or insurance or providing alternatives to bonding or insurance for subcontractors.
- (7) Negotiating in good faith with interested historically underutilized businesses and not rejecting them as unqualified without sound reasons based on their capabilities. Any rejection of a historically underutilized business based on lack of qualification should have the reasons documented in writing.
- (8) Providing assistance to an otherwise qualified historically underutilized business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisting

historically underutilized businesses in obtaining the same unit pricing with the bidder's suppliers in order to help historically underutilized businesses in establishing credit.

- (9) Negotiating joint venture and partnership arrangements with historically underutilized businesses in order to increase opportunities for historically underutilized business participation on a public construction or repair project when possible.
- (10) Providing quick pay agreements and policies to enable historically underutilized business contractors and suppliers to meet cash-flow demands.

## Identification of Historically Underutilized Business Participation

I, \_\_\_\_\_,  
(Name of Bidder)

do hereby certify that on this project, we will use the following historically underutilized business enterprises as construction subcontractors, vendors, suppliers or providers of professional services.

Firm Name, Address and Phone #

Work type

\*Category

[illegible]

\*Categories: Black, African American (**B**), Hispanic (**H**), Asian American (**A**), American Indian (**I**), Female (**F**), Socially and Economically Disadvantaged (**D**), Disabled (**D2**)

**The total value of historically underutilized business contracting will be**

(**\$**)\_\_\_\_\_.

I, \_\_\_\_\_,  
(Name of Bidder)

further certify that I/my firm is itself a historically underutilized business enterprise in the \_\_\_\_\_  
category as defined above. (select and make appropriate entry from above list)

**CITY OF KANNAPOLIS-AFFIDAVIT A-Listing of Good Faith Efforts**

Affidavit of \_\_\_\_\_

(Name of Bidder)

I have made a good faith effort to comply under the following areas checked:

**Bidders must earn at least 50 points from the good faith efforts listed for their bid to be considered responsive.** (1 NC Administrative Code 30 I.0101)

- ☐ **1 – (10 pts)** Contacted historically underutilized businesses that reasonably could have been expected to submit a quote and that were known to the contractor, or available on State or local government maintained lists, at least 10 days before the bid date and notified them of the nature and scope of the work to be performed.
- ☐ **2 --(10 pts)** Made the construction plans, specifications and requirements available for review by prospective historically underutilized businesses, or providing these documents to them at least 10 days before the bids are due.
- ☐ **3 – (15 pts)** Broken down or combined elements of work into economically feasible units to facilitate historically underutilized participation.
- ☐ **4 – (10 pts)** Worked with the historically underutilized business trade, community, or contractor organizations identified by the Office of Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of historically underutilized businesses.
- ☐ **5 – (10 pts)** Attended prebid meetings scheduled by the public owner.
- ☐ **6 – (20 pts)** Provided assistance in getting required bonding or insurance or provided alternatives to bonding or insurance for subcontractors.
- ☐ **7 – (15 pts)** Negotiated in good faith with interested historically underutilized businesses and did not reject them as unqualified without sound reasons based on their capabilities. Any rejection of a historically underutilized business based on lack of qualification should have the reasons documented in writing.
- ☐ **8 – (25 pts)** Provided assistance to an otherwise qualified historically underutilized business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisted historically underutilized businesses in obtaining the same unit pricing with the bidder's suppliers in order to help historically underutilized businesses in establishing credit.
- ☐ **9 – (20 pts)** Negotiated joint venture and partnership arrangements with historically underutilized businesses in order to increase opportunities for historically underutilized business participation on a public construction or repair project when possible.
- ☐ **10 - (20 pts)** Provided quick pay agreements and policies to enable historically underutilized contractors and suppliers to meet cash-flow demands.

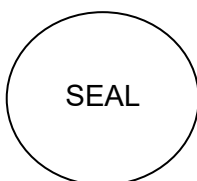
The undersigned, if apparent low bidder, will enter into a formal agreement with the firms listed in the Identification of Historically Underutilized Business Participation schedule conditional upon scope of contract to be executed with the Owner. Substitution of contractors must be in accordance with GS143-128.2(d) Failure to abide by this statutory provision will constitute a breach of the contract.

The undersigned hereby certifies that he or she has read the terms of the historically underutilized business commitment and is authorized to bind the bidder to the commitment herein set forth.

Date: \_\_\_\_\_ Name of Authorized Officer: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_



State of North Carolina, County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

Notary Public \_\_\_\_\_

My commission expires \_\_\_\_\_

**CITY OF KANNAPOLIS-AFFIDAVIT B--Intent to Perform Contract  
with Own Workforce.**

Affidavit of \_\_\_\_\_  
(Name of Bidder)

I hereby certify that it is our intent to perform 100% of the work required for the \_\_\_\_\_  
\_\_\_\_\_ contract.  
(Name of Project)

In making this certification, the Bidder states that the Bidder does not customarily subcontract elements of this type project, and normally performs and has the capability to perform and will perform all elements of the work on this project with his/her own current work forces; and

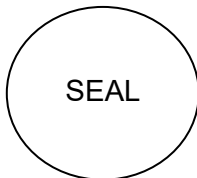
The Bidder agrees to provide any additional information or documentation requested by the owner in support of the above statement.

The undersigned hereby certifies that he or she has read this certification and is authorized to bind the Bidder to the commitments herein contained.

Date: \_\_\_\_\_ Name of Authorized Officer: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_



State of North Carolina, County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

Notary Public \_\_\_\_\_

My commission expires \_\_\_\_\_

**BID FORM**

## PROJECT IDENTIFICATION:

Opal Street Water and Street Improvement Project

## THIS BID IS SUBMITTED TO:

Alley, Williams, Carmen & King, Inc.  
120 S. Main Street  
Kannapolis, North Carolina 28081

1.01 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the time indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

2.01 Bidder accepts all of the terms and conditions of the Invitation to Bid and the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 60 days after the day of bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner. Bidder will sign and submit the Agreement with the Bonds and other documents required by the Bidding Documents within 10 days after the date of Owner's Notice of Award.

## 3.01 In submitting this Bid, Bidder represents that:

- A. Bidder has examined and carefully studied the Bidding Documents, the other related data identified in the Bidding Documents, and the following Addenda, receipt of all which is hereby acknowledged:

No. \_\_\_\_\_ Dated \_\_\_\_\_

No. \_\_\_\_\_ Dated \_\_\_\_\_

No. \_\_\_\_\_ Dated \_\_\_\_\_

No. \_\_\_\_\_ Dated \_\_\_\_\_

- B. Bidder has visited the site and become familiar with and satisfied as to the general, local, and site conditions that may affect cost, progress, and performance of the Work.
- C. Bidder is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Bidder has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except underground facilities) which have been identified in the Supplementary Conditions as provided in Paragraph 4.02 of the General Conditions, and reports and drawings of a hazardous environmental condition, if any, which has been identified in the Supplementary Conditions as provided in Paragraph 4.06 of the General Conditions.

- E. Bidder has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and underground facilities) at or contiguous to the site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying the specific means, methods, techniques, sequences, and procedures of construction required by the Bidding Documents to be employed by Bidder, and safety precautions and programs incident thereto.
  - F. Bidder does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid or performance of the Work at the price(s) bid and within the times and in accordance with the other terms and conditions of the Bidding Documents.
  - G. Bidder is aware of the general nature of Work to be performed by Owner and others at the site that relates to Work indicated in the Bidding Documents.
  - H. Bidder has correlated the information known to Bidder, information and observations obtained from visits to the site, reports and drawings identified in the Bidding Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Bidding Documents.
  - I. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by Engineer is acceptable to Bidder.
  - J. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.
  - K. Bidder further represents that this Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization, or corporation; Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; Bidder has not solicited or induced any individual or entity to refrain from bidding; and Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over Owner.
- 4.01 Bidder will complete the Work for the following unit prices, computed in accordance with Paragraph 11.03.B of the General Conditions. Bidder acknowledges that estimated quantities are not guaranteed and are solely for the purpose of comparison of Bids, and that final payment for all Unit Price Bid items will be based on actual quantities provided, determined as provided in the Contract Documents.

UNIT PRICE SCHEDULE							
ITEM	DESC	SECT	ITEM DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	EXTENSION
1	NCDOT	800	MOBILIZATION	1	LS	LUMP SUM	
2	NCDOT	801/SP-1	CONSTRUCTION SURVEYING, AS-BUILT SURVEY FOR WATER LINE	1	LS	LUMP SUM	
3	NCDOT	226/SP-2	COMPREHENSIVE GRADING	1	LS	LUMP SUM	
4	NCDOT	225	UNDERCUT EXCAVATION	150	CY		
5	NCDOT	265	SELECT GRANULAR MATERIAL, CLASS III	150	CY		
6	NCDOT	270	GEOTEXTILE FOR SOIL STABILIZATION	150	SY		
7	NCDOT	520	AGGREGATE BASE COURSE	320	TN		
8	NCDOT	607	INCIDENTAL MILLING	110	SY		
9	NCDOT	610	ASPHALT CONCRETE INTERMEDIATE COURSE, I19.0C	240	TN		
10	NCDOT	610	ASPHALT CONCRETE SURFACE COURSE, S9.5C	200	TN		
11	NCDOT	620/SP-3	ASPHALT BINDER FOR PLANT MIX	35	TN		
12	NCDOT	654/SP-4	PATCHING EXISTING PAVEMENT	100	TN		
13	NCDOT	SP-5	ASPHALT WEDGING	10	TN		
14	NCDOT	846	2' VALLEY CURB AND GUTTER	150	LF		
15	NCDOT	848	6" CONCRETE DRIVEWAY	30	SY		
16	NCDOT	1510/SP-6	6" C-900 PVC WATER LINE	888	LF		
17	NCDOT	1510/SP-6	6" DUCTILE IRON PIPE WATER LINE	112	LF		



UNIT PRICE SCHEDULE							
ITEM	DESC	SECT	ITEM DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	EXTENSION
18	NCDOT	1510/SP-6	6" DIP HYDRANT LEG, RESTRAINED JOINT	20	LF		
19	NCDOT	1510/SP-6	MECHANICAL JOINT FITTINGS	610	LBS		
20	NCDOT	1510/SP-6	FIRE HYDRANT	2	EA		
21	NCDOT	1510/SP-6	6" GATE VALVE	7	EA		
22	NCDOT	1510/SP-6	2" GATE VALVE	1	EA		
23	NCDOT	1510/SP-6	2" TEMPORARY BLOW OFF	1	EA		
24	NCDOT	1510/SP-7	RECONNECT WATER METERS	9	EA		
25	NCDOT	858	ADJUSTMENT OF MANHOLES	4	EA		
26	NCDOT	1530	ABANDON EXISTING WATER LINE	625	LF		
27	NCDOT	SP-8	BACKFLOW PREVENTION FOR FILLING WATER MAIN	1	EA		
28	NCDOT	SP-9	TIE TO EXISTING WATER MAIN	4	EA		
29	NCDOT	1607	CONSTRUCTION ENTRANCE	1	EA		
30	NCDOT	1642/SP-10	WATTLE CHECKS	9	EA		
31	NCDOT	SP-11	FABRIC INSERT INLET PROTECTION DEVICE	1	EA		
32	NCDOT	1660	SEEDING AND MULCHING	1	LS	LUMP SUM	
33	NCDOT	SP-12	CONCRETE WASHOUT STRUCTURE	1	EA		
34	NCDOT	SP-13	TEMPORARY TRAFFIC CONTROL	1	LS	LUMP SUM	
						SUBTOTAL	
						10% CONTINGENCY	
						TOTAL BID	

The Contingency is to be used for minor change order items authorized by the Owner. Any unused Contingency reverts back to the owner at the completion of the contract. **The Owner reserves the right to reduce or eliminate all or a portion of the proposed work dependent upon funding. The Contractor shall have no claim relative to reduction or elimination of work at any location on this project.**

5.01 Bidder agrees that all excavation is unclassified.

5.02 Bidder agrees that the Work will be completed and ready for final payment in accordance with Paragraph 14.04 of the General Conditions within 120 calendar days, after the commencement of Contract Times as defined in the General Conditions.

5.03 Bidder accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the work within the times specified above.

6.01 Communications concerning this Bid shall be sent to Bidder at the following address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7.01 The following documents are attached to and made a condition of the Bid.

- A. Required Bid Security in the form of a Bid Bond - Certified Check.
- B. Bidder is instructed to complete the Identification of Historically Underutilized Business Participation Form, HUB Affidavit A or Affidavit B.
- C. Bidder is instructed to complete Iran Divestment
- D. Bidder is instructed to complete the Debarment Form.
- E. Bidder is instructed to complete E-Verify.

8.01 The terms used in this Bid have the meanings indicated in the instructions to Bidders, the General Conditions, and the Supplementary Conditions.

SIGNATURE OF BIDDER

Contractor's License Number \_\_\_\_\_

License Expiration Date \_\_\_\_\_

## **If an Individual**

By \_\_\_\_\_  
(signature of individual)

doing business as \_\_\_\_\_

Business address \_\_\_\_\_

\_\_\_\_\_

Phone No. \_\_\_\_\_

Date \_\_\_\_\_, 20\_\_\_\_

ATTEST \_\_\_\_\_ TITLE \_\_\_\_\_

## **If a Partnership**

By \_\_\_\_\_  
(firm name)

\_\_\_\_\_  
(signature of authorized partner)

Business address \_\_\_\_\_

\_\_\_\_\_

Phone No. \_\_\_\_\_

Date \_\_\_\_\_, 20\_\_\_\_

ATTEST \_\_\_\_\_ TITLE \_\_\_\_\_

## **If a Limited Liability Company (LLC)**

By \_\_\_\_\_  
(company name)

By \_\_\_\_\_  
(signature of manager or authorized memeber)

\_\_\_\_\_  
(title)

Business address \_\_\_\_\_

Phone No. \_\_\_\_\_

Date \_\_\_\_\_, 20\_\_\_\_

ATTEST \_\_\_\_\_ TITLE \_\_\_\_\_

## **If a Corporation**

By \_\_\_\_\_  
(Corporation name)

\_\_\_\_\_  
(signature of authorized person)

\_\_\_\_\_  
(title)

Business address \_\_\_\_\_

Phone No. \_\_\_\_\_

Date \_\_\_\_\_, 20\_\_\_\_

ATTEST \_\_\_\_\_ TITLE \_\_\_\_\_

(Seal)

**\*\*Contractor, Vendor or Bidder – Return This Form With All Other Required Documentation\*\***

**IRAN DIVESTMENT ACT CERTIFICATION  
REQUIRED BY N.C.G.S. 147-86.59**

---

Name of Vendor or Bidder: \_\_\_\_\_  
\_\_\_\_\_

As of the date listed below, the contractor, vendor or bidder listed above and all subcontractors utilized by the contractor, vendor or bidder listed above, is not listed on the Final Divestment List created by the State Treasurer pursuant to N.C.G.S. 147-86.55.

The undersigned hereby certifies that he or she is authorized by the contractor, vendor or bidder listed above to make the foregoing statement.

---

---

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Printed Name Title

*Notes to persons signing this form:*

N.C.G.S. 147-86.59 requires this certification for bids or contracts with the State of North Carolina, a North Carolina local government, or any other political subdivision of the State of North Carolina. The certification is required at the following times:

- When a bid is submitted
- When a contract is entered into (if the certification was not already made when the vendor made its bid)
- When a contract is renewed, or assigned

N.C.G.S. 147-86.59 requires that contractors with the State, a North Carolina local government, or any other political subdivision of the state of North Carolina must not utilize any subcontractor found on the State Treasurer's Final Divestment List.

The State Treasurer's Final Divestment List can be found on the State Treasurer's website at the address [www.nctreasurer.com/Iran](http://www.nctreasurer.com/Iran) and will be updated every 180 days.

CERTIFICATE REGARDING DEBARMENT,  
SUSPENSION AND OTHER RESPONSIBILITY MATTERS

This form must be completed for each prime and subcontractor; and submitted to the State Construction Grants Section, PO Box 27687, Raleigh, NC 27611.

The prospective participant certifies to the best of its knowledge and belief that it and its principals;

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- b. Have not within a three year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph b. of this certification; and
- d. Have not with a three year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 U.S.C. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

---

Name and Title of Authorized Representative

---

(Prime Contractor or Sub)

---

Signature of Authorized Representative

---

Date

I am unable to certify to the above statements. Attached is my explanation.

Prime or Subcontractor's Name:

Telephone Number:

**NOTICE TO VENDORS AND PARTIES**  
**TO ANY CONTRACT WITH**  
**THE CITY OF KANNAPOLIS**

Effective September 4, 2013, House Bill 786/S.L. 2013-418, passed by the General Assembly of North Carolina, requires that business entities and employers with whom a public entity contracts provide proof of enrollment and participation in E-Verify, an internet based system operated by the U.S. Department of Homeland Security, which may be used to determine the eligibility of new hires to work in the United States. This legislation applies to all state agencies, cities, counties, school boards, as well as all private employers doing business in North Carolina who employ 25 or more employees in the State of North Carolina. **This law applies to all City contracts.**

HB786 specifically prohibits governmental units from entering into contracts “unless the contractor and the contractor’s subcontractors comply with the requirements of Article 2 of Chapter 64 of the General Statutes.” (Article 2 of Chapter 64 establishes North Carolina’s E-Verify requirements for private employers). It is important to note that the verification requirement applies to subcontractors as well as contractors. The terms “contractor” and “subcontractor” refers to any person or entity entering any kind of contractual relationship with the City.

The new laws specifically prohibit governmental units from entering into contracts with contractors who have not (or their subs have not) complied with E-Verify requirements. Although the new statutes don’t specify the consequences for entering into a contract in violation of this prohibition, it may be reasonable to assume that the contract would be void.

As proof of enrollment and participation in E-Verify, the City requires all parties entering into a contractual relationship with the City to have executed and notarized the E-Verify Affidavit attached hereto.

Any violation of this provision by the Contractor, would provide grounds for a breach of contract claim by the City. Should the contractor fail to ensure that his or her subcontractors, if any, or subsequently hired subcontractors are non-compliant, would allow for the contract to be voided by the City.

The following website provides further information about participation and enrollment in E-Verify: [www.uscis.gov/everfy](http://www.uscis.gov/everfy)

Michael B. Legg  
City Manager  
City of Kannapolis

**CITY OF KANNAPOLIS**

**E-VERIFY AFFIDAVIT**

STATE OF NORTH CAROLINA

CITY OF \_\_\_\_\_

Before me, the undersigned Notary Public, personally appeared \_\_\_\_\_  
(Affiant) who, being by me first duly sworn, doth depose and say as follows:

I, in my capacity as \_\_\_\_\_ (Title) of \_\_\_\_\_  
(Business Entity or Employer), having lawful authority to act in its behalf and personal knowledge of the facts set out herein, do attest to the following:

At the time of execution and during the term or performance of any contract with City of Kannapolis, North Carolina:

1. ☐ The Business Entity or Employer will not knowingly employ, hire for employment, or continue to employ any unauthorized alien. The Business Entity or Employer is enrolled in E-Verify. The Business Entity or Employer will participate in E-Verify to verify the employment status of new hires, as well as any subcontractors' compliance with E-Verify:

\*\*\*\*\* [OR] \*\*\*\*\*

2. ☐ The Business Entity has 25 or fewer employees and does not intend to hire more than 25 employees for the purpose of supplying goods or services. Pursuant to NC House Bill 786/S.L.2013-418, vendors with 25 or fewer employees are exempt from acquiring an E-Verify account and are required to supply a copy of their driver license if they have not registered and do not have an E-Verify User Identification Number. Should the Business Entity or Employer acquire more than 26 employees, the Business Entity or Employer will acquire an E-Verify account.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Affiant

I, the undersigned Notary Public in and for \_\_\_\_\_ hereby  
certify that \_\_\_\_\_ whose name as \_\_\_\_\_ (Title) of  
\_\_\_\_\_ (Business Entity or Employer) and first being duly sworn  
the foregoing Affidavit and who is known to me, acknowledged before me on this day that, being  
informed of the contents of the said Affidavit he/she, as such officer or agent and with full authority,  
executed the same voluntarily as and for the act of the Business Entity or Employer.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

Print Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

(affix seal)



AGREEMENT

THIS AGREEMENT is dated as of the \_\_\_\_ day of \_\_\_\_ in the year \_\_\_\_, by and between  
The City of Kannapolis (herein called Owner) and \_\_\_\_\_ (herein called Contractor).

Owner and Contractor, in consideration of the mutual covenants herein set forth, agree as follows:

**ARTICLE 1. WORK.**

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents based on the acceptance by Owner of Contractor's Bid.

1.02 The Work is generally described as follows:

**Opal Street Water and Street Improvement Project – Replacement of approximately 1,000 LF of 6” PVC & DIP water main, street repair, and paving or other work necessary or as directed by the City Engineer.**

**ARTICLE 2. ENGINEER.**

2.01 Alley, Williams, Carmen & King, Inc. is the Engineer as referred to in the Contract Documents. The Engineer, and its duly authorized agents (as declared by the Owner), will assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

Contact Person: David W. Lipe, P.E. Telephone: 704-938-1515

**ARTICLE 3. CONTRACT TIMES, LIQUIDATED DAMAGES, DELAYS AND DAMAGES, DELAY COMPENSATION.**

3.01 Time of the Essence.

A. All time limits for Substantial Completion and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

3.02 The Contract Times shall be as indicated in the Contractor's Bid. The Work will be substantially completed within the number of calendar days indicated in the Contractor's Bid from the date when the Contract Times commence to run as provided in Paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions within the number of days indicated in the Contractor's Bid from the date when the Contract Times commence to run.

3.03 Liquidated Damages.

A. Owner and Contractor recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 3.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay Owner **\$500.00** for each day that expires after the time

specified in Paragraph 3.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

- B. In case of joint responsibility for delay in the completion of the Work, where two or more separate contracts are in force at the same time and cover work at the same site, liquidated damages assessed against any one Contractor will be based upon the individual responsibility of that Contractor for the delay as determined by, and in the judgment of, Engineer.
- C. Owner shall have the right to deduct the liquidated damages from any money in its hands, otherwise due, or to become due, to Contractor, or to initiate applicable dispute resolution procedures and recover liquidated damages for nonperformance of this Contract within the time stipulated.

#### 3.04 Delays and Damages.

- A. In the event Contractor is delayed in the prosecution and completion of the Work because of any delays caused by Owner or Engineer, and except as set forth in Paragraph 4.01 of the General Conditions, Contractor shall have no claim against Owner or Engineer for damages or contract adjustment other than an extension of Contract Times and the waiving of liquidated damages during the period occasioned by the delay.

#### ARTICLE 4. CONTRACT PRICE.

- 4.01 Owner shall pay Contractor in current funds, for completion of the Work designated in Article 1 in accordance with the Contract Documents an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of that item as indicated in the Contractor's Bid, for the total amount of:

---

(words)

(\$ \_\_\_\_\_)  
(figures)

As provided in Paragraph 11.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer as provided in Paragraph 9.08 of the General Conditions. Unit prices have been computed as provided in Paragraph 11.03 of the General Conditions.

#### ARTICLE 5. PAYMENT PROCEDURES.

##### 5.01 Submittal and Processing of Payments.

- A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

##### 5.02 Progress Payments; Retainage.

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment as recommended by Engineer, on or about the 25<sup>th</sup> day of each month during construction. All progress payments will be on the basis of the progress of the Work measured

by the schedule of values established in Paragraph 2.07 of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in Division 1, General Requirements.

- B. Prior to Substantial Completion, Owner will retain from progress payments, less the aggregate of payments previously made and less such amounts as Engineer shall determine, or Owner may withhold, in accordance with Paragraph 4.02.B.5 of the General Conditions, an amount equal to the following percentages:
1. Until the Work is 50 percent complete, retainage will be 5 percent of Work completed.
  2. Retainage will be 5 percent of the value of materials and equipment that are not incorporated in the Work but are delivered, suitably stored, and accompanied by documentation satisfactory to Owner as provided in Paragraph 14.02.A.1 of the General Conditions. Stored materials and equipment retainage will be released when the materials and equipment are incorporated in the Work.
  3. When the project is fifty percent (50%) complete, the OWNER, with written consent of the surety, shall not retain any further retainage from periodic payments due the CONTRACTOR, if the CONTRACTOR continues to perform satisfactorily and any nonconforming work identified in writing prior to that time by the ENGINEER, or OWNER has been corrected by the CONTRACTOR and accepted by the ENGINEER, or OWNER. If the OWNER determines the CONTRACTOR's performance is unsatisfactory, the OWNER may reinstate retainage for each subsequent periodic payment application as authorized in this subsection up to the maximum amount of five percent (5%).
  4. The project shall be deemed fifty percent (50%) complete when the CONTRACTOR's gross project invoices, excluding the value of materials stored off-site, equal or exceed fifty percent (50%) of the value of the contract, except the value of materials stored on-site shall not exceed twenty percent (20%) of the CONTRACTOR's gross project invoices for the purpose of determining whether the project is fifty percent (50%) complete.
  5. Notwithstanding items (2) and (3) of section , and section SC-14.02.C of the Supplementary Conditions, following fifty percent (50%) completion of the project, the OWNER shall be authorized to withhold additional retainage from a subsequent periodic payment, not to exceed five percent (5%) as set forth in item of this section, in order to allow the OWNER to retain two and one half percent (2.5%) total retainage through the completion of the project. In the event that the OWNER elects to withhold additional retainage on any periodic payment subsequent to release of retainage pursuant to section SC-14.02.C.5 of the Supplementary Conditions, the general CONTRACTOR may also withhold from the subcontractors remaining on the project sufficient retainage to offset the additional retainage held by the OWNER, notwithstanding the actual percentage of retainage withheld by the OWNER of the project as a whole.

Within 60 days after the submission of a pay request and the OWNER receives a certificate of substantial completion from the ENGINEER, or the OWNER receives beneficial occupancy or use of the project, the OWNER with written consent of the surety shall release to the CONTRACTOR all retainage on payments held by the OWNER: However, the OWNER may retain sufficient funds to secure completion of the project or corrections on any work. If the OWNER retains funds,

the amount retained shall not exceed two and one-half times the estimated value of the work to be completed or corrected.

The existence of any third-party claims against the contractor or any additive change orders to the construction contract shall not be a basis for delaying the release of any retainage on partial payments.

Nothing in this section shall prevent the OWNER from withholding payment to the CONTRACTOR in addition to the amounts authorized by other sections of this contract for unsatisfactory job progress, defective construction not remedied, disputed work, or third-party claims filed against the OWNER or reasonable evidence that a third-party claim will be filed."

Consent of the Surety shall be obtained before retainage is paid by Owner. Consent of the Surety, signed by an agent, must be accompanied by a certified copy of such agent's authority to act for the Surety.

### 5.03 Final Payment.

- A. Upon completion and acceptance of the Work in accordance with Paragraphs 14.07.A of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in Paragraph 14.07.B.

## ARTICLE 6. CONTRACT DOCUMENTS.

- A. The Contract Documents which comprise the entire agreement between Owner and Contractor concerning the Work consist of the following:
1. This Agreement.
  2. General Conditions.
  3. Supplementary Conditions.
  4. Special Conditions.
  5. Specifications.
  6. Project Special Provisions
  7. Rules Implementing Mediated Settlement Conferences
  8. Bid Form.
  9. Drawings consisting of 8 sheets.
  10. Addenda numbers    to   , inclusive.
  11. Exhibits to this Agreement, enumerated as follows:
    - a. Contractor's Bid.
    - b. Notice to Proceed.
    - c. Documentation submitted by Contractor prior to Notice of Award, marked Exhibit   .
  12. The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto:
    - a. Written Amendments
    - b. Work Change Directives.
    - c. Change Orders.
  13. North Carolina Department of Transportation Standard Specifications for Roads and Structures, dated January 2024, by reference.
  14. Standard Specifications for Wastewater Collection and Water Distribution for Cabarrus County, current revision.

## 15. City of Kannapolis Water &amp; Sewer Standards and Policies

- B. There are no Contract Documents other than those listed in this article.
- C. The Contract Documents may be amended, modified, or supplemented only as provided in Paragraph 3.04 of the General Conditions.

## ARTICLE 7. MISCELLANEOUS.

## 7.01 Terms.

- A. Terms used in this Agreement will have the meanings indicated in the General Conditions.

## 7.02 Assignment of Contract.

- B. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation moneys that may become due and moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law); and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

## 7.03 Successors and Assigns.

- A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect of all covenants, agreements, and obligations contained in the Contract Documents.

## 7.04 Severability.

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

## 7.05 Business Addresses.

- A. The business address of Contractor given herein and the address of Contractor's office in the vicinity of the Work are both hereby designated as the places to which all notices, letters, and other communication to Contractor will be mailed or delivered. The address of Owner appearing herein is hereby designated as the place to which all notices, letters, and other communication to Owner shall be mailed or delivered. Either party may change its address at any time by an instrument in writing delivered to Engineer and to the other party.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. One counterpart each has been delivered to Owner, Contractor, Engineer and Surety \_\_\_\_\_.

This Agreement will be effective on \_\_\_\_\_.

OWNER: City of Kannapolis

CONTRACTOR:

By \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Address for giving notices

Address for giving notices

401 Laureate Way  
Kannapolis, NC 28081

Approved as to Form:

Contractor's Lic. No. \_\_\_\_\_

\_\_\_\_\_  
Attorney for Owner

Expiration Date: \_\_\_\_\_

Joint Venture

ATTEST:

CONTRACTOR: \_\_\_\_\_

\_\_\_\_\_  
City Clerk

By \_\_\_\_\_

This Instrument has been pre-audited in a manner required by the local Gov't budget and fiscal control act.

Title: \_\_\_\_\_

Address for giving notices

\_\_\_\_\_  
Finance Officer

Contractor's Lic. No. \_\_\_\_\_

Expiration Date \_\_\_\_\_

(Municipal Seal)

ATTEST:

\_\_\_\_\_  
Secretary  
(Contractor's Seal)

CONTRACTOR'S RELEASE

KNOW ALL MEN BY THESE PRESENTS that \_\_\_\_\_  
(Contractor)

of \_\_\_\_\_ County of \_\_\_\_\_ and State of \_\_\_\_\_,  
do hereby acknowledge that

\_\_\_\_\_  
(Contractor)

has this day had and received of and from the \_\_\_\_\_  
(Owner)

the sum of One Dollar and other valuable consideration in full satisfaction and payment of all sums of money owing, payable and belonging to \_\_\_\_\_  
(Contractor)

by any means whatsoever, for on account of a certain agreement between said \_\_\_\_\_  
(Owner)

and \_\_\_\_\_ dated \_\_\_\_\_.  
(Contractor)

NOW THEREFORE, the said \_\_\_\_\_  
(Contractor)

(for myself, my heirs, executors and administrators) (for itself, its successors and assigns) do by

these presents remise, release, quit-claim and forever discharge the said

\_\_\_\_\_ its successor and assigns, of and  
(Owner)

from all claims and demands arising from or in connection with the said agreement dated \_\_\_\_\_ and of and from all, and all manner of action and actions, cause and causes of action and actions, suits, debts, dues, duties, sum and sums of money, accounts, reckoning, bonds, bills, specialties, covenants, contracts, agreements, promises, variances, damages, judgments, extents, executions, claims and demand, whatsoever in law or equity, or otherwise which against the said

\_\_\_\_\_ ever had, now  
(Owner)

have, now which (I, my heirs, executors, or administrators) (it, its successors and assigns) hereafter can, shall or may have, for upon or by reason of any manner cause or thing whatsoever, from the beginning of the world to the date of these presents.

IN WITNESS WHEREOF, \_\_\_\_\_,  
(Contractor)

has caused these presents to be duly executed the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Signed, Sealed and Delivered in the presence of:

\_\_\_\_\_  
(Individual Contractor) (SEAL)

\_\_\_\_\_  
(Partnership Contractor) (SEAL)

Attest: \_\_\_\_\_ By: \_\_\_\_\_ (SEAL)  
(Partner)

\_\_\_\_\_  
(Corporation)

\_\_\_\_\_  
(Secretary) By: \_\_\_\_\_  
(President or Vice President)

(CORPORATE SEAL)



CONTRACTOR'S AFFIDAVIT

STATE OF: \_\_\_\_\_.

COUNTY OF: \_\_\_\_\_.

Before me, the undersigned, a Notary Public, \_\_\_\_\_,

in and for said County and State personally appeared

\_\_\_\_\_  
(Individual, Partner, or duly authorized representative of Corporate Contractor)

who being duly sworn according to law deposes and says that all labor, material and outstanding claims and indebtedness of whatever nature arising out of the performance of the contract of the

\_\_\_\_\_  
(Owner)with \_\_\_\_\_  
(Contractor)

have been paid in full.

\_\_\_\_\_  
(Individual, Partner, or duly authorized  
representative or Corporate Contractor)

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_.

My Commission Expires: \_\_\_\_\_.

Do not complete with bid Do not complete with bid Do not complete with bid Do not complete with bid

**City of Kannapolis****- AFFIDAVIT C -****Portion of the Work to be  
Performed by Historically  
Underutilized Business Firms****(Note this form is to be submitted only by the apparent lowest responsible, responsive bidder.)**

If the portion of the work to be executed by historically underutilized businesses as defined in GS143-128.4(b) is equal to or greater than 10% of the bidders total contract price, then the bidder must complete this affidavit.

This affidavit shall be provided by the apparent lowest responsible, responsive bidder within **72 hours** after notification of being low bidder.

Affidavit of \_\_\_\_\_ I do hereby certify that on the  
(Name of Bidder)

\_\_\_\_\_  
(Project Name)  
Project ID# \_\_\_\_\_ Amount of Bid \$ \_\_\_\_\_

I will expend a minimum of \_\_\_\_\_% of the total dollar amount of the contract with historically underutilized business enterprises. Historically underutilized businesses will be employed as construction subcontractors, vendors, suppliers or providers of professional services. Such work will be subcontracted to the following firms listed below. Attach additional sheets if required

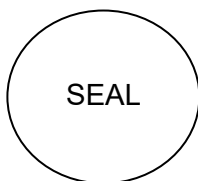
Name and Phone Number	*Category	Work description	Dollar Value

\*Categories: Black, African American (**B**), Hispanic (**H**), Asian American (**A**), American Indian (**I**), Female (**F**), Socially and Economically Disadvantaged (**D**), Disabled (**D2**)

Pursuant to GS143-128.2(d), the undersigned will enter into a formal agreement with Historically Underutilized Business Firms for work listed in this schedule conditional upon execution of a contract with the Owner. Failure to fulfill this commitment may constitute a breach of the contract.

The undersigned hereby certifies that he or she has read the terms of this commitment and is authorized to bind the bidder to the commitment herein set forth.

Date: \_\_\_\_\_ Name of Authorized Officer: \_\_\_\_\_



Signature: \_\_\_\_\_

Title: \_\_\_\_\_

State of North Carolina, County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

Notary Public \_\_\_\_\_

My commission expires \_\_\_\_\_

## City of Kannapolis - AFFIDAVIT D - Good Faith Efforts

(Note this form is to be submitted only by the apparent lowest responsible, responsive bidder.)

If the goal of 10% participation by historically underutilized business **is not** achieved, the Bidder shall provide the following documentation to the Owner of his good faith efforts:

Affidavit of \_\_\_\_\_ I do hereby certify that on the  
(Name of Bidder)

\_\_\_\_\_  
(Project Name)

Project ID# \_\_\_\_\_ Amount of Bid \$ \_\_\_\_\_

I will expend a minimum of \_\_\_\_\_ % of the total dollar amount of the contract with historically underutilized business enterprises. Historically underutilized businesses will be employed as construction subcontractors, vendors, suppliers or providers of professional services. Such work will be subcontracted to the following firms listed below. (Attach additional sheets if required)

Name and Phone Number	*Category	Work description	Dollar Value

\*Categories: Black, African American (**B**), Hispanic (**H**), Asian American (**A**), American Indian (**I**), Female (**F**), Socially and Economically Disadvantaged (**D**), Disabled (**D2**)

**Examples** of documentation that may be required to demonstrate the Bidder's good faith efforts to meet the goals set forth in these provisions include, but are not necessarily limited to, the following:

- Copies of solicitations for quotes to at least three (3) historically underutilized business firms from the source list provided by the State for each subcontract to be let under this contract (if 3 or more firms are shown on the source list). Each solicitation shall contain a specific description of the work to be subcontracted, location where bid documents can be reviewed, representative of the Prime Bidder to contact, and location, date and time when quotes must be received.
- Copies of quotes or responses received from each firm responding to the solicitation.
- A telephone log of follow-up calls to each firm sent a solicitation.
- For subcontracts where a historically underutilized business firm is not considered the lowest responsible sub-bidder, copies of quotes received from all firms submitting quotes for that particular subcontract.
  - Documentation of any contacts or correspondence to historically underutilized business, community, or contractor organizations in an attempt to meet the goal.
- Copy of pre-bid roster.
- Letter documenting efforts to provide assistance in obtaining required bonding or insurance for historically underutilized business.
- Letter detailing reasons for rejection of historically underutilized business due to lack of qualification.
- Letter documenting proposed assistance offered to historically underutilized business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letter of credit, including waiving credit that is ordinarily required.

Failure to provide the documentation as listed in these provisions may result in rejection of the bid and award to the next lowest responsible and responsive bidder.

**City of Kannapolis****- AFFIDAVIT D -****Good Faith Efforts**

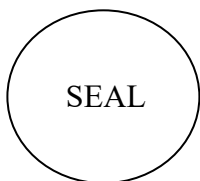
Pursuant to GS143-128.2(d), the undersigned will enter into a formal agreement with Historically Underutilized Business Firms for work listed in this schedule conditional upon execution of a contract with the Owner. Failure to fulfill this commitment may constitute a breach of the contract.

The undersigned hereby certifies that he or she has read the terms of this commitment and is authorized to bind the bidder to the commitment herein set forth.

Date: \_\_\_\_\_ Name of Authorized Officer: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_



State of \_\_\_\_\_, County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

Notary Public \_\_\_\_\_

My commission expires \_\_\_\_\_

**APPENDIX E****HUB DOCUMENTATION FOR CONTRACT PAYMENTS**

Prime Contractor/Architect: \_\_\_\_\_

Address &amp; Phone: \_\_\_\_\_

Project Name: \_\_\_\_\_

Pay Application #: \_\_\_\_\_ Period: \_\_\_\_\_

The following is a list of payments to be made to historically underutilized business contractors on this project for the above-mentioned period.

HUB FIRM NAME	* INDICATE TYPE OF HUB	AMOUNT PAID THIS MONTH	TOTAL PAYMENTS TO DATE	TOTAL AMOUNT COMMITTED

\*Categories: Black, African American (**B**), Hispanic (**H**), Asian American (**A**), American Indian (**I**), Female (**F**), Socially and Economically Disadvantaged (**D**), Disabled (**D2**)

Date: \_\_\_\_\_ Approved/Certified By: \_\_\_\_\_

Name

Title

Signature

Signature certifies that any historically underutilized business firms not previously verified in the bid/award process have been appropriately verified, services have been rendered, and payment is due as processed.

**\*\*THIS DOCUMENT MUST BE SUBMITTED WITH EACH PAY REQUEST & FINAL PAYMENT\*\***

HUB-E

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

**ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE**

and

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Endorsed by



CONSTRUCTION SPECIFICATIONS INSTITUTE

These General Conditions have been prepared for use with the Suggested Forms of Agreement Between Owner and Contractor (EJCDC C-520 or C-525, 2007 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are contained in the Narrative Guide to the EJCDC Construction Documents (EJCDC C-001, 2007 Edition). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (EJCDC C-800, 2007 Edition).

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## ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

### 1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
  2. *Agreement*—The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.
  3. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
  4. *Asbestos*—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
  5. *Bid*—The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
  6. *Bidder*—The individual or entity who submits a Bid directly to Owner.
  7. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda).
  8. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid security of acceptable form, if any, and the Bid Form with any supplements.
  9. *Change Order*—A document recommended by Engineer which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.
  10. *Claim*—A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
  11. *Contract*—The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*—Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
13. *Contract Price*—The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).
14. *Contract Times*—The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.
15. *Contractor*—The individual or entity with whom Owner has entered into the Agreement.
16. *Cost of the Work*—See Paragraph 11.01 for definition.
17. *Drawings*—That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.
18. *Effective Date of the Agreement*—The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
19. *Engineer*—The individual or entity named as such in the Agreement.
20. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
21. *General Requirements*—Sections of Division 1 of the Specifications.
22. *Hazardous Environmental Condition*—The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.
23. *Hazardous Waste*—The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
24. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
25. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
26. *Milestone*—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

27. *Notice of Award*—The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.
28. *Notice to Proceed*—A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.
29. *Owner*—The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.
30. *PCBs*—Polychlorinated biphenyls.
31. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
32. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.
33. *Project*—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
34. *Project Manual*—The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.
35. *Radioactive Material*—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
36. *Resident Project Representative*—The authorized representative of Engineer who may be assigned to the Site or any part thereof.
37. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
38. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.
39. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.

40. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
41. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
42. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
43. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
44. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
45. *Successful Bidder*—The Bidder submitting a responsive Bid to whom Owner makes an award.
46. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.
47. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.
48. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
49. *Unit Price Work*—Work to be paid for on the basis of unit prices.
50. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.
51. *Work Change Directive*—A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an

addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

## 1.02 Terminology

A. The words and terms discussed in Paragraph 1.02.B through F are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.

### B. *Intent of Certain Terms or Adjectives:*

1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.09 or any other provision of the Contract Documents.

### C. *Day:*

1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

### D. *Defective:*

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
  - a. does not conform to the Contract Documents; or
  - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
  - c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).

### E. *Furnish, Install, Perform, Provide:*



1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
  2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
  3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
  4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, “provide” is implied.
- F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

## **ARTICLE 2 – PRELIMINARY MATTERS**

### **2.01 *Delivery of Bonds and Evidence of Insurance***

- A. When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.
- B. *Evidence of Insurance:* Before any Work at the Site is started, Contractor and Owner shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Contractor and Owner respectively are required to purchase and maintain in accordance with Article 5.

### **2.02 *Copies of Documents***

- A. Owner shall furnish to Contractor up to ten printed or hard copies of the Drawings and Project Manual. Additional copies will be furnished upon request at the cost of reproduction.

### **2.03 *Commencement of Contract Times; Notice to Proceed***

- A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

## 2.04 *Starting the Work*

- A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

## 2.05 *Before Starting Construction*

- A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to Engineer for timely review:
  - 1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;
  - 2. a preliminary Schedule of Submittals; and
  - 3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

## 2.06 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

## 2.07 *Initial Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.
  - 1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of

the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.

2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

### **ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE**

#### **3.01    *Intent***

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to Owner.
- C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in Article 9.

#### **3.02    *Reference Standards***

- A. Standards, Specifications, Codes, Laws, and Regulations
  1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
  2. No provision of any such standard, specification, manual, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

#### **3.03    *Reporting and Resolving Discrepancies***

- A. *Reporting Discrepancies:*

1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.
2. *Contractor's Review of Contract Documents During Performance of Work:* If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) any standard, specification, manual, or code, or (c) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

*B. Resolving Discrepancies:*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
  - a. the provisions of any standard, specification, manual, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents); or
  - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

**3.04 Amending and Supplementing Contract Documents**

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:
  1. A Field Order;
  2. Engineer's approval of a Shop Drawing or Sample (subject to the provisions of Paragraph 6.17.D.3); or

3. Engineer's written interpretation or clarification.

### 3.05 *Reuse of Documents*

- A. Contractor and any Subcontractor or Supplier shall not:
  1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions; or
  2. reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

### 3.06 *Electronic Data*

- A. Unless otherwise stated in the Supplementary Conditions, the data furnished by Owner or Engineer to Contractor, or by Contractor to Owner or Engineer, that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.
- C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

## **ARTICLE 4 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS**

### 4.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the

Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

#### 4.02 *Subsurface and Physical Conditions*

A. *Reports and Drawings:* The Supplementary Conditions identify:

- 1. those reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site; and
- 2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).

B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

- 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
- 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
- 3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

#### 4.03 *Differing Subsurface or Physical Conditions*

A. *Notice:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed either:

- 1. is of such a nature as to establish that any "technical data" on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or
- 2. is of such a nature as to require a change in the Contract Documents; or

3. differs materially from that shown or indicated in the Contract Documents; or
4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

- B. *Engineer's Review:* After receipt of written notice as required by Paragraph 4.03.A, Engineer will promptly review the pertinent condition, determine the necessity of Owner's obtaining additional exploration or tests with respect thereto, and advise Owner in writing (with a copy to Contractor) of Engineer's findings and conclusions.

C. *Possible Price and Times Adjustments:*

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
  - a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and
  - b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:
  - a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or
  - b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or
  - c. Contractor failed to give the written notice as required by Paragraph 4.03.A.
3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, neither Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other

professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

#### 4.04 *Underground Facilities*

A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data provided by others; and
2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
  - a. reviewing and checking all such information and data;
  - b. locating all Underground Facilities shown or indicated in the Contract Documents;
  - c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction; and
  - d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated:*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
2. If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price



or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

#### 4.05 *Reference Points*

- A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

#### 4.06 *Hazardous Environmental Condition at Site*

- A. *Reports and Drawings:* The Supplementary Conditions identify those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at the Site.
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
  - 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
  - 2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
  - 3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.
- D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by

Paragraph 6.16.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 4.06.E.

- E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered written notice to Contractor: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.
- F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.
- G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- H. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

- I. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

## **ARTICLE 5 – BONDS AND INSURANCE**

### **5.01   *Performance, Payment, and Other Bonds***

- A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.
- B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.
- C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

### **5.02   *Licensed Sureties and Insurers***

- A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

### **5.03   *Certificates of Insurance***

- A. Contractor shall deliver to Owner, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.

- B. Owner shall deliver to Contractor, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain.
- C. Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
- D. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor.
- E. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.

#### 5.04 *Contractor's Insurance*

- A. Contractor shall purchase and maintain such insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:
  - 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
  - 2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
  - 3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
  - 4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:
    - a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or
    - b. by any other person for any other reason;
  - 5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
  - 6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.
- B. The policies of insurance required by this Paragraph 5.04 shall:

1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, be written on an occurrence basis, include as additional insureds (subject to any customary exclusion regarding professional liability) Owner and Engineer, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;
2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;
3. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;
4. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);
5. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and
6. include completed operations coverage:
  - a. Such insurance shall remain in effect for two years after final payment.
  - b. Contractor shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

#### 5.05 *Owner's Liability Insurance*

- A. In addition to the insurance required to be provided by Contractor under Paragraph 5.04, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.

#### 5.06 *Property Insurance*

- A. Unless otherwise provided in the Supplementary Conditions, Owner shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:

1. include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee;
  2. be written on a Builder's Risk "all-risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (other than that caused by flood), and such other perils or causes of loss as may be specifically required by the Supplementary Conditions.
  3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
  4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;
  5. allow for partial utilization of the Work by Owner;
  6. include testing and startup; and
  7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other loss payee to whom a certificate of insurance has been issued.
- B. Owner shall purchase and maintain such equipment breakdown insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee.
- C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other loss payee to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.
- D. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property

insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

- E. If Contractor requests in writing that other special insurance be included in the property insurance policies provided under this Paragraph 5.06, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Contractor by appropriate Change Order. Prior to commencement of the Work at the Site, Owner shall in writing advise Contractor whether or not such other insurance has been procured by Owner.

#### 5.07 *Waiver of Rights*

- A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or loss payees thereunder. Owner and Contractor waive all rights against each other and their respective officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.
- B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for:
  - 1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and
  - 2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial utilization pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.
- C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery

against Contractor, Subcontractors, or Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them.

5.08 *Receipt and Application of Insurance Proceeds*

- A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the loss payees, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order.
- B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

5.09 *Acceptance of Bonds and Insurance; Option to Replace*

- A. If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

- A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to Paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.



## ARTICLE 6 – CONTRACTOR’S RESPONSIBILITIES

### 6.01 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall not be responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

### 6.02 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner’s written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.

### 6.03 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.
- B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

#### 6.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 as it may be adjusted from time to time as provided below.
1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.
  2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

#### 6.05 *Substitutes and "Or-Equals"*

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances described below.
1. *"Or-Equal" Items:* If in Engineer's sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an "or-equal" item, in which case review and approval of the proposed item may, in Engineer's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:
    - a. in the exercise of reasonable judgment Engineer determines that:
      - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
      - 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole; and
      - 3) it has a proven record of performance and availability of responsive service.
    - b. Contractor certifies that, if approved and incorporated into the Work:
      - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
      - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

## 2. *Substitute Items:*

- a. If in Engineer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.
- b. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.
- c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented by the General Requirements, and as Engineer may decide is appropriate under the circumstances.
- d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
  - 1) shall certify that the proposed substitute item will:
    - a) perform adequately the functions and achieve the results called for by the general design,
    - b) be similar in substance to that specified, and
    - c) be suited to the same use as that specified;
  - 2) will state:
    - a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time,
    - b) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and
    - c) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;
  - 3) will identify:
    - a) all variations of the proposed substitute item from that specified, and
    - b) available engineering, sales, maintenance, repair, and replacement services; and

- 4) shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change.
- B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.
- C. *Engineer's Evaluation:* Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by a Change Order in the case of a substitute and an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.
- D. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- E. *Engineer's Cost Reimbursement:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- F. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

#### 6.06 *Concerning Subcontractors, Suppliers, and Others*

- A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.
- B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or

other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.

- C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:
  - 1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity; nor
  - 2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.
- E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.
- F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as a loss payee on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

## 6.07 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.
- B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.
- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

## 6.08 *Permits*

- A. Unless otherwise provided in the Supplementary Conditions, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

## 6.09 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all

court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor's responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.

- C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

#### 6.10 *Taxes*

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

#### 6.11 *Use of Site and Other Areas*

A. *Limitation on Use of Site and Other Areas:*

1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.
2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.
3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.

- B. *Removal of Debris During Performance of the Work:* During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

- C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor

shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

- D. *Loading Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

#### 6.12 *Record Documents*

- A. Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to Engineer for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to Engineer for Owner.

#### 6.13 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
1. all persons on the Site or who may be affected by the Work;
  2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
  3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.
- C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.



- D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- F. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

#### 6.14 *Safety Representative*

- A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

#### 6.15 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

#### 6.16 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

#### 6.17 *Shop Drawings and Samples*

- A. Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Engineer may require.

1. *Shop Drawings:*
    - a. Submit number of copies specified in the General Requirements.
    - b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 6.17.D.
  2. *Samples:*
    - a. Submit number of Samples specified in the Specifications.
    - b. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 6.17.D.
- B. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.
- C. *Submittal Procedures:*
1. Before submitting each Shop Drawing or Sample, Contractor shall have:
    - a. reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
    - b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
    - c. determined and verified the suitability of all materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
    - d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
  2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval of that submittal.
  3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop

Drawings or Sample submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

*D. Engineer's Review:*

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
3. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

*E. Resubmittal Procedures:*

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.

**6.18** *Continuing the Work*

- A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

**6.19** *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on representation of Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
  2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
1. observations by Engineer;
  2. recommendation by Engineer or payment by Owner of any progress or final payment;
  3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
  4. use or occupancy of the Work or any part thereof by Owner;
  5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;
  6. any inspection, test, or approval by others; or
  7. any correction of defective Work by Owner.

#### 6.20 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable .
- B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor,

Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

- C. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
  2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

#### 6.21 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.
- B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.
- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this Paragraph 6.21, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

## ARTICLE 7 – OTHER WORK AT THE SITE

### 7.01 *Related Work at Site*

- A. Owner may perform other work related to the Project at the Site with Owner's employees, or through other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:
  - 1. written notice thereof will be given to Contractor prior to starting any such other work; and
  - 2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.
- B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.
- C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

### 7.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:
  - 1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;
  - 2. the specific matters to be covered by such authority and responsibility will be itemized; and
  - 3. the extent of such authority and responsibilities will be provided.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

### 7.03 *Legal Relationships*

- A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.
- B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's wrongful actions or inactions.
- C. Contractor shall be liable to Owner and any other contractor under direct contract to Owner for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's wrongful action or inactions.

## **ARTICLE 8 – OWNER'S RESPONSIBILITIES**

### 8.01 *Communications to Contractor*

- A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

### 8.02 *Replacement of Engineer*

- A. In case of termination of the employment of Engineer, Owner shall appoint an engineer to whom Contractor makes no reasonable objection, whose status under the Contract Documents shall be that of the former Engineer.

### 8.03 *Furnish Data*

- A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

### 8.04 *Pay When Due*

- A. Owner shall make payments to Contractor when they are due as provided in Paragraphs 14.02.C and 14.07.C.

### 8.05 *Lands and Easements; Reports and Tests*

- A. Owner's duties with respect to providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

### 8.06 *Insurance*

- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

### 8.07 *Change Orders*

- A. Owner is obligated to execute Change Orders as indicated in Paragraph 10.03.

#### 8.08 *Inspections, Tests, and Approvals*

- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 13.03.B.

#### 8.09 *Limitations on Owner's Responsibilities*

- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

#### 8.10 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.06.

#### 8.11 *Evidence of Financial Arrangements*

- A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents.

#### 8.12 *Compliance with Safety Program*

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed pursuant to Paragraph 6.13.D.

### **ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION**

#### 9.01 *Owner's Representative*

- A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract Documents.

#### 9.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits



and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

#### 9.03 *Project Representative*

- A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

#### 9.04 *Authorized Variations in Work*

- A. Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

#### 9.05 *Rejecting Defective Work*

- A. Engineer will have authority to reject Work which Engineer believes to be defective, or that Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Engineer will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

#### 9.06 *Shop Drawings, Change Orders and Payments*

- A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.

- B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.
- C. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.
- D. In connection with Engineer's authority as to Applications for Payment, see Article 14.

9.07 *Determinations for Unit Price Work*

- A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of Paragraph 10.05.

9.08 *Decisions on Requirements of Contract Documents and Acceptability of Work*

- A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question.
- B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believes that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.
- C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.
- D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

9.09 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to the Resident Project Representative, if any, and assistants, if any.

#### 9.10 *Compliance with Safety Program*

- A. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Engineer has been informed pursuant to Paragraph 6.13.D.

### **ARTICLE 10 – CHANGES IN THE WORK; CLAIMS**

#### 10.01 *Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).
- B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

#### 10.02 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.D.

### 10.03 *Execution of Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:
1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;
  2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and
  3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

### 10.04 *Notification to Surety*

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

### 10.05 *Claims*

- A. *Engineer's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.
- B. *Notice:* Written notice stating the general nature of each Claim shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Times shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The

opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).

- C. *Engineer's Action:* Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:
1. deny the Claim in whole or in part;
  2. approve the Claim; or
  3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.
- D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.
- E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.
- F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

## **ARTICLE 11 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK**

### **11.01 *Cost of the Work***

- A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 11.01.B, and shall include only the following items:
1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on

Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:
  - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
  - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
  - c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
  - d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
  - e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

- f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.
- g. The cost of utilities, fuel, and sanitary facilities at the Site.
- h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, express and courier services, and similar petty cash items in connection with the Work.
- i. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.

B. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:

- 1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.
- 2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
- 3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
- 4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
- 5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A.

C. *Contractor's Fee:* When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.

- D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

#### 11.02 *Allowances*

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.

B. *Cash Allowances:*

1. Contractor agrees that:

- a. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
- b. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

C. *Contingency Allowance:*

1. Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.

- D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

#### 11.03 *Unit Price Work*

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.



- D. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:
1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
  2. there is no corresponding adjustment with respect to any other item of Work; and
  3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

## **ARTICLE 12 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES**

### **12.01 *Change of Contract Price***

- A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:
1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or
  2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or
  3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).
- C. *Contractor's Fee:* The Contractor's fee for overhead and profit shall be determined as follows:
1. a mutually acceptable fixed fee; or
  2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
    - a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;
    - b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;

- c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 12.01.C.2.a and 12.01.C.2.b is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;
- d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;
- e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
- f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

#### 12.02 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

#### 12.03 *Delays*

- A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.
- B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the

control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.

- D. Owner, Engineer, and their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.
- E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

## **ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK**

### *13.01 Notice of Defects*

- A. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor. Defective Work may be rejected, corrected, or accepted as provided in this Article 13.

### *13.02 Access to Work*

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply therewith as applicable.

### *13.03 Tests and Inspections*

- A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:
  - 1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;
  - 2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in Paragraph 13.04.C; and
  - 3. as otherwise specifically provided in the Contract Documents.

- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.
- E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation.
- F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

#### 13.04 *Uncovering Work*

- A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.
- B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.
- C. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.
- D. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

### 13.05 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

### 13.06 *Correction or Removal of Defective Work*

- A. Promptly after receipt of written notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).
- B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

### 13.07 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
  - 1. repair such defective land or areas; or
  - 2. correct such defective Work; or
  - 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
  - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute

resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.

- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

#### 13.08 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer's recommendation of final payment, Engineer) prefers to accept it, Owner may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness) and for the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

#### 13.09 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct, or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and

equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.

- C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

## **ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION**

### **14.01 *Schedule of Values***

- A. The Schedule of Values established as provided in Paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed.

### **14.02 *Progress Payments***

#### **A. *Applications for Payments:***

1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the

Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.

3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

*B. Review of Applications:*

1. Engineer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
  - a. the Work has progressed to the point indicated;
  - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and any other qualifications stated in the recommendation); and
  - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
  - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or
  - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
  - a. to supervise, direct, or control the Work, or



- b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
  - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
  - d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or
  - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:
- a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
  - b. the Contract Price has been reduced by Change Orders;
  - c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or
  - d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

*C. Payment Becomes Due:*

- 1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.

*D. Reduction in Payment:*

- 1. Owner may refuse to make payment of the full amount recommended by Engineer because:
  - a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;
  - b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
  - c. there are other items entitling Owner to a set-off against the amount recommended; or

- d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.
2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor remedies the reasons for such action.
3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1 and subject to interest as provided in the Agreement.

#### 14.03 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

#### 14.04 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the tentative certificate to Owner, notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner's objections, Engineer considers the Work substantially complete, Engineer will, within said 14 days, execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.
- D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities

pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to Engineer's issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.

- E. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the tentative list.

#### 14.05 *Partial Utilization*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
  - 1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 14.04.A through D for that part of the Work.
  - 2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
  - 3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
  - 4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

#### 14.06 *Final Inspection*

- A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

## 14.07 *Final Payment*

### *A. Application for Payment:*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.
2. The final Application for Payment shall be accompanied (except as previously delivered) by:
  - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.6;
  - b. consent of the surety, if any, to final payment;
  - c. a list of all Claims against Owner that Contractor believes are unsettled; and
  - d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

### *B. Engineer's Review of Application and Acceptance:*

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for payment. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

### *C. Payment Becomes Due:*

1. Thirty days after the presentation to Owner of the Application for Payment and accompanying documentation, the amount recommended by Engineer, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages, will become due and will be paid by Owner to Contractor.

#### 14.08 *Final Completion Delayed*

- A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Engineer so confirms, Owner shall, upon receipt of Contractor's final Application for Payment (for Work fully completed and accepted) and recommendation of Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

#### 14.09 *Waiver of Claims*

- A. The making and acceptance of final payment will constitute:
  1. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and
  2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

### **ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION**

#### 15.01 *Owner May Suspend Work*

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to Contractor and Engineer which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.05.

#### 15.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will justify termination for cause:

1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);
  2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;
  3. Contractor's repeated disregard of the authority of Engineer; or
  4. Contractor's violation in any substantial way of any provisions of the Contract Documents.
- B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:
1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion);
  2. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere; and
  3. complete the Work as Owner may deem expedient.
- C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph, Owner shall not be required to obtain the lowest price for the Work performed.
- D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.
- E. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.

- F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B and 15.02.C.

#### 15.03 *Owner May Terminate For Convenience*

- A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
  2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
  3. all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and
  4. reasonable expenses directly attributable to termination.
- B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

#### 15.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.

## **ARTICLE 16 – DISPUTE RESOLUTION**

### **16.01 *Methods and Procedures***

- A. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.
- B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.
- C. If the Claim is not resolved by mediation, Engineer's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:
  - 1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions; or
  - 2. agrees with the other party to submit the Claim to another dispute resolution process; or
  - 3. gives written notice to the other party of the intent to submit the Claim to a court of competent jurisdiction.

## **ARTICLE 17 – MISCELLANEOUS**

### **17.01 *Giving Notice***

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:
  - 1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended; or
  - 2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

### **17.02 *Computation of Times***

- A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.



### 17.03 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

### 17.04 *Survival of Obligations*

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

### 17.05 *Controlling Law*

- A. This Contract is to be governed by the law of the state in which the Project is located.

### 17.06 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

SUPPLEMENTARY CONDITIONS

## SCOPE

- SC-1        DEFINITIONS AND TERMINOLOGY  
             SC-1.01        Defined Terms
- SC-2        PRELIMINARY MATTERS  
             SC-2.02        Copies of Documents  
             SC-2.03        Commencement of Contract Times
- SC-3        CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE  
             SC-3.01        Intent
- SC-4        AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS;  
             REFERENCE POINTS  
             SC-4.02        Subsurface and Physical Conditions  
             SC-4.04        Underground Facilities
- SC-5        BONDS AND INSURANCE  
             SC-5.01        Performance, Payment, and Other Bonds  
             SC-5.02        Licensed Sureties and Insurers  
             SC-5.03        Certificates of Insurance  
             SC-5.04        Contractor's Liability Insurance  
             SC-5.05        Property Insurance  
             SC-5.06        Waiver of Rights  
             SC-5.07        Receipt and Application of Insurance Proceeds  
             SC-5.08        Acceptance of Bonds and Insurance; Option to Replace  
             SC-5.09        Partial Utilization; Acknowledgment of Property Insurer
- SC-6        CONTRACTOR'S RESPONSIBILITIES  
             SC-6.02        Labor; Working Hours  
             SC-6.05        Substitutes or Or-Equals  
             SC-6.06        Concerning Subcontractors, Suppliers, and Others  
             SC-6.08        Permits  
             SC-6.09        Laws and Regulations  
             SC-6.10        Taxes  
             SC-6.13        Safety and Protection  
             SC-6.19        Contractor's General Warranty and Guarantee
- SC-7        OTHER WORK AT THE SITE  
             SC-7.04        Delays and Damages
- SC-8        OWNER'S RESPONSIBILITIES - No modifications.
- SC-9        ENGINEER'S STATUS DURING CONSTRUCTION - No modifications.
- SC-10       CHANGES IN THE WORK; CLAIMS - No modifications.
- SC-11       COST OF THE WORK; CASH ALLOWANCES; UNIT PRICE WORK  
             SC-11.03       Unit Price Work

SC-12	CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES - No modifications
SC-13	TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK
	SC-13.02 Access to Work
	SC-13.07 Correction Period
SC-14	PAYMENTS TO CONTRACTOR AND COMPLETION
	SC-14.02 Progress Payments
	SC-14.07 Final Payment
SC-15	SUSPENSION OF WORK AND TERMINATION - No modifications.
SC-16	DISPUTE RESOLUTION
	SC-16.01 Methods and Procedures
SC-17	MISCELLANEOUS
	SC-17.04 Survival of Obligations

SUPPLEMENTARY CONDITIONS

SCOPE. These Supplementary Conditions amend or supplement the General Conditions and other provisions of the Contract Documents as indicated herein. All provisions which are not so amended or supplemented remain in full force and effect.

## SC-1. DEFINITIONS AND TERMINOLOGY

SC-1.01. Defined Terms. Add the following definitions to Paragraph 1.01.A of the General Conditions:

15. Supplementing Paragraph 1.01.A.15 of the General Conditions, Contractor – “Person or company financing project or company actually doing the work and responsible to the Owner for the proper performance of the work.”

52. Inspector/Observer - Owner's construction Inspector/Observer employed by Owner, or Observer hired by Owner.

53. Engineer's Consultants-An individual or entity having a contract with Engineer to furnish services as Engineer's Independent professional associate or consultant with respect to the Project and who is identified as such in the Supplementary Conditions. Supplementing Paragraph 1.01.A.53 of the General Conditions, Engineer's Consultants will be:

a. \_\_\_\_\_

b. \_\_\_\_\_

54. Without exception - The term "without exception", when used in the Contract Documents following the name of a Supplier or a propriety item of equipment, product, or material, shall mean that the sources of the product are limited to the listed Suppliers or products and that no like, equivalent, or "or-equal" item and no substitution will be permitted.

## SC-2. PRELIMINARY MATTERS

SC-2.02. Copies of Documents. Delete Paragraph 2.02.A of the General Conditions, and add the following new paragraph:

- A. The Contractor to whom a contract is awarded will be furnished, free of charge, 4 copies of the Specifications and 4 sets of the Drawings, together with all Addenda thereto. Additional Copies of Specifications and Drawings may be obtained from Engineer on the following basis:

Full set of Drawings and Specifications      \$50.00

- B. The Owner shall furnish the Contractor an additional set of Plans and Specifications marked "Record Drawings" which shall be kept in the job office. This set shall be correct at all times and available to all Contractors and Subcontractors on the project. The Contractor shall keep a complete and up to date record in red pencil of any and all changes made during construction. This set of Drawings and Specifications shall be forwarded to the Owner upon completion of the project and prior to final payment. No monthly payment estimate will be approved by the Owner unless this set is up to date at the time Contractor submits payment request.

SC- 2.03. Commencement of Contract Times: Notice to Proceed. Delete the last sentence of Paragraph 2.03.A of the General Conditions and add the following new sentence:

In no event, shall the Contract Times commence to run later than the thirtieth day after the Effective Date of the Agreement.

#### SC-3 CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

SC-3.01. Add the following new sentence at the end of Paragraph 3.01.A of the General Conditions:

The Specifications as a whole will govern the construction of the entire Work. The applicable provisions thereof will govern Work to be performed under each section of the Contract.

#### SC-4 AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS: REFERENCE POINTS

Refer to Special Conditions for information concerning drawings and reports used in preparation of the Contract Documents.

#### SC-4.02. Subsurface and Physical Conditions.

##### A. Reports and Drawings.

##### 1. Delete Paragraph 4.02.A.1 of the General Conditions and add the following:

1. No report of explorations and tests of subsurface conditions at or contiguous to the site have been prepared.

##### 2. Delete Paragraph 4.02.A.2 of the General Conditions and add the following:

2. No drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site are available.

##### B. Limited Reliance by Contractor on Technical Data Authorized. Delete Paragraph 4.02.B of the General Conditions in its entirety and insert the following paragraph:

B. No Reliance by Contractor Authorized. Owner and Engineer do not warrant the accuracy of the physical conditions information and drawings which are not Contract Documents. Contractor uses such information at Contractors sole risk.

SC-4.04. B. Not Shown or Indicated. Add the following new paragraph immediately after Paragraph 4.04.B.2 of the General Conditions:

Generally, service connections are not indicated on the Drawings. Contractor shall be responsible for discovery of existing underground installations, in advance of excavating or trenching, by contacting all local utilities and by prospecting."

SC-5 BONDS AND INSURANCE. Delete Article 5 of the General Conditions in its entirety, and insert the following text in its place:

#### ARTICLE 5 - BONDS AND INSURANCE

##### 5.01. Performance, Payment, and Other Bonds

**A. All performance, materials or other surety bonds required by the City of Kannapolis,**

**statute of the State of North Carolina or local, state or federal ordinance, statute or regulation shall be issued by a company authorized and licenses to do business in the State of North Carolina having a current rating of A, or higher, as established and published by A. M. Best Company. The bond must be issued by a surety company having an A. M. Best's company finance strength rating of, at a minimum, "Class V". The bond must be accompanied by a certified and current power of attorney by the attorney-in-fact who executed the bond on behalf of the surety company.**

- B.** Contractor shall furnish performance and payment Bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all Contractor's obligations under the Contract Documents. A two hundred percent (200%) Performance Bond will be acceptable in lieu of separate Performance and Payment Bonds. These Bonds shall remain in effect at least until 1 year after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other Bonds as are required by the Contract Documents.
- C.** All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, US Department of the Treasury. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.
- D.** If the Surety on any Bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall within 20 days thereafter substitute another Bond and Surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

#### 5.02 Licensed Sureties and Insurers.

A. All Bonds and Insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue Bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

#### 5.03 Certificates of Insurance.

A. Contractor shall deliver to Owner, with copies to each additional insured, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain. Owner shall deliver to Contractor, with copies to each additional insured, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain.

B. Certificates of Insurance shall be submitted on the forms included in the Contract Documents.

#### 5.04 Contractor's Liability Insurance.

A. Contractor shall purchase and maintain such liability and other insurance as is appropriate for the

Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
2. claims for damages because of bodily injury, occupation-al sickness or disease, or death of Contractor's employees;
3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
4. claims for damages insured by reasonably available personal injury liability coverage which are sustained: (i1) by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or (ii) by any other person for any other reason;
5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle.

B. The policies of insurance so required by this Paragraph 5.04 to be purchased and maintained shall:

1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, include as additional insureds (subject to any customary exclusion in respect of professional liability) Owner, Engineer, Engineer's Consultants, and any other individuals listed as additional insureds, and include coverage for the respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;
2. include at least the specific coverages and be written for not less than the limits of liability specified herein or required by Laws or Regulations, whichever is greater;
3. include completed operations insurance;
4. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.12, 6.16, and 6.31 through 6.33 of the General Conditions;
5. contain a provision or endorsement that should any of the policies be cancelled before the expiration date thereof, the issuing insurer will endeavor to mail 30 days written notice to the certificate holder (Owner and Engineer), but failure to do so shall impose no obligation or liability of any kind upon the insurer, it's agents or representatives.
6. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work;

7. with respect to completed operations insurance, and any other insurance coverage written on a claims-made basis, remain in effect for at least 2 years after final payment (and Contractor shall furnish Owner and Engineer evidence satisfactory to Owner of continuation of such insurance at final payment and one year thereafter);
8. contain a cross liability or severability of interest clause or endorsement. Insurance covering the specified additional insureds shall be primary insurance, and all other insurance carried by the additional insureds shall be excess insurance; and
9. with respect to workers' compensation and employers' liability, comprehensive automobile liability, commercial general liability, and umbrella liability insurance, Contractor shall require its insurance carriers to waive all rights of subrogation against Owner, Engineer, and their respective officers, directors, partners, employees, and agents.

C. Workers' Compensation and Employers' Liability Insurance. This insurance shall protect Contractor against all claims under applicable state workers' compensation laws, including coverage as necessary for the benefits provided under the United States Longshoremen's and Harbor Workers' Act and the Jones Act. Contractor shall also be protected against claims for injury, disease, or death of employees which, for any reason, may not fall within the provisions of a workers' compensation law. This policy shall include an "all states" or "other states" endorsement.

The liability limits shall be not less than:

Workers' compensation	Statutory
Employers' liability	\$1,000,000 each occurrence

D. Comprehensive Automobile Liability Insurance. This insurance shall be occurrence type written in comprehensive form, and shall protect Contractor, and Owner and Engineer as additional insureds, against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles, either on or off the project site whether they are owned, non-owned, or hired.

The liability limits shall be not less than:

Bodily injury and property damage	\$1,000,000 combined single limit for each occurrence
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E. Commercial General Liability Insurance. This insurance shall be occurrence type written in comprehensive form and shall protect Contractor, and Owner and Engineer as additional insureds, against claims arising from injuries, sickness, disease, or death of any person or damage to property arising out of performance of the Work. The policy shall also include a per-project aggregate limit endorsement, personal injury liability coverage, contractual liability coverage, completed operations and products liability coverage, and coverage for blasting, explosion, collapse of buildings, and damage to underground property.

The liability limits shall be not less than:

Bodily injury and property damage	\$1,000,000 combined single limit for each occurrence
	\$1,000,000 general aggregate

F. Umbrella Liability Insurance. This insurance shall protect Contractor, and Owner and Engineer as



additional insureds, against claims in excess of the limits provided under workers' compensation and employers' liability, comprehensive automobile liability, and commercial general liability policies. The umbrella policy shall follow the form of the primary insurance, including the application of the primary limits.

The liability limits shall be not less than:

Bodily injury and property damage	\$4,000,000 combined single limit for each occurrence
	\$4,000,000 general aggregate

G. Owner's Protective Liability Insurance. This insurance shall be issued in the name of Owner and shall protect and defend Owner and Engineer against claims arising as a result of the operations of Contractor or Contractor's Subcontractors.

The liability limits shall be not less than:

Bodily injury and property damage	\$1,000,000 combined single limit for each occurrence
	\$1,000,000 general aggregate

#### 5.05 Property Insurance.

A. Contractor, with sole liability for the payment of the premiums, shall purchase and maintain property insurance upon the Work at the site in the amount of the full replacement cost thereof. This insurance shall:

1. include the interests of Owner, Contractor, Subcontractors, Engineer, Engineer's Consultants, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a named insured;
2. be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, false work, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, flood, and damage caused by frost and freezing;
3. cover, in an amount not less than \$\_\_\_\_\_, the Owner-furnished equipment and materials to be erected or installed by Contractor;
4. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
5. cover materials and equipment stored at the site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;

6. allow for partial utilization of the Work by Owner;
7. include testing and startup; and
8. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer and Engineer's Consultant with 30 days' written notice to each other additional insured to whom a certificate of insurance has been issued.

B. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with Paragraph 5.06 shall contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until the issuing insurer has endeavored to mail 30 days written notice to Owner and Contractor and to each other additional insured to whom a certificate of insurance has been issued, and shall contain waiver provisions in accordance with Paragraph 5.07.

C. If Owner requests in writing that other special insurance be included in the property insurance policies provided under Paragraph 5.06, Contractor shall, if possible, include such insurance, and the cost thereof will be charged to Owner by appropriate Change Order or Written Amendment. Prior to commencement of the Work at the site, Contractor shall in writing advise Owner whether or not such other special insurance has been procured by Contractor.

#### 5.06 Waiver of Rights.

A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, Engineer, and Engineer's Consultants, (and the officers, directors, partners, employees, agents and other consultants and subcontractors of each and any of them) and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. Owner and Contractor waive all rights against each other and their respective officers, directors, partners, employees, agents and other consultants and subcontractors of each and any of them for all and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors, Engineer, Engineer's Consultants, and all other individuals or entities listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.

B. Owner waives all rights against Contractor, Subcontractors, Engineer, Engineer's Consultants, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them for:

1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other peril whether or not insured by Owner; and
2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed project or part thereof by Owner during partial utilization

pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.

C. Any insurance policy covering any loss, damage, or consequential loss referred to in Paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss the insurers will have no rights of recovery against Owner, Contractor, Subcontractors, Engineer, Engineer's Consultants, or the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them.

#### 5.07. Receipt and Application of Insurance Proceeds.

A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the monies so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order or Written Amendment.

B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

#### 5.08 Acceptance of Bonds and Insurance; Option to Replace.

A. If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the Bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.05.C. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the Bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent Bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

#### 5.09 Partial Utilization, Acknowledgment of Property Insurance.

A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to Paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

**SC-6 CONTRACTOR'S RESPONSIBILITIES.**

SC-6.02. Labor; Working Hours. Add the following new paragraphs immediately after Paragraph 6.02.B of the General Conditions:

C. No Work shall be done between 8:00 p.m. and 7:00 a.m. without permission of Owner. However, emergency work may be done without prior permission.

D. Night Work may be undertaken as a regular procedure with the permission of Owner; such permission, however, may be revoked at any time by Owner if Contractor fails to maintain adequate equipment and supervision for the proper prosecution and control of the Work at night.

SC-6.05. Substitutes and "Or-Equals". Add the following new paragraph immediately after Paragraph 6.05.F of the General Conditions:

G. Application for review of substitute or "or-equal" materials or equipment will be considered by Engineer according to Section 133-3, General Statutes for North Carolina, from times indicated in the Instructions To Bidders, and must be submitted in writing. Applications received after the date indicated in the Instructions to Bidders, will not be reviewed.

SC-6.06. Concerning Subcontractors, Suppliers, and Others. Add the following new paragraph immediately after Paragraph 6.06.G of the General Conditions:

H. Particular consideration will be given to the qualifications of each Subcontractor. The use of Subcontractors proposed by Bidder and accepted by Owner prior to the Notice of Award will be required in the performance of the Work unless otherwise permitted or directed by Owner.

SC-6.08. Permits. Add the following new paragraph immediately after Paragraph 6.08.A of the General Conditions:

B. Owner will obtain and pay for the following permits, if required:

1. NCDOT Encroachment Agreements
2. Erosion and Sediment Control Plan
3. Notice of Intent (NOI)
4. 401 Water Quality Certification/Nationwide Permit
5. Army Corps of Engineers Section 404 Permit
6. NCDWQ Non-Discharge Sewer Permit
7. NCDENR Permit for Water Distribution Facilities
8. North Carolina Railroad Encroachment Agreements

SC-6.09 Laws and Regulations. Add the following new paragraphs immediately after Paragraph 6.09.C of the General Conditions:

D. Safety and Health Regulations. North Carolina "Occupational Safety and Health Standards for

General Industry" shall apply to Work under this Contract.

E. Contract Determination - Debarment. This contract will not be awarded to a Contractor that has been suspended by the State of North Carolina or any agency or department thereof for conviction or indictment or any of the offenses enumerated in G.S. 133-27.

Subcontracts of any tier will not be awarded to a subcontractor (or firm) that has been suspended for conviction or indictment of any of the offenses enumerated in G.S. 133-27.

The Contractor will complete and submit with the Bid the certification pertaining to debarment included in the Bid Forms section of this document.

F. North Carolina License Requirements. Pursuant to Section 87-15, General Statutes of North Carolina, Bidders must show evidence of a North Carolina Contractor's License prior to consideration of their Bids.

SC-6.10. Taxes. Add the following new paragraph paragraphs immediately after Paragraph 6.10.A of the General Conditions:

B. The Contractor shall, without additional expense to the Owner pay all applicable federal, state, and local taxes of every kind and character, except taxes and assessments on the real property comprising the site of the Project, and such taxes shall be considered incidental and included in the total Bid.

C. The Contractor shall submit to the Owner certified proof evidencing the payment of sales and use tax on all materials purchased and tool and equipment rentals paid by the Contractor for governmental projects. The certified statement shall be on a form acceptable to the Owner and shall itemize such purchases and rentals and the tax paid thereon, and certify that the materials, tools, and equipment were used for this project. Such statements shall be furnished to the Owner in triplicate, monthly, with the partial payments.

SC-6.13 SAFETY AND PROTECTION. Add the following new paragraphs immediately after Paragraph 6.13.A.3 of the General Conditions.

4. OSHA 200 logs for the pasts 2 years shall be submitted to the Owner.
5. A written copy of safety, drug, and alcohol abuse program.
6. Review of pre-job and post-job safety requirements and procedures.
7. Agree to receive all Owner safety warning notices and act immediately on said notices.
8. Agree to a project insurance review with the Owner and provide additional coverage as requested above that stated in Article 8 of the Supplementary Conditions.
9. Shall strictly adhere to and comply with especially:
  - OSHA 29 CFR Subpart E. (Personal Protection)
  - OSHA 29 CFR Subpart P. (Excavations)
  - OSHA 29 CFR Subpart S. (Underground Construction)
  - OSHA 29 CFR Subpart U. (Blasting)
10. All concerns reviewed at the Project preconstruction meeting.

SC-6.19 Contractor's General Warranty and Guarantee. Delete Paragraph 6.19.B.7 of the General Conditions and replace with the following Paragraphs 6.19.B.7 and 6.19.B.8:

7. any correction of defective Work by Owner; or
8. any expiration of a correction period.

SC-7. OTHER WORK AT THE SITE

SC-7.04. Delay and Damages. Add the following new paragraph immediately after Paragraph 7.03 of the General Conditions;

7.04. Delays and Damages.

A. In the event Contractor is delayed in the prosecution and completion of the Work because of the rate of progress of the Work to be performed under other sections of this Contract, other contracts, or damage to the Work or the property of Contractor by contractors on other sections of this Contract or other contracts, Contractor shall have no claim against Owner for damages or contract adjustment other than an extension of Contract Times and the waiving of liquidated

damages for the period of delay.

Time limitations required by Owner shall be for the benefit of Owner and contractors under other sections of this Contract or other contracts who have entered into such contracts with Owner in reliance on the time limitations set forth in these Contract Documents. Any claim by Contractor for damages due to delay or damage to the Work or the property of Contractor by another contractor shall be asserted against that contractor.

SC-8 OWNER'S RESPONSIBILITIES - No modifications.

SC-9 ENGINEER'S STATUS DURING CONSTRUCTION - No modifications.

SC-10 CHANGES IN THE WORK; CLAIMS. No modifications.

SC-11 COST OF THE WORK; CASH ALLOWANCES; UNIT PRICE WORK

SC-11.03. UNIT PRICE WORK. Delete Paragraph 11.03.D.3 of the General Conditions and replace it with the following:

3. if the variation in the total bid price of work performed by Contractor is changed by more than 25 percent; and
4. if Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

SC-12 CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES - No modifications.

SC-13 TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK.

SC-13.02. Access to Work. Add the following new paragraph immediately after Paragraph 13.02.A of the

B. Authorized representatives of the NCDENR, NCDOT, Railroad, and Owner shall have access to the Work wherever it is in preparation or progress. Contractor shall provide proper facilities for such access and inspection.

SC-13.07. Correction Period. Add the following new paragraph immediately after Paragraph 13.07.E of the General Conditions:

F. Nothing in this Article 13 concerning the correction period shall establish a period of limitation with respect to any other obligation which Contractor has under the Contract Documents. The establishment of time periods relates only to the specific obligations of Contractor to correct the Work, and has no relationship to the time within which Contractor's obligations under the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish Contractor's liability with respect to Contractor's obligations other than to specifically correct the Work.

#### SC-14 PAYMENTS TO CONTRACTOR AND COMPLETION

SC-14.02. Progress Payments. Add the following new paragraphs immediately after Paragraph 14.02.A.3 of the General Conditions:

4. Summary Sheet. Each application for payment shall be accompanied by Contractor's updated partial payment application with summary figures and approval signatures.
  5. Contractor's Affidavit. Each application for payment shall be accompanied with the Contractor's affidavit certifying compliance with Contract Documents and that all previous amounts have been paid for which provisions partial payment applications have been submitted.
  6. Tax Statement and Certification. Each application for payment shall be accomplished by Contractor's tax statement and certification, containing original signatures and notary seal, certifying summarizing payment of state and local taxes.
  7. Materials and Equipment. Payments for stored materials and equipment shall be based only upon the actual cost to Contractor of the materials and equipment and shall not include any overhead or profit to Contractor.
- Partial payments will not be made for undelivered materials or equipment.
8. Schedules and Data. During the progress of the Work, each Application for Payment shall be accompanied by Contractor's updated schedule of operations, or progress report, with such shop drawings schedules, procurement schedules, value of material and equipment on hand included in application, and other data specified or reasonably required by Engineer.
  9. Appendix E - DBE Documentation for Contract Payments.

SC-14.02. C. Payment Becomes Due. Replace Paragraph 14.02.C.1 of the General Conditions with the following paragraphs

1. Forty-five days after the presentation of the Application For Payment to Owner with ENGINEER's recommendation, the amount recommended will (subject to the

provisions of paragraph 14.02.D) become due, and when due will be paid by Owner to CONTRACTOR.

2. Should the progress payment to the CONTRACTOR, be delayed by more than 45 days, the CONTRACTOR shall be paid interest, beginning on the 46<sup>th</sup> day, at the legal rate on such unpaid balance as may be due. Where a conditional acceptance of a contract exists, and where the OWNER is retaining a reasonable sum pending correction of the conditions, interest on the reasonable sum shall not apply.
3. Within seven days of receipt by the CONTRACTOR of each progress payment, the CONTRACTOR shall pay the subcontractor based on work completed or service provided under the subcontract. If any progress payment to the subcontractor is delayed by more than seven days after receipt of progress payment by the CONTRACTOR, the CONTRACTOR shall pay the subcontractor interest, beginning on the eighth day, at the rate of one percent (1%) per month or fraction thereof on the unpaid balance as may be due.
4. The percentage of retainage on payments made by the CONTRACTOR to the subcontractor shall not exceed the percentage of retainage on payments made by the OWNER to the CONTRACTOR. Any percentage of retainage on payments made by

the CONTRACTOR to the subcontractor that exceeds the percentage of retainage on payments made by the OWNER to the CONTRACTOR shall be subject to interest to be paid by the CONTRACTOR to the subcontractor at the rate of one percent (1%) per month or fraction thereof.

5. Full payment, less authorized deductions, shall also be made for those trades that have reached one hundred percent (100%) completion of their contract by or before the project is fifty percent (50%) complete if the contractor has performed satisfactorily. However, payment to the early finishing trades is contingent upon the owner's receipt of an approval or certification from the architect of record or applicable engineer that the work performed by the subcontractor is acceptable and in accordance with the contract documents. At that time, the owner shall reduce the retainage for such trades to five-tenths percent (0.5%) of the contract. Payments under this subsection shall be made no later than 60 days following receipt of the subcontractor's request or immediately upon receipt of the surety's consent, whichever occurs later. Early finishing trades under this subsection shall include structural steel, piling, caisson, and demolition. The early finishing trades for which line-item release of retained funds is required shall not be construed to prevent an owner or an owner's representative from identifying any other trades not listed in this subsection that are also allowed line-item release of retained funds. Should the owner or owner's representative identify any other trades to be afforded line-item release of retainage, the trade shall be listed in the original bid documents. Each bid document shall list the inspections required by the owner before accepting the work, and any financial information required by the owner to release payment to the trades, except the failure of the bid documents to contain this information shall not obligate the OWNER to release the retainage if it has not received the required certification from the ARCHITECT of record or applicable ENGINEER.
6. Neither the OWNER's nor CONTRACTOR's release of retainage on payments as part of a payment in full on a line item of work under SC-14.07. C.5 shall affect any applicable warranties on work done by the CONTRACTOR or subcontractor, and the warranties shall not begin to run any earlier than either the OWNER's receipt of a certificate of substantial completion from the ARCHITECT, ENGINEER, or

DESIGNER in charge of the project or the OWNER receives beneficial occupancy.



7. Nothing in this section shall prevent the CONTRACTOR at the time of application and certification to the OWNER from withholding application and certification to the OWNER for payment to the subcontractor for unsatisfactory job progress; defective construction not remedied; disputed work; third party claims filed or reasonable evidence that claim will be filed; failure of subcontractor to make timely payments for labor, equipment, and materials; damage to CONTRACTOR or another subcontractor; reasonable evidence that subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed the initial percentage retained by the OWNER.
8. Nothing in this section shall prevent the OWNER from withholding payment to the CONTRACTOR in addition to the amounts authorized by this other sections of this contract for unsatisfactory job progress, defective construction not remedied, disputed work, or third-party claims filed against the OWNER or reasonable evidence that a third-party claim will be filed."

SC-14.07. Final Payment. Add the following at the end of Paragraph 14.07.A.2.D of the General Conditions:

E. Consent of the Surety, signed by an agent, must be accompanied by a certified copy of such agent's authority to act for the Surety.

SC-14.07. C. Payment Becomes Due. Replace Paragraph 14.07.C.1 of the General conditions with the following paragraphs:

1. The balance due the Contractor shall be paid in full within 45 days after respective prime contracts of the project have been accepted by the OWNER, certified by the ENGINEER to be completed in accordance with terms of the plans and specifications, or occupied by the OWNER and used for the purpose for which the project was constructed, whichever occurs first. However, when the ENGINEER determines that delay in completion of the project in accordance with terms of the plans and specifications is the fault of the CONTRACTOR, the project may be occupied and used for the purposes for which it was constructed without payment of any interest on amounts withheld past the 45 day limit. Should final payment to the CONTRACTOR beyond the date such contracts have been certified to be completed by the designer or architect, accepted by the OWNER, or occupied by the OWNER and used for the purposes for which the project was constructed, be delayed by more than 45 days, the CONTRACTOR shall be paid interest, beginning on the 46<sup>th</sup> day, at the legal rate on the unpaid balance as may be due.

2. Where a conditional acceptance of a contract exists, and where the OWNER is retaining a reasonable sum pending correction of the conditions, interest on the reasonable sum shall not apply.

3. Within seven days of receipt by the CONTRACTOR of the final payment, the

CONTRACTOR shall pay the subcontractor based on work completed or service provided under the subcontract. If the final payment to the subcontractor is delayed by more than seven days after receipt of final payment by the CONTRACTOR, the CONTRACTOR shall pay the subcontractor interest, beginning on the eighth day, at the rate of one percent (1%) per month or fraction thereof on the unpaid balance as may be due.

4. The percentage of retainage on payments made by the CONTRACTOR to the

subcontractor shall not exceed the percentage of retainage on payments made by the OWNER to the CONTRACTOR. Any percentage of retainage on payments made by the CONTRACTOR to the subcontractor that exceeds the percentage of retainage on payments made by the OWNER to the CONTRACTOR shall be subject to interest to be paid by the CONTRACTOR to the subcontractor at the rate of one percent (1%) per month or fraction thereof.

5. Nothing in this section shall prevent the CONTRACTOR at the time of application and certification to the OWNER from withholding application and certification to the OWNER for payment to the subcontractor for unsatisfactory job progress; defective construction not remedied; disputed work; third party claims filed or reasonable evidence that claim will be filed; failure of subcontractor to make timely payments for labor, equipment, and materials; damage to CONTRACTOR or another subcontractor; reasonable evidence that subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed the initial percentage retained by the OWNER.

6. Nothing in this section shall prevent the OWNER from withholding payment to the CONTRACTOR in addition to the amounts authorized by other sections of this contract for unsatisfactory job progress, defective construction not remedied, disputed work, or third-party claims filed against the OWNER or reasonable evidence that a third-party claim will be filed."

SC-15 SUSPENSION OF WORK AND TERMINATION - No modifications.

SC-16 DISPUTE RESOLUTION.

SC-16.01. Methods and Procedures. Delete Article 16 of the General Conditions in its entirety. See rules implementing mediated settlement conferences, Section IMS1:7.

SC-17 MISCELLANEOUS.

SC-17.04. Survival of Obligations. Add the following new paragraph immediately after Paragraph 17.04.A of the General Conditions:

B. Contractor shall obtain from all Suppliers and manufacturers any and all warranties and guarantees of such Suppliers and manufacturers, whether or not specifically required by the Specifications, and shall assign such warranties and guarantees to Owner. With respect, thereto, Contractor shall render reasonable assistance to Owner when requested, in order to enable Owner to enforce such warranties and guarantees. The assignment of any warranties or guarantees shall not affect the Correction Period or any other provisions of these Contract Documents.

End of Section

## SPECIAL CONDITIONS

A. SCOPE. These Special Conditions amend or supplement the Technical Specifications and other provisions of the Contract Documents as indicated herein. All provisions which are not so amended or supplemented remain in full force and effect.

B. SUPPLEMENTARY CONDITIONS. Add the following paragraphs to Supplementary Conditions section:

## SC-4.02. Subsurface and Physical Conditions.

## A. Reports and Drawings.

1. Delete Paragraph 4.2.1.1 of the General Conditions and add the following:
  - a. No reports of explorations and tests of subsurface conditions at or contiguous to the site have been prepared.
2. Delete Paragraph 4.2.1.2 of the General Conditions and add the following:
  - a. No drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site are available.

## B. Limited Reliance by Contractor on Technical Data Authorized. Delete Paragraph 4.2.2 of the General Conditions in its entirety and insert the following paragraph:

1. No Reliance by Contractor Authorized. Owner and Engineer do not warrant the accuracy of the physical conditions information and drawings which are not Contract Documents. Contractor uses such information at Contractors sole risk.

## C. SC 5.04.H Railroad Protective Liability Insurance - Delete Entire Section.

- C. CONSTRUCTION TIME AND RAIN DAYS: The Construction Time shall be as stated on the Bid Form. The total number of calendar days stipulated for substantial and final completion shall be the number of calendar days allowed in the construction time including time for normal bad weather. The following is a list of the number of bad weather days allowed per month for this project:

Month	Average Daily Temperature	Average No. Days with 0.10 inch precipitation
January	40.2	7
February	43.7	6
March	51.6	7
April	59.7	6
May	67.4	6
June	74.8	6
July	78.7	6
August	77.2	5
September	70.8	4
October	59.8	5

November	50.6	6
December	42.7	6

Normal bad weather days shall be defined as those days on which precipitation is 0.10 of an inch, or greater, and that bad weather will have an adverse effect on the construction activities.

If the total accumulated number of Calendar days lost due to bad weather, from the start of work until the project is completed, exceeds the total number of days allowed in the construction time for normal bad weather, the time for Substantial and Final Completion shall be extended by the difference. For construction periods that begin or end in the middle of the month, the bad weather days will be prorated based on the following formula:

Bad weather days = (number of contract days for that month/number of days in the month) x average number of bad weather days for the month. The results that end in .6 or greater shall be rounded up to the next whole number.

Bad weather days and any extension of time shall be based on local climatological data logs kept at the nearest local government water treatment, wastewater treatment facility or other agency that maintains rainfall data, as determined by the Engineer.

End of Section

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**STANDARD SPECIAL PROVISIONS- GENERAL****ERRATA**

(1-16-24)

Z-4

Revise the *2024 Standard Specifications* as follows:

**Division 3**

**Page 3-5, Article 305-2 MATERIALS, after line 16,** replace " 1032-3(A)(7)" with "1032-3" and add the item "Galvanized Corrugated Steel Pipe" with Section "1032-3".

**Page 3-6, Article 310-2 MATERIALS, after line 9,** add the item "Galvanized Corrugated Steel Pipe" with Section "1032-3".

**Division 9**

**Page 9-17, Article 904-4 MEASUREMENT AND PAYMENT, prior to line 1,** replace " Sign Erection, Relocate Type (Ground Mounted)" with "Sign Erection, Relocate Type \_\_\_\_ (Ground Mounted)".

**Division 10**

**Page 10-51, Article 1024-4 WATER, prior to line 1,** delete the "unpopulated blank row" in Table 1024-2 between "Time of set, deviation from control" and "Chloride Ion Content, Max.".

**Page 10-170, Subarticle 1081-1(C) Requirements, line 4,** replace "maximum" with "minimum".

**Division 11**

**Page 11-15, Article 1160-4 MEASUREMENT AND PAYMENT, line 24,** replace "Where barrier units are moved more than one" with "Where barrier units are moved more than once".

**Division 15**

**Page 15-10, Article 1515-4 MEASUREMENT AND PAYMENT, lines 11,** replace " All piping" with "All labor, the manhole, other materials, excavation, backfilling, piping".

**Division 16**

**Page 16-14, Article 1633-5 MEASUREMENT AND PAYMENT, line 20-24 and prior to line 25,** delete and replace with the following " *Flocculant* will be measured and paid in accordance with Article 1642-5 applied to the temporary rock silt checks."

**Page 16-3, Article 1609-2 MATERIALS, after line 26,** replace "Type 4" with "Type 4a".

**Page 16-25, Article 1644-2 MATERIALS, after line 22,** replace "Type 4" with "Type 4a".

**NO FUEL PRICE ADJUSTMENT:**

There will be no price adjustments for fuel prices associated with items in this contract.

**SP-1: CONSTRUCTION SURVEYING, AS-BUILT FOR WATER LINE:****Description**

Construction Surveying shall be conducted as outlined in Section 801 of the 2024 Standard Specifications. As-built for Water Line will be performed in accordance with the Kannapolis Land Development Standards Manual.

**Measurement and Payment**

*Construction Surveying, As-built for Water Line* shall be paid for work performed on a lump sum basis for completed work and upon approval from the City of Kannapolis of the as-built of the water line.

Payment will be made under:

<b>Pay Item</b>	<b>Pay Unit</b>
Construction Surveying, As-built for Water Line	Lump Sum

**SP-2: REMOVAL OF ASPHALT -COMPACTING EXISTING BASE:****Description**

This item is for removing existing asphalt pavements (to include asphalt and base material as required) to the depths indicated in the project specifications and typical sections and as directed by the Engineer. This item will also include compacting the existing roadway base if during the removal/milling operation at the designated depth the existing roadway base is exposed. The Contractor will be required to compact the existing roadway base using a large (15 to 20-ton static weight) smooth drum vibratory roller. There will be no separate payment for the compaction of the subgrade as compensation for this work should be included in the line item for *Comprehensive Grading*. If in the opinion of the Engineer additional stone base is needed for this work, the stone will be paid for under the line item for Aggregate Base Course. Any removal and replacement of the existing base and subgrade deeper than the proposed pavement and/or concrete depth will be compensated through the undercut line item if needed as directed by the Engineer. The depth of milling/removal needs to accommodate the proposed pavement and/or concrete section at each location and in no case, will be less than the existing asphalt pavement depth so that all existing asphalt is removed prior to compacting the existing base. The contractor is responsible for maintaining positive drainage on finished pavement and/or concrete surfaces at all locations of pavement milling/removal and restoration of the surfaces.

**Measurement and Payment**

No separate payment will be made for removal of existing pavements and compacting existing roadway bases exposed during milling/removal as this work is incidental to the line item for *Comprehensive Grading*.

**SP-3 PRICE ADJUSTMENT - ASPHALT BINDER FOR PLANT MIX:**

(11-21-00)

620

SP6 R25

Price adjustments for asphalt binder for plant mix will be made in accordance with Section 620 of the *NCDOT Standard Specifications*.

The base price index for asphalt binder for plant mix is **\$ 564.38** per ton.

This base price index represents an average of F.O.B. selling prices of asphalt binder at supplier's terminals on **March 1, 2025**.

#### **SP-4 PATCHING EXISTING PAVEMENT:**

(1-15-02) (Rev. 1-16-24)

610

SP6 R88R

#### **Description**

The Contractor's attention is directed to the fact that there are areas of existing pavement on this project that will require repair prior to resurfacing. Patch the areas that, in the opinion of the Engineer, need repairing. The areas to be patched will be delineated by the Engineer prior to the Contractor performing repairs.

#### **Materials**

The patching consists of Asphalt Concrete Base Course, Asphalt Concrete Intermediate Course, Asphalt Concrete Surface Course, or a combination of base, intermediate and surface course.

#### **Construction Methods**

Remove existing pavement at locations directed by the Engineer in accordance with Section 250 of the *Standard Specifications*.

Place Asphalt Concrete Base Course in lifts not exceeding 5.5 inches. Utilize compaction equipment suitable for compacting patches as small as 3.5 feet by 6 feet on each lift. Use an approved compaction pattern to achieve proper compaction. If patched pavement is to be open to traffic between December through March of the following year, use Asphalt Concrete Intermediate Course or Asphalt Concrete Surface Course as the top layer of the patch.

Schedule operations so that all areas where pavement has been removed will be repaired on the same day of the pavement removal and all lanes of traffic restored.

#### **Measurement and Payment**

*Patching Existing Pavement* will be measured and paid as the actual number of tons of asphalt plant mix complete in place that has been used to make completed and accepted repairs. The asphalt plant mixed material will be measured by being weighed in trucks on certified platform scales or other certified weighing devices. The above price and payment will be full compensation for all work covered by this provision, including but not limited to removal and disposal of all types of pavement; furnishing and applying tack coat; furnishing, placing, and compacting of asphalt plant mix; and furnishing scales.

Furnishing asphalt binder will be paid as provided in Article 620-4 for *Asphalt Binder for Plant Mix* for each grade required.

Payment will be made under:

#### **Pay Item**

Patching Existing Pavement

#### **Pay Unit**

Ton



**SP-5: ASPHALT WEDGING:****Description**

Asphalt Wedging will be performed using Section 610 of the 2024 Standard Specifications and as shown in the construction plans. The Wedging will be performed at a depth to provide positive drainage from the roadway to the adjacent shoulder using S9.5B asphalt concrete mix prior to the overlay of the roadway. Tack the designated area prior to performing the Wedging.

**Measurement and Payment**

*Asphalt Wedging* will be measured and paid as the actual number of tons of asphalt plant mix complete in place that has been used to make completed and accepted repairs. The asphalt plant mixed material will be measured by being weighed in trucks on certified platform scales or other certified weighing devices. The above price and payment will be full compensation for all work covered by this provision, including but not limited to removal and disposal of all types of pavement; furnishing and applying tack coat; furnishing, placing, and compacting of asphalt plant mix; and furnishing scales.

Furnishing asphalt binder will be paid as provided in Article 620-4 for *Asphalt Binder for Plant Mix* for each grade required.

Payment will be made under:

**Pay Item**

Asphalt Wedging

**Pay Unit**

Ton

**SP-6: UTILITY PIPING INSTALLATIONS:****Description**

This item is for the installation of pipe, fittings, valves, fire hydrants, and blow offs shown in the construction plans for the project. In addition to the referenced NCDOT specifications, the contractor shall adhere to the Kannapolis Land Development Standards Manual for materials and installation requirements to each line item listed in this Project Special Provision.

**Measurement and Payment**

Payment shall be made in accordance with the unit listed in the Bid Form for the respective line item and shall include materials, labor, and equipment necessary to complete the work.

**SP-7: RECONNECT WATER METERS:****Description**

This item is for the reconnection of water meters to the new water main in accordance with Section 1515 of the 2024 Standard Specifications and the Kannapolis Land Development Standards Manual. Reconnection of the water meters shall not take place until passing pressure tests, bacteria tests have been obtained on the proposed water main, certifications for the water

main have been approved, the proposed water main is in service, and prior to abandoning the existing water main.

### **Measurement and Payment**

*Reconnect Water Meters* will be measured and paid for each meter reconnected and shall include materials, labor, fittings, piping, and equipment necessary to perform the work in accordance with the specifications noted.

Payment will be made under:

<b>Pay Item</b>	<b>Pay Unit</b>
Reconnect Water Meters	Each

### **SP-8: BACKFLOW PREVENTION FOR FILLING WATER MAINS:**

#### **Description**

Backflow prevention is required to fill the proposed water main using water from the existing water main. The backflow will be installed at the location shown in the construction plans and details. The backflow shall be tested and certified for use prior to connecting to the existing and filling the proposed water main for pressure testing.

### **Measurement and Payment**

*Backflow Prevention for Filling Water Mains* will be measured and paid for each backflow installed and shall include materials, labor, fittings, piping, tapping saddle, and equipment necessary to perform the work in accordance with the specifications noted.

Payment will be made under:

<b>Pay Item</b>	<b>Pay Unit</b>
Backflow Prevention for Filling Water Mains	Each

### **SP-9: TIE TO EXISTING WATER MAIN:**

#### **Description**

This item is for tying the proposed water main to the new water main in accordance with the Kannapolis Land Development Standards Manual. Tie to Existing Water Mains shall not take place until passing pressure tests and bacteria tests have been obtained on the proposed water main, certifications for the water main have been approved, the proposed water main is in service, and prior to abandoning the existing water main.

### **Measurement and Payment**

*Tie to Existing Water Mains* will be measured and paid for each tie in installed and shall include materials, labor, fittings, piping, and equipment necessary to perform the work in accordance with the specifications noted.

Payment will be made under:

**Pay Item**

Tie to Existing Water Mains

**Pay Unit**

Each

**SP-10: WATTLE CHECKS:**

**Description**

Wattle Checks shall be installed per Section 1642 of the 2024 Standard Specifications and will be installed in lieu of the ditch checks shown on the construction plans.

**Measurement and Payment**

*Wattle Checks* will be measured and paid for each check installed and shall include materials, labor, maintenance, removal, and equipment necessary to perform the work in accordance with the specifications.

Payment will be made under:

**Pay Item**

Wattle Checks

**Pay Unit**

Each

**SP-11: FABRIC INSERT INLET PROTECTION DEVICE:**

**Description**

This work shall consist of installing, maintaining, and removing “Fabric Insert Inlet Protection Device”, of the type specified, in inlet structures (catch basins, drop inlets, etc) in areas where asphalt or concrete may not be fully removed in lieu of Rock Inlet Sediment Traps type ‘C’ or as directed by the engineer.

**Materials**

The product shall be a Fabric Insert Inlet Protection Device composed of a fitted woven polypropylene geotextile double sewn with nylon. The Fabric Insert Inlet Protection Device shall be manufactured to fit the opening of the catch basin or drop inlet and will have dump straps attached at the bottom to facilitate the emptying of the device and shall have lifting loops for lifting the device from the basin. The Fabric Insert Inlet Protection Device shall have restraint cord approximately halfway up the bag to keep the sides away from the catch basin walls.

The stitching shall meet the following physical properties:

Physical	Test Method	English
Average Wide Width Strength	ASTM D-4884	165 lbs/in

The fitted filter assembly shall have the following physical properties:

Physical	Test Method	English
Grab Tensile	ASTM D-4632	315 x 300 lbs
Grab Elongation	ASTM D-4632	15 x 15%
Minimum Puncture Strength	ASTM D-4833	125 lbs
Mullen Burst	ASTM D-3786	650 PSI
Minimum UV Resistance	ASTM D-4355	90%

Flow Rate	ASTM D-4491	40 gal/min/ft <sup>2</sup>
Apparent Opening	ASTM D-4751	40 US Sieve
Permittivity	ASTM D-4491	0.55 sec-1

### Construction Methods

Strictly comply with manufacturer's installation instructions and recommendations. Maintenance shall include regular daily inspections and after each qualifying rain event. The Fabric Insert Inlet Protection Device shall be emptied, cleaned, and placed back into the basin when it reaches 50% capacity or as directed by the engineer.

### Measurement and Payment

*Fabric Insert Inlet Protection Device* will be measured and paid at the contract unit price for the type specified, complete in place and accepted. Such payment shall be full compensation for furnishing and installing the Fabric Insert Inlet Protection Device in accordance with this specification and for all required maintenance.

Payment will be made under:

Pay Item	Pay Unit
Fabric Insert Inlet Protection Device	Each

### **SP-12: CONCRETE WASHOUT STRUCTURE:**

(8-17-23)

### Description

Concrete washout structures are enclosures above or below grade to contain concrete waste water and associated concrete mix from washing out ready-mix trucks, drums, pumps, or other equipment. Concrete washouts must collect and retain all the concrete washout water and solids, so that this material does not migrate to surface waters or into the ground water. These enclosures are not intended for concrete waste not associated with wash out operations.

The concrete washout structure may include constructed devices above or below ground and or commercially available devices designed specifically to capture concrete wash water.

### Materials

Item	Section
Temporary Silt Fence	1605

*Safety Fence* shall meet the specifications as provided elsewhere in this contract.

Geomembrane basin liner shall meet the following minimum physical properties for low permeability; it shall consist of a polypropylene or polyethylene 10 mil thick geomembrane. If the minimum setback dimensions can be achieved the liner is not required. (5 feet above groundwater, 50 feet from top of bank of perennial stream, other surface water body, or wetland.)

### Construction Methods

Build an enclosed earthen berm or excavate to form an enclosure in accordance with the details and as directed.

Install temporary silt fence around the perimeter of the enclosure in accordance with the details and as directed if structure is not located in an area where existing erosion and sedimentation control devices are capable to containing any loss of sediment.

Post a sign with the words “Concrete Washout” in close proximity of the concrete washout area, so it is clearly visible to site personnel. Install safety fence as directed for visibility to construction traffic.

Alternate details for accommodating concrete washout may be submitted for review and approval.

The alternate details shall include the method used to retain and dispose of the concrete waste water within the project limits and in accordance with the minimum setback requirements. (5 feet above groundwater, 50 feet from top of bank of perennial stream, other surface water body, or wetland.)

### **Maintenance and Removal**

Maintain the concrete washout structure(s) to provide adequate holding capacity plus a minimum freeboard of 12 inches. Remove and dispose of hardened concrete and return the structure to a functional condition after reaching 75% capacity.

Inspect concrete washout structures for damage and maintain for effectiveness.

Remove the concrete washout structures and sign upon project completion. Grade the earth material to match the existing contours and permanently seed and mulch area.

### **Measurement and Payment**

*Concrete Washout Structure* will be paid for per each enclosure installed in accordance with the details. If alternate details or commercially available devices are approved, then those devices will also be paid for per each approved and installed device.

*Temporary Silt Fence* will be installed in accordance with Article 1605-5 of the *Standard Specifications* and payment considered incidental to the installation of the structure.

*Safety Fence* shall be considered incidental to the installation of the structure.

No measurement will be made for other items or for over excavation or stockpiling.

Payment will be made under:

#### **Pay Item**

Concrete Washout Structure

#### **Pay Unit**

Each

**SP-13 TEMPORARY TRAFFIC CONTROL (TTC):**

(7-16-13) (Rev. 7-15-14) Revised for payment provisions by Kannapolis

RWZ-1

Maintain traffic in accordance with Divisions 10, 11 and 12 of the 2024 Standard Specifications and the following provisions:

Install Work Zone Advance Warning Signs in accordance with the detail drawing provided in these plans prior to beginning any other work. Use a lane closure or slow moving operation to complete the work, as necessary, unless otherwise indicated. Refer to Standard Drawing No. 1101.02, 1101.11, 1110.01, 1110.02, 1130.01 1135.01 and 1180.01 of the 2024 Roadway Standard Drawings. Use a moving operation only if the minimum speed maintained at all times is 3 mph with no stops that narrow or close a lane of travel. If the moving operation is progressing slower than 3 mph at any time, install a lane closure. Maintain the existing traffic pattern at all times, except in the immediate work zone where lane closures are allowed as determined by the Engineer.

Refer to attached details and Standard Drawing No. 1101.02, 1101.03, 1101.04, 1101.05, 1101.11, 1110.01, 1110.02, 1115.01, 1130.01, 1135.01, 1145.01, 1150.01, 1165.01, and 1180.01 of the 2024 Roadway Standard Drawings when closing a lane of travel in a stationary work zone such as pavement patching resurfacing, or pavement marking removal. Properly ballasted cones and skinny drums may be used instead of drums. However, drums are required for the upstream taper portion of lane closures in all applications. The stationary work zone shall be a maximum of 1 mile in length at any given time on 2 Lane, 2 Way facilities unless otherwise approved by the Engineer. A pilot vehicle operation may be used in conjunction with flaggers and the appropriate pilot vehicle warning signing as directed by the Engineer. During periods of construction inactivity, return the traffic pattern to the existing alignment and remove or cover any work zone signs. When covering work zone signs, use an opaque material that prevents reading of the sign at night by a driver using high beam headlights. Use material, which does not damage the sign sheeting. Replace any obliterated markings as required by other sections of the 2024 Standard Specifications and the Engineer.

When personnel and/or equipment are working on the shoulder adjacent to and within 5 feet of an open travel lane, close the nearest open travel lane using Standard Drawing No. 1101.02 of the 2024 Roadway Standard Drawings. When personnel and/or equipment are working within a lane of travel of an undivided facility, close the lane according to the traffic control plans, 2024 Roadway Standard Drawings or as directed by the Engineer. Conduct the work so that all personnel and/or equipment remain within the closed travel lane. Do not work simultaneously, 12/17/2015 TC-2 on both sides of an open travel way, within the same location, on a two-lane, two-way road. Perform work only when weather and visibility conditions allow safe operations as directed by the Engineer.

When utilizing a slow-moving operation for such items as pavement marking and marker placement, as a minimum the slow moving operation caravan shall consist of the vehicles and devices shown on the Moving Operation Caravan Details according to Roadway Standard Drawing No. 1101.02, sheet 11 of the 2024 Roadway Standard Drawings. Traffic cones may be

used when necessary to provide additional protection of wet pavement markings. Ballast all traffic cones so they will not be blown over by traffic.

#### TRAFFIC OPERATIONS:

##### **1) Paving Lift Requirements and Time Limitations:**

For paving lifts of 2.0" or less, bring all newly resurfaced lanes to the same station and elevation within 72 hours. If not brought up to the same station and elevation within 72 hours, the Contractor shall place portable "UNEVEN PAVEMENT" signs in advance of the uneven pavement and spaced every ½ mile along the section of uneven pavement. Once mitigated, all portable "UNEVEN PAVEMENT" signs shall be removed. No additional compensation will be made for these signs or any other type of portable warning signs as these are included in the "Temporary Traffic Control" contract pay item. For paving lifts greater than 2", bring all newly resurfaced lanes to the same station and elevation by the end of each work day unless the Contractor utilizes the notched wedge paving methods as described below. Failure to comply with the following requirements will result in a suspension of all other operations until all lanes of traffic are brought to the same station and elevation: 1. During paving operations, any paving lift greater than 2" for asphalt surface course mixes shall be mitigated by having an approved wedge apparatus on the paver that shapes the edge 1" vertically and the remaining at a maximum slope steepness of 2:1. For intermediate and base course mixes, use an approved wedge device that shapes the edge with a maximum slope steepness of 2:1. The maximum paving lift allowed to use this method is 3". 2. At the end of the work day, the Contractor shall place portable "UNEVEN PAVEMENT" signs in advance of the uneven pavement and spaced every ½ mile along the section of uneven pavement. Once mitigated, all portable "UNEVEN PAVEMENT" signs shall be removed. No additional compensation will be made for these signs or any other type of portable warning signs as these are included in the "Temporary Traffic Control" contract pay item. 3. In the next day's paving operation and not to exceed 72 hours, the Contractor shall bring up the adjacent lane to the same station and elevation before any further paving takes place on the project.

##### **2) Shoulder Drop-Off Requirements and Time Limitations:**

Backfill at a 6:1 slope up to the edge and elevation of existing pavement in areas adjacent to an open travel lane that has an edge of pavement drop-off as follows:

- (A) Drop-off that exceeds 2 inches on roadways with posted speed limits of 45 mph or greater.
- (B) Drop-off that exceeds 3 inches on roadways with posted speed limits less than 45 mph.

For drop-offs that exceed the above requirements, backfill the unacceptable drop-off with suitable compacted material, as approved by the Engineer. The material, equipment and labor associated with this operation will be at no expense to the Department. This work is not considered part of shoulder reconstruction.

**3) Project Requirements:**

Failure to comply with the following requirements will result in a suspension of all other operations:

1. Before working on ANY MAP, the Contractor shall submit a written construction sequence for traffic control and construction lighting for ALL MAPS to the Engineer at the first pre-construction meeting and the sequence must be approved before closing a lane of traffic. The Contractor and Engineer will coordinate with the Traffic Management Unit at 919-773-2800 or Traffic Services for additional traffic control guidance, as necessary.
2. Obtain written approval of the Engineer before working in more than one location or setting up additional lane closures. The maximum length of any one lane closure is 1 mile unless otherwise directed by the Engineer.
3. Contractor shall mill and pave lanes in an order such that water shall not accumulate.
4. Traffic Control for the milling and/or paving of ramps is to be done according to Standard Drawing Number 1101.02, Sheets 9 & 10 unless otherwise approved to be closed by the Engineer. If approved, Contractor will provide plans and devices for the detour at no additional cost to the department.
5. If lane closure restrictions apply, see Special Provision, "Intermediate Contract Times and Liquidated Damages".
6. If milled areas are not paved back within 72 hours, the Contractor is to furnish and install the following portable signs to warn drivers of the conditions. These are to include, but not limited to "Rough Road" (W8-8), "Uneven Lanes" (W8-11), and "Grooved Pavement" (W8-15) w/ Motorcycle Plaque mounted below. These are to be dual indicated on Multi-Lane Roadways with speed limits 45 mph and greater where lateral clearance can be obtained within the median areas. These portable signs are incidental to the other items of work included in the temporary traffic control (Lump Sum) pay item.

**4) Work Zone Signing:****Description**

Install advance/general warning work zone signs according to the Detail Drawing provided in these plans prior to beginning of work. Install and maintain signing in accordance with the attached drawings and Divisions 11 and 12 of the 2024 Standard Specifications.

**(A) Installation**

All stationary Advance/General warning work zone signs require notification to existing Utility owners per Article 105-8 of the 2024 Standard Specifications and Special Provision SP1 G115 within 3 to 12 full working days prior to installation.



Install all Advance/General warning work zone signs before beginning work on a particular map. If signs are installed more than seven (7) calendar days prior to the beginning of work on a particular map, cover the signs until the work begins. Install each work zone Advance/General warning sign separately and not on the same post or stand with any other sign except where an advisory speed plate or directional arrow is used.

All stationary signing is to be installed as shown on the detail drawing(s) unless otherwise directed by the Engineer. All sign locations to be verified by the Engineer prior to installation. Once the signs have been installed and accepted, any sign relocations requested by the Department will be compensated in accordance with Article 104-7. Any additional signs other than the ones shown in the drawing will be compensated in accordance with Article 104-7.

No stationary -Y- Line advance warning signage is required unless there's more than 1,000 feet of resurfacing along the -Y- line. Whenever work proceeds through an intersection, portable signs shall be used for traffic control. There will be no direct compensation for any portable signing.

If there is a period of construction inactivity longer than 14 calendar days, remove or cover advance/general warning work zone signs. Uncover advance/general warning work zone signs no more than 7 calendar days before work resumes. All other operations may be suspended upon failure to comply with the above requirements. Such suspended operations would not be resumed until the above requirements are fulfilled.

#### **(B) Sign Removal**

All stationary work zone signs shall be removed once the project is substantially complete. The project is substantially complete when the resurfacing operations are completed and the shoulders are brought up to the same elevation as the proposed pavement and when pavement markings are installed. The pavement marking doesn't have to be the final marking material to be considered substantially complete. Any remaining punch list items are to be completed with portable work zone signing. There will be no compensation for any portable signing. Sign removal is a condition of final project acceptance.

#### **(C) Lane Closure Work Zone Signs**

Install any required lane closure signing needed during the life of the project in accordance with the Standard Drawing No. 1101.02, 1101.11 and 1110.02 of the 2024 Roadway Standard Drawings. Any required portable signs for lane closures are compensated in the contract pay item for Temporary Traffic Control.

#### **5) Measurement and Payment:**

Temporary traffic control work, including, but not limited to installation and removal of portable signs, cones, drums, skinny drums, flaggers, AFAD's, changeable message boards, truck mounted attenuators, flashing arrow boards, and pilot vehicles will be paid at the contract lump sum price for Temporary Traffic Control. The Temporary Traffic Control pay item does not include work zone

advance or general warning signs. Partial payments for Temporary Traffic Control will be made as follows: The cumulative total of the lump sum price for temporary traffic control will be equal to the percent complete (project) as calculated for each partial pay estimate. Additional flashing arrow boards and message boards beyond those shown in the contract, detail drawings or Roadway Standard Drawings required by the Engineer will be paid as extra work in accordance with Article 104-7 of the Standard Specifications.

The work of satisfactorily installing and removing work zone advance and/or general warning signs, including, but not limited to, furnishing, locating, installing, covering, uncovering and removing stationary signs will be measured for each required sign and paid at the contract price for Work Zone Advance/General Warning Signing (SF). Payment for Work Zone Advance/General Warning Signing will be limited to a maximum of 90% of the total installed quantity. The remaining 10% will be paid once all signs have been removed.

The Lump Sum price for Temporary Traffic Control will include the work of four (4) flaggers per operation per map being utilized at the same time on any day. If a pilot vehicle is used for an operation, the Lump Sum Price for Temporary Traffic Control will include the work of five (5) flaggers. The operator of a pilot vehicle will be considered one of the five flaggers.

Any additional flagging beyond the “included” amount covered in the Temporary Traffic Control pay item will be considered supplemental flagging and compensated at a rate of \$20.00 per hour for each additional flagger as approved by the Engineer.

In the event the contractor works during nighttime hours, no additional compensation will be made for lighting or costs associated with nighttime operations. Compensation for additional costs associated with nighttime work will be considered incidental to the lump sum payment for Traffic Control.

Any necessary law enforcement needed for traffic control will be incidental to the lump sum payment for Traffic Control.

Any and all traffic control measures needed for traffic control installations in accordance with NCDOT Standards will be considered incidental to the lump sum payment for Traffic Control.

If the contractor elects to close the road during construction, the contractor shall obtain approval from the City of Kannapolis prior to the closing. Detour signage, barricades, and other necessary appurtenances to install the closure shall be paid in the lump sum price for Temporary Traffic Control if the road closure is allowed during construction.

Payment will be made under:

<b>Pay Item</b>	<b>Pay Unit</b>
Temporary Traffic Control	Lump Sum

**RULES IMPLEMENTING MEDIATED  
SETTLEMENT CONFERENCES IN  
THE CITY OF KANNAPOLIS CONSTRUCTION PROJECTS**

Adopted:

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## **RULE 1. INITIATING MEDIATED SETTLEMENT CONFERENCES**

**A. Purpose of Mandatory Settlement Conferences.** Pursuant to G.S. 143-128(g) and 143-135.26 (1 1), these Rules are promulgated to implement a system of settlement events which are designated to focus the parties' attention on settlement rather than on claim preparation and to provide a structured opportunity for settlement negotiations to take place. Nothing herein is intended to limit or prevent the parties from engaging in settlement procedures voluntarily at any time prior to or during commencement of the dispute resolution process.

### **B. Initiating the Dispute Resolution Process**

1. Any party to a contract with the City of Kannapolis (the "City") governed by Article 8. Ch. 143 of the General Statutes and identified in G.S. 143-128(g) and who is a party to a dispute arising out of the construction process in which the amount in controversy is at least \$15,000 may submit a written request to the City of Kannapolis for non-binding mediation of the dispute administered by the American Arbitration Association pursuant to its Construction Industry Mediation Rules.
2. Prior to submission of a written request for mediation to the City of Kannapolis, the parties requesting mediation:
  - a. If a prime contractor, must have first submitted its claim to the Project Designer for review. If the dispute is not resolved through the Project Designer's instructions, then the dispute becomes ripe for mediation in the Formal Dispute Resolution Process, and the party may submit their written request for mediation to the City Manager for the City of Kannapolis or his designee (the "City Manager").
  - b. If the party requesting mediation is a subcontractor, it must first have submitted its claim for mediation to the prime contractor with whom it has a contract. If the dispute is not resolved through the Prime Contractor's involvement, then the dispute becomes ripe for mediation in the Formal Dispute Resolution Process, and the party may submit its written request for mediation to the City Manager.
  - c. If the party requesting mediation is the Project Designer, then it must first submit its claim to the City of Kannapolis to resolve. If the dispute is not resolved with the City of Kannapolis' involvement, then the Project Designers' dispute is ripe for mediation in the Formal Dispute Resolution Process, and the Project Designer may submit its written request to the City Manager for mediation.
  - d. City is under no obligation to secure or enforce participation of any of the parties subject to this Article.

## **RULE 2. SELECTION OF MEDIATOR**

- A. Selection of Certified Mediator by Agreement of the Parties.** The parties may select a mediator certified pursuant to the Rules by agreement within 21 days of requesting mediation. The requesting party shall file with the City Manager a Notice of Selection of Mediator by Agreement within 10 days of the request; however, any party may file the notice. Such notice shall state the name, address and telephone number of the mediator selected; state the rate of compensation of the mediator; state that the mediator and opposing counsel have agreed upon the selection and rate of compensation; and state that the mediator is certified pursuant to these Rules.
- B. Nomination and Public Owner Approval of a Non-Certified Mediator.** The parties may select a mediator who does not meet the certification requirements of these rules but who, in the opinion of the parties and the City Manager, is otherwise qualified by training or experience to mediate the action. If the parties select a non-certified mediator, the requesting party shall file with the City Manager a Nomination of Non-Certified Mediator within 10 days of the request. Such nomination shall state the name, address and telephone number of the mediator; state the training, experience or other qualifications of the mediator; state the rate of compensation of the mediator; and state that the mediator and opposing counsel have agreed upon the selection and rate of compensation. The City Manager shall rule on said nomination, shall approve or disapprove of the parties' nomination and shall notify the parties of its decision
- C. Appointment of Mediator by the City of Kannapolis.** If the parties cannot agree upon the selection of a mediator, the party or party's attorney shall so notify the City Manager and request, on behalf of the parties, that the City Manager appoint a mediator. The request for appointment must be filed within 10 days after request to mediate and shall state that the parties have had a full and frank discussion concerning the selection of a mediator and have been unable to agree. The request shall state whether any party prefers a certified attorney mediator, and if so, the City Manager shall appoint a certified attorney mediator. If no preference is expressed, the City Manager may appoint a certified attorney mediator or a certified non-attorney mediator.
- D. Mediator Information Directory.** To assist the parties in the selection of a mediator by agreement, the parties are free to utilize the list of certified mediators maintained in any county participating in the Superior Court Mediation Settlement Conference Program.
- E. Disqualification of Mediator.** Any party may request replacement of the mediator by the City Manager for good cause. Nothing in this provision shall preclude mediators from disqualifying themselves.

## **RULE 3. THE MEDIATED SETTLEMENT CONFERENCE**

- A. Where Conference is to be Held.** Unless all parties and the mediator otherwise agree, the mediated settlement conference shall be held in the *City of Kannapolis*.

The mediator shall be responsible for reserving a place and making arrangements for the conference and for giving timely notice of the time and location of the conference to all attorneys, unrepresented parties and other persons and entities required to attend.

- B. When Conference is to be Held.** The deadline for completion of the mediation shall be not less than 30 days nor more than 60 days after the naming of the mediator.
- C. Request to Extend Deadline for Completion.** A party, or the mediator, may request the City Manager to extend the deadline for completion of the conference. Such request shall state the reasons the extension is sought and shall be served by the moving party upon the other parties and the mediator. If any party does not consent to the request, said party shall promptly communicate its objection to the City Manager. The City Manager may grant the request by setting a new deadline for completion of the conference.
- D. Recesses.** The mediator may recess the conference at any time and may set times for reconvening. If the time for reconvening is set before the conference is recessed, no further notification is required for persons present at the conference.
- E. Delay.** The mediated settlement conference shall not be cause for the delay of the construction project which is the focus of the dispute.

#### **RULE 4. DUTIES OF PARTIES AND OTHER PARTICIPANTS IN FORMAL DISPUTE RESOLUTION PROCESS**

##### **A. Attendance.**

1. All parties to the dispute originally presented to the Designer or Prime Contractor for initial resolution must attend the mediation. Failure of a party to a construction contract to attend the mediation will result in the public owner's withholding of monthly payment to that party until such party attends the mediation.
2. Attendance shall constitute physical attendance, not by telephone or other electronic means. Any attendee on behalf of a party must have authority from that party to bind it to any agreement reached as a result of the mediation.
3. Attorneys on behalf of parties may attend the mediation but are not required to do so.
4. Sureties or insurance company representatives are not required to attend the mediation unless any monies paid or to be paid as a result of any agreement reached as a result of mediation require their presence or acquiescence. If such agreement or presence is required, then authorized representatives of the surety or insurance company must attend the mediation.

- B. Finalizing Agreement.** If an agreement is reached in the conference, parties to the agreement shall reduce its terms to writing and sign it along with their counsel.

C. **Mediation Fee.** The mediation fee shall be paid in accordance with G.S. 143-128(g).

D. **Failure to compensate mediator.** Any party's failure to compensate the mediators in accordance with G.S. 143-128(g) shall subject that party to a withholding of said amount of money from the party's monthly payment by the City of Kannapolis.

## **RULE 5. AUTHORITY AND DUTIES OF MEDIATORS**

### **A. Authority of Mediator.**

1. The mediator shall at all times be in control of the conference and the procedures to be followed.
2. The mediator may communicate privately with any participant or counsel prior to and during the conference. The fact that private communications have occurred with a participant shall be disclosed to all other participants at the beginning of the conference.
3. The mediator shall make a good faith effort to schedule the conference at a time that is convenient with the participants, attorneys and mediator. In the absence of agreement, the mediator shall select the date for the conference.

### **B. Duties of Mediator.**

1. The mediator shall define and describe the following at the beginning of the conference:
  - a. The process of mediation;
  - b. The difference between mediation and other forms of conflict resolution;
  - c. The costs of the mediated settlement conference;
  - d. That the mediated settlement conference is not a trial, the mediator is not a judge, and the parties retain their legal rights if they do not reach settlement;
  - e. The circumstances under which the mediator may meet and communicate privately with any of the parties or with any other person;
  - f. Whether and under what conditions communications with the mediator will be held in confidence during the conference;
  - g. The inadmissibility of conduct and statements as provided by G.S. 7A-38.1 (1);
  - h. The duties and responsibilities of the mediator and the participants; and
  - i. That any agreement reached will be reached by mutual consent.
2. The mediator has a duty to be impartial and to advise all participants of any circumstance bearing on possible bias, prejudice or partiality.

3. It is the duty of the mediator timely to determine that an impasse exists and that the conference should end.
4. The mediator shall report to the City Manager within 10 days of the conference whether or not an agreement was reached by the parties. If an agreement was reached, the report shall state the nature of said agreement. The mediators report shall inform the City Manager of the absence of any party known to the mediator to have been absent from the mediated settlement conference without permission. The City Manager may require the mediator to provide statistical data for evaluation of the mediated settlement conference program.
5. It is the duty of the mediator to schedule the conference and conduct it prior to the deadline of completion set by the rules. Deadlines for completion of the conference shall be strictly observed by the mediator unless said time limit is changed by a written order of the City Manager.

#### **RULE 6. COMPENSATION OF THE MEDIATOR**

**A. By Agreement.** When the mediator is stipulated by the parties, compensation shall be as agreed upon between the parties and the mediator provided that the provision of G.S. 143-128(g) are observed. *Should the City of Kannapolis fail to compensate the mediator, it shall hereby be subject to a civil cause of action from the mediator for the 1/3 portion of the mediator's total fee as required by G.S. 143-128(g).*

**B. By Appointment.** When the mediator is appointed by the City Manager, the parties shall compensate the mediator for mediation services at the, rate in accordance with the rate charged for Superior Court mediation. The parties shall also pay to the mediator a one-time per case administrative rate in accordance with the rate charged for Superior Court mediation, which is due upon appointment.

#### **RULE 7. MEDIATOR CERTIFICATION.**

All mediators certified in the Formal Dispute Resolution Program shall be properly certified in accordance with the rules certifying mediators in Superior Court in North Carolina, except when otherwise allowed by the City Manager upon the request of the parties to the mediation. When selecting mediators, the parties may designate a preference for mediators with a background in construction law or public construction contracting. Such requirements, while preferred, are not mandatory under these rules. All mediators chosen must either demonstrate they are certified in accordance with the Rules Implementing Scheduled Mediated Settlement Conference in Superior Court or must gain the consent of the City Manager to mediate any dispute in accordance with these rules.



**RULE 8.      RULE MAKING**

These Rules are subject to amendment by the City of Kannapolis at any time the City deems it appropriate.

**RULE 9.      TIME LIMITS**

Any time limit provided for by these Rules may be waived or extended by the mediator it appoints for good cause shown. If the mediator has not yet been appointed, the designer of record shall decide all waivers or extensions of time for good cause shown.



Wage and Hour Division

Print Fact Sheet



WAGE AND HOUR DIVISION

UNITED STATES DEPARTMENT OF LABOR

# Fact Sheet #66: The Davis-Bacon and Related Acts (DBRA)

October 2023

This fact sheet provides general information concerning DBRA.

## Coverage

DBRA requires payment of prevailing wages on federally funded or assisted construction projects.

The Davis-Bacon Act applies to each federal government or District of Columbia contract in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works. Many federal laws that authorize federal assistance for construction through grants, loans, loan guarantees, insurance, and other methods are Davis-Bacon "Related Acts." The "Related Acts" include provisions that apply Davis-Bacon labor standards to most federally assisted construction. Examples of "Related Acts" include the Federal-Aid Highway Acts, the Housing and Community Development Act of 1974, and the Federal Water Pollution Control Act.

## Basic Provisions/Requirements

Contractors must pay laborers and mechanics working on the site of the work at least the locally prevailing wages (including fringe benefits), listed in the Davis-Bacon wage determination applicable to the contract, for the work performed. Davis-Bacon labor standards clauses must be included in covered contracts.

The Davis-Bacon "prevailing wage" is the combination of the basic hourly rate and any fringe benefits listed in a Davis-Bacon wage determination. The contractor's obligation to pay at least the prevailing wage listed in the applicable wage determination can be met by paying each laborer and mechanic the applicable prevailing wage entirely as cash wages or by a combination of cash wages and employer-provided bona fide fringe benefits. Prevailing wages, including fringe benefits, must be paid for all hours worked on the site of the work.

Apprentices may be paid less than the rates listed in the applicable wage determination only when they are individually registered in an apprenticeship program registered with the Department of Labor or with a state apprenticeship agency recognized by the Department, and the terms of the apprenticeship program are met.

Contractors are required to pay covered workers weekly and submit weekly certified payroll records to the contracting agency. They are also required to post the applicable Davis-Bacon wage determination and the Davis-Bacon poster (WH-1321) on the work site in a prominent and accessible place where they

can be easily seen by the workers.

## Davis-Bacon Wage Determinations

Davis-Bacon wage determinations are published on the System for Award Management (SAM) website for contracting agencies to include them into covered contracts. The “prevailing wages” are determined based on wages paid to various classes of laborers and mechanics employed on specific types of construction projects in an area. Guidance on determining the type of construction, and when multiple wage determinations are applicable to a project, is provided in All Agency Memoranda 130, 131 and 236.

## Retaliation Is Prohibited

Retaliation is prohibited against any worker or job applicant for engaging in protected activities. Examples of protected include, but are not limited to, making a complaint to a manager, contractor, contracting agency, or WHD; cooperating in a WHD investigation; requesting payment of wages; refusing to return back wages to the contractor; complaints by a third party on behalf of a worker; consulting with WHD staff; informing another worker about their rights under the DBRA; and testifying at a hearing or trial.

WHD will notify contractors of violation findings and direct them to provide appropriate make whole relief to affected worker(s) and job applicant(s) or take appropriate remedial action, or both, where retaliation has been found to have occurred. Engaging in prohibited retaliation may also be grounds for debarment.

## Penalties/Sanctions and Appeals

Contract payments may be withheld in sufficient amounts to satisfy liabilities of the contractor for unpaid wages, and for liquidated damages for overtime violations under the Contract Work Hours and Safety Standards Act (CWHSSA). In addition, violations of the Davis-Bacon labor standards may be grounds for contract termination, contractor liability for any resulting costs to the government, and debarment from future contracts for a period of three years.

Contractors may challenge the Wage and Hour Division’s determinations of violations and debarment before an Administrative Law Judge (ALJ). Interested parties may appeal ALJ decisions to the Department’s Administrative Review Board (ARB). Final ARB decisions may be appealed to and are enforceable through the federal courts.

## Typical Compliance Issues

Compliance issues that frequently arise on DBRA projects include:

- Misclassification of laborers and mechanics.
- Failure to pay full prevailing wage, including fringe benefits, for all hours worked (including overtime hours).
- Incomplete or inaccurate recordkeeping, such as not counting all hours worked or not recording hours worked in each classification by an individual who worked in two or more classifications during a day.
- Failure to maintain a copy of the bona fide apprenticeship program and individual registration documents for apprentices.
- Failure to submit certified payrolls weekly.
- Failure to post the Davis- Bacon poster and applicable wage determination at the work site.

# Relation to State, Local, and Other Federal Laws

The Copeland "Anti-Kickback" Act prohibits contractors from in any way inducing an employee to give up any part of the compensation to which they are entitled and requires contractors to submit a weekly statement of the wages paid to each worker performing DBRA-covered work.

Contractors on projects subject to DBRA labor standards may also be subject to additional prevailing wage and overtime pay requirements under State (and local) laws. Also, overtime pay requirements under CWHSSA and the Fair Labor Standards Act may apply.

Under Reorganization Plan No. 14 of 1950, (5 U.S.C. Appendix 1), the federal contracting or assistance-administering agencies have day-to-day responsibility for administration and enforcement of the Davis-Bacon labor standards provisions and, in order to promote consistent and effective enforcement, the Department of Labor has regulatory and oversight authority, including the authority to investigate compliance.

## Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website:

<http://www.dol.gov/agencies/whd> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

Topics Worker Rights For Employers Resources Interpretive Guidance State Laws News



### Wage and Hour Division

An agency within the U.S.  
Department of Labor

200 Constitution Ave NW  
Washington, DC 20210  
[1-866-4-US-WAGE](tel:1-866-4-US-WAGE)  
[1-866-487-9243](tel:1-866-487-9243)  
[www.dol.gov](http://www.dol.gov)

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# EMPLOYEE RIGHTS ON GOVERNMENT CONTRACTS

THIS ESTABLISHMENT IS PERFORMING GOVERNMENT CONTRACT WORK SUBJECT TO:  
(CHECK ONE)

- ☐ **SERVICE CONTRACT ACT (SCA)**
- ☐ **PUBLIC CONTRACTS ACT (PCA)**

## MINIMUM WAGES

Your rate must be no less than the federal minimum wage established by the Fair Labor Standards Act (FLSA).

A higher rate may be required for SCA contracts if a wage determination applies. Such wage determination will be posted as an attachment to this notice.

## FRINGE BENEFITS

SCA wage determinations may require fringe benefit payments (or a cash equivalent). PCA contracts do not require fringe benefits.

## OVERTIME PAY

You must be paid 1.5 times your basic rate of pay for all hours worked over 40 in a week. There are some exceptions.

## CHILD LABOR

No person under 16 years of age may be employed on a PCA contract.

## SAFETY & HEALTH

Work must be performed under conditions that are sanitary, and not hazardous or dangerous to employees' health and safety.

## ENFORCEMENT

Specific DOL agencies are responsible for the administration of these laws. To file a complaint or obtain information, contact the **Wage and Hour Division (WHD)** by calling its toll-free help line at 1-866-4-USWAGE (1-866-487-9243), or visit [www.dol.gov/whd](http://www.dol.gov/whd)

Contact the **Occupational Safety and Health Administration (OSHA)** by calling 1-800-321-OSHA (1-800-321-6742), or visit [www.osha.gov](http://www.osha.gov)

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WAGE AND HOUR DIVISION  
UNITED STATES DEPARTMENT OF LABOR

1-866-487-9243  
TTY: 1-877-889-5627  
[www.dol.gov/whd](http://www.dol.gov/whd)



## U.S. DEPARTMENT OF LABOR

The purpose of the discussion below is to advise contractors which are subject to the Walsh-Healey Public Contracts Act or the Service Contract Act of the principal provisions of these acts.

### WALSH-HEALEY PUBLIC CONTRACTS ACT

**General Provisions**—This act applies to contracts which exceed or may exceed \$10,000 entered into by any agency or instrumentality of the United States for the manufacture or furnishing of materials, supplies, articles, or equipment. The act establishes minimum wage, maximum hours, and safety and health standards for work on such contracts, and prohibits the employment on contract work of convict labor (unless certain conditions are met) and children under 16 years of age. The employment of homeworkers (except homeworkers with disabilities employed under the provisions of Regulations, 29 CFR Part 525) on a covered contract is not permitted.

In addition to its coverage of prime contractors, the act under certain circumstances applies to secondary contractors performing work under contracts awarded by the Government prime contractor.

All provisions of the act except the safety and health requirements are administered by the Wage and Hour Division.

**Minimum Wage**—Covered employees must currently be paid not less than the Federal minimum wage established in section 6(a)(1) of the Fair Labor Standards Act.

**Overtime**—Covered workers must be paid at least one and one-half times their basic rate of pay for all hours worked in excess of 40 a week. Overtime is due on the basis of the total hours spent in all work, Government and non-Government, performed by the employee in any week in which covered work is performed.

**Child Labor**—Employers may protect themselves against unintentional child labor violations by obtaining certificates of age. State employment or age certificates are acceptable.

**Safety and Health**—No covered work may be performed in plants, factories, buildings, or surroundings or under work conditions that are unsanitary or hazardous or dangerous to the health and safety of the employees engaged in the performance of the contract. The safety and health provisions of the Walsh-Healey Public Contracts Act are administered by the Occupational Safety and Health Administration.

**Posting**—During the period that covered work is being performed on a contract subject to the act, the contractor must post copies of Notice to Employees Working on Government Contracts in a sufficient number of places to permit employees to observe a copy on the way to or from their place of employment.

**Responsibility for Secondary Contractors**—Prime contractors are liable for violations of the act committed by their covered secondary contractors.

### SERVICE CONTRACT ACT

**General Provisions**—The Service Contract Act applies to every contract entered into by the United States or the District of Columbia, the principal purpose of which is to furnish services in the United States through the use of service employees. Contractors and subcontractors performing on such Federal contracts must observe minimum wage and safety and health standards, and must maintain certain records, unless a specific exemption applies.

**Wages and Fringe Benefits**—Every service employee performing any of the Government contract work under a service contract in excess of \$2,500 must be paid not less than the monetary wages, and must be furnished the fringe benefits, which the Secretary of Labor has determined to be prevailing in the locality for the classification in which the employee is working or the wage rates and fringe benefits (including any accrued or prospective wage rates and fringe benefits) contained in a predecessor contractor's collective bargaining agreement. The wage rates and fringe benefits required are usually specified in the contract but in no case may employees doing work necessary for the performance of the contract be paid less than the minimum wage established in section 6(a)(1) of the Fair Labor Standards Act. Service contracts which do not exceed \$2,500 are not subject to prevailing rate determinations or to the safety and health requirements of the act. However, the act does require that employees performing work on such contracts be paid not less than the minimum wage rate established in section 6(a)(1) of the Fair Labor Standards Act.

**Overtime**—The Fair Labor Standards Act and the Contract Work Hours Safety Standards Act may require the payment of overtime at time and one-half the regular rate of pay for all hours work on the contract in excess of 40 a week. The Contract Work Hours Safety Standards Act is more limited in scope than the Fair Labor Standards Act and generally applies to Government contracts in excess of \$100,000 that require or involve the employment of laborers, mechanics, guards, watchmen.

**Safety and Health**—The act provides that no part of the services in contracts in excess of \$2,500 may be performed in buildings or surroundings or under working conditions, provided by or under the control or supervision of the contractor or subcontractor, which are unsanitary or hazardous or dangerous to the health or safety of service employees engaged to furnish the services. The safety and health provisions of the Service Contract Act are administered by the Occupational Safety and Health Administration.

**Notice to Employees**—On the date a service employee commences work on a contract in excess of \$2,500, the contractor (or subcontractor) must provide the employee with a notice of the compensation required by the act. The posting of the notice (including any applicable wage determination) contained on the reverse in a location where it may be seen by all employees performing on the contract will satisfy this requirement.

**Notice in Subcontracts**—The contractor is required to insert in all subcontracts the labor standards clauses specified by the regulations in 29 CFR Part 4 for Federal service contracts exceeding \$2,500.

**Responsibility for Secondary Contractors**—Prime contractors are liable for violations of the act committed by their covered secondary contractors.

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**Other Obligations**—Observance of the labor standards of these acts does not relieve the employer of any obligation he may have under any other laws or agreements providing for higher labor standards.

**Additional Information**—Additional information and copies of the acts and applicable regulations and interpretations may be obtained from the nearest office of the Wage and Hour Division or the national office in Washington, D.C. Information pertaining to safety and health standards may be obtained from the nearest office of the Occupational Safety and Health Administration or the national office in Washington, D.C.

# DERECHOS DEL EMPLEADO BAJO CONTRATOS GUBERNAMENTALES

ESTE ESTABLECIMIENTO REALIZA TRABAJO BAJO CONTRATO DEL GOBIERNO SUJETO A  
(MARQUE UNO):

☐ **LEY DE CONTRATOS POR SERVICIOS (SCA-SIGLAS EN INGLÉS)**

☐ **LEY DE CONTRATOS PÚBLICOS (PCA-SIGLAS EN INGLÉS)**

**SALARIOS MINIMOS** Su tasa de pago no puede ser inferior al salario mínimo establecido por la Ley de Normas Justas de Trabajo (FLSA-siglas en inglés).

Se podría exigir una tasa superior para contratos bajo SCA si se aplica una determinación de salarios. Dicha determinación de salarios se fijará a este aviso como adición.

**BENEFICIOS  
ADICIONALES**

Las determinaciones de salarios bajo SCA pueden exigir pagos de beneficios adicionales (o un equivalente en efectivo). Contratos bajo PCA no exigen beneficios adicionales.

**PAGO DE  
SOBRETIEPMO**

Se le ha de pagar tiempo y medio (1.5) de su tasa básica de pago por todas las horas trabajadas en exceso de 40 por semana. Existen algunas excepciones.

**TRABAJO DE  
MENORES DE EDAD**

Se prohíbe el empleo de menores de 16 años de edad en contratos bajo PCA.

**SEGURIDAD Y  
SANIDAD**

El trabajo ha de desempeñarse bajo condiciones higiénicas y no arriesgadas o peligrosas para la salud y seguridad del empleado.

**CUMPLIMIENTO**

La responsabilidad para la administración de estas leyes le corresponde a ciertas agencias específicas del Departamento de Trabajo (DOL-siglas en inglés). Para sentar una denuncia u obtener información, gavor de ponerse en contacto con la **División de Horas y Salarios** (WHD-siglas en inglés para la Sección) llamando gratuitamente a la línea de asistencia 1-866-4-USWAGE (1-866-487-9243), o visitando [www.dol.gov/whd](http://www.dol.gov/whd)

Favor de ponerse en contacto con la **Administración de Seguridad y Salud Ocupacionales** (OSHA-siglas en inglés) llamando al 1-800-321-OSHA (1-800-321-6742), o visitando [www.osha.gov](http://www.osha.gov)

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DIVISIÓN DE HORAS Y SALARIOS  
DEPARTAMENTO DE TRABAJO DE LOS EE.UU.

1-866-487-9243  
TTY: 1-877-889-5627  
[www.dol.gov/whd](http://www.dol.gov/whd)





## DEPARTAMENTO DE TRABAJO DE EEUU

El propósito de lo que se presenta a continuación es aconsejar a contratistas sujetos a la Ley Walsh-Healey De Contratos Públicos o a la Ley de Contratos por Servicios sobre las provisiones principales de estas dos leyes.

### LEY WALSH-HEALEY SOBRE CONTRATOS PÚBLICOS

**Provisiones generales** — Esta ley se aplica a contratos que exceden, o que puedan exceder, \$10,000 contratados por cualquier agencia o entidad de los Estados Unidos para la fabricación o para proveer materiales, provisiones, artículos o equipo. La Ley establece salario mínimo, horas máximas, y normas de seguridad y salud para trabajo realizado bajo dichos contratos, y prohíbe el empleo, en trabajo contratado, de presidiarios (a menos que se cumplan ciertas condiciones) y de menores de 16 años de edad. No se permite el empleo de trabajadores caseros (salvo el de trabajadores caseros con incapacidades empleados bajo las provisiones de 29 CFR Part 525) en contratos sujetos a esta ley.

Además de aplicarse a contratistas primarios, bajo ciertas circunstancias se aplica esta ley a contratistas secundarios que realicen trabajo bajo contratos concedidos por el contratista primario del gobierno.

La División de Horas y Salarios administra todas las provisiones de la ley salvo las exigencias sobre seguridad y salud.

**Salario Mínimo** — Actualmente se le ha de pagar a todo empleado bajo el alcance de esta ley por lo menos el salario mínimo federal establecido en la división 6(a)(1) de la Ley de Normas Justas de Trabajo.

**Sobretiempo** — Se les ha de pagar a trabajadores bajo el alcance de esta ley tiempo y medio de su tasa básica de pago por cada hora trabajada en exceso de 40 por semana. El pago de sobretiempo debe basarse en el total de horas que le haya tomado al empleado, en cualquier semana, para desempeñar trabajo, gubernamental y no gubernamental, sujeto a esta ley.

**Trabajo de Menores de Edad** — El empresario se puede proteger contra infracciones no intencionales de trabajo de menores de edad obteniendo certificados de edad. Se aceptan certificados estatales de empleo o de edad.

**Seguridad y Sanidad** — No se permite realizar trabajo bajo el alcance de esta ley en establecimientos, fábricas, edificios, sitios o bajo condiciones laborales que sean insalubres, arriesgadas o peligrosas para la salud y seguridad de empleados ocupados en la realización del contrato.

La Administración de Seguridad y Salud Ocupacionales administra las provisiones de seguridad y sanidad de la Ley Walsh-Healey Sobre Contratos Públicos.

**Avisos** — Durante el período en que se realiza trabajo bajo un contrato sujeto a la ley, el contratista ha de colocar ejemplares del Aviso A Empleados Trabajando Bajo Contratos Gubernamentales en varios sitios para que los empleados puedan observar un ejemplar en camino o a la salida de su sitio de empleo.

**La Responsabilidad de Contratistas Secundarios** — Los contratistas primarios tienen responsabilidad legal sobre infracciones de la ley cometidas por sus contratistas secundarios bajo el alcance de esta ley.

### LA LEY DE CONTRATOS POR SERVICIOS

**Provisiones Generales** — La Ley De Contratos Por Servicios se aplica a todo contrato concedido por los Estados Unidos o el Distrito de Columbia, cuyo propósito principal sea proveer servicios en los Estados Unidos con el empleo de empleados que presten servicios. Contratistas y subcontratistas realizando trabajo bajo dichos contratos federales han de cumplir con las normas de salario mínimo, seguridad y sanidad, además de mantener ciertos registros, a menos que se aplique una exención específica.

**Salarios y Beneficios Adicionales** — A todo empleado que preste servicios para desempeñar cualquier trabajo en un contrato gubernamental por servicios en exceso de \$2,500 se le ha de pagar no menos de las tasas monetarias, y se le ha de proporcionar los beneficios adicionales, que el/la Secretario(a) de Trabajo haya determinado prevalecientes en la localidad para la clasificación bajo la cual el empleado esté trabajando o las tasas de pago y beneficios adicionales (incluyendo cualquier tasa de pago y beneficios adicionales acumulados o anticipados) contenidos en el acuerdo colectivo del contratista antecesor. Se suele especificar en el contrato las tasas de pago y los beneficios adicionales exigidos. No obstante, bajo ninguna situación se permite pagar menos del salario mínimo establecido en la división 6(a)(1) de la Ley de Normas Justas de Trabajo a empleados desempeñando trabajo necesario para el cumplimiento del contrato. Contratos por servicios que no excedan \$2,500 no están sujetos a las determinaciones de tasas prevalecientes o a las exigencias de seguridad y sanidad de la ley. No obstante, la ley sí exige que se les pague a empleados desempeñando trabajo bajo dichos contratos no menos del salario mínimo establecido por la división 6(a)(1) de la Ley de Normas Justas de Trabajo.

**Sobretiempo** — La Ley de Normas Justas de Trabajo y la Ley Sobre Horas Laborales y Normas de Seguridad Para Contratos pueden exigir el pago de sobretiempo a tiempo y medio de la tasa regular de pago por toda hora trabajada para el contrato en exceso de 40 horas por semana. La Ley Sobre Horas Laborales y Normas de Seguridad Para Contratos tiene menos alcance que la Ley de Normas Justas de Trabajo y generalmente se aplica a contratos del Gobierno en exceso de \$100,000 que exigen o incluyen el empleo de obreros, mecánicos, guardias, serenos.

**Seguridad y Sanidad** — La ley especifica que ninguna parte de los servicios prestados bajo contratos en exceso de \$2,500 debe realizarse en edificios o sitios o bajo condiciones laborales, proporcionadas por o bajo el control o supervisión del contratista o subcontratista, que sean insalubres, arriesgadas o peligrosas para la salud y seguridad de los empleados ocupados en la ejecución del contrato. La Administración de Seguridad y Salud Ocupacionales administra las provisiones de seguridad y sanidad de la Ley De Contratos Por Servicios.

**Aviso a los Empleados** — En la fecha que comience a trabajar un empleado prestando servicios bajo un contrato en exceso de \$2,500, el contratista (o subcontratista) ha de proveerle al empleado un aviso sobre la compensación exigida por la ley. Se puede cumplir con la exigencia del aviso (inclusive cualquier determinación aplicable de salarios), contenido al lado inverso, colocándolo donde lo puedan ver todos los empleados trabajando en el contrato.

**Aviso en Subcontratos** — Se le exige al contratista insertar las cláusulas sobre las normas laborales especificadas por los reglamentos en 29 CFR Part 4 para contratos por servicios federales que excedan \$2,500 en todos los subcontratos. Responsabilidad de Contratistas Secundarios — Los contratistas primarios tienen responsabilidad legal por infracciones de la ley cometidas por contratistas secundarios.

**Otras Obligaciones** — El cumplimiento con las normas laborales de estas leyes no exonera al empresario de ninguna otra obligación que él pueda tener bajo cualquier otra ley o acuerdo que exijan normas laborales superiores.

**Información Adicional** — Se puede obtener información adicional y ejemplares de las leyes y de reglamentos e interpretaciones aplicables de la oficina más cercana de la División de Horas y Salarios o de la Oficina Nacional en Washington, D.C. Se puede obtener información referente a las normas de seguridad y sanidad de la oficina más cercana de la Administración de Seguridad y Salud Ocupacionales o de la Oficina Nacional en Washington, D.C.

# EMPLOYEE RIGHTS

## UNDER THE FAIR LABOR STANDARDS ACT

### FEDERAL MINIMUM WAGE

# \$7.25

PER HOUR

BEGINNING JULY 24, 2009

The law requires employers to display this poster where employees can readily see it.

**OVERTIME PAY** At least 1½ times the regular rate of pay for all hours worked over 40 in a workweek.

**CHILD LABOR** An employee must be at least 16 years old to work in most non-farm jobs and at least 18 to work in non-farm jobs declared hazardous by the Secretary of Labor. Youths 14 and 15 years old may work outside school hours in various non-manufacturing, non-mining, non-hazardous jobs with certain work hours restrictions. Different rules apply in agricultural employment.

**TIP CREDIT** Employers of "tipped employees" who meet certain conditions may claim a partial wage credit based on tips received by their employees. Employers must pay tipped employees a cash wage of at least \$2.13 per hour if they claim a tip credit against their minimum wage obligation. If an employee's tips combined with the employer's cash wage of at least \$2.13 per hour do not equal the minimum hourly wage, the employer must make up the difference.

**PUMP AT WORK** The FLSA requires employers to provide reasonable break time for a nursing employee to express breast milk for their nursing child for one year after the child's birth each time the employee needs to express breast milk. Employers must provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by the employee to express breast milk.

**ENFORCEMENT** The Department has authority to recover back wages and an equal amount in liquidated damages in instances of minimum wage, overtime, and other violations. The Department may litigate and/or recommend criminal prosecution. Employers may be assessed civil money penalties for each willful or repeated violation of the minimum wage or overtime pay provisions of the law. Civil money penalties may also be assessed for violations of the FLSA's child labor provisions. Heightened civil money penalties may be assessed for each child labor violation that results in the death or serious injury of any minor employee, and such assessments may be doubled when the violations are determined to be willful or repeated. The law also prohibits retaliating against or discharging workers who file a complaint or participate in any proceeding under the FLSA.

**ADDITIONAL INFORMATION**

- Certain occupations and establishments are exempt from the minimum wage, and/or overtime pay provisions.
- Special provisions apply to workers in American Samoa, the Commonwealth of the Northern Mariana Islands, and the Commonwealth of Puerto Rico.
- Some state laws provide greater employee protections; employers must comply with both.
- Some employers incorrectly classify workers as "independent contractors" when they are actually employees under the FLSA. It is important to know the difference between the two because employees (unless exempt) are entitled to the FLSA's minimum wage and overtime pay protections and correctly classified independent contractors are not.
- Certain full-time students, student learners, apprentices, and workers with disabilities may be paid less than the minimum wage under special certificates issued by the Department of Labor.

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WAGE AND HOUR DIVISION  
UNITED STATES DEPARTMENT OF LABOR

1-866-487-9243  
[www.dol.gov/agencies/whd](http://www.dol.gov/agencies/whd)



WH1088 REV 0423

# DERECHOS DE LOS TRABAJADORES

BAJO LA LEY DE NORMAS JUSTAS DE TRABAJO (FLSA—siglas en inglés)

## SALARIO MÍNIMO FEDERAL

# \$7.25

POR HORA

A PARTIR DEL 24 DE JULIO DE 2009

La ley exige que los empleadores exhiban este cartel donde sea visible por los empleados.

### PAGO POR SOBRETIENTO

Por lo menos tiempo y medio (1½) de la tasa regular de pago por todas las horas trabajadas en exceso de 40 en una semana laboral.

### TRABAJO DE MENORES DE EDAD

El empleado tiene que tener por lo menos 16 años para trabajar en la mayoría de los trabajos no agrícolas y por lo menos 18 años para trabajar en los trabajos no agrícolas declarados peligrosos por la Secretaría de Trabajo. Los menores de 14 y 15 años pueden trabajar fuera del horario escolar en varias ocupaciones que no sean de manufactura, de minería, y que no sean peligrosas con ciertas restricciones al horario de trabajo. Se aplican distintos reglamentos al empleo agrícola.

### CRÉDITO POR PROPINAS

Los empleadores de "empleados que reciben propinas" que cumplan con ciertas condiciones, pueden reclamar un crédito de salario parcial basado en las propinas recibidas por sus empleados. Los empleadores les tienen que pagar a los empleados que reciben propinas un salario en efectivo de por lo menos \$2.13 por hora si ellos reclaman un crédito de propinas contra su obligación de pagar el salario mínimo. Si las propinas recibidas por el empleado combinadas con el salario en efectivo de por lo menos \$2.13 por hora del empleador no equivalen al salario mínimo por hora, el empleador tiene que compensar la diferencia.

### EXTRACCIÓN EN EL TRABAJO

La FLSA requiere que los empleadores proporcionen un tiempo de descanso razonable para que un empleado pueda extraerse leche de los pechos para el/la bebé que esté amamantando durante un año después del nacimiento del/de la niño(a) cada vez que la empleada necesite extraerse leche. Empleadores deben proveer un lugar, que no sea un cuarto de baño, que esté oculto de la vista y libre de intrusión de parte de compañeros de trabajo y del público, el cual la empleada podría usar para extraerse leche.

### CUMPLIMIENTO

El Departamento tiene la autoridad de recuperar salarios retroactivos y una cantidad igual en daños y perjuicios en casos de incumplimientos con el salario mínimo, sobretiempo y otros incumplimientos. El Departamento puede litigar y/o recomendar un enjuiciamiento criminal. A los empleadores se les pueden imponer sanciones pecuniarias civiles por cada incumplimiento deliberado o repetido de las disposiciones de la ley del pago del salario mínimo o de sobretiempo. También se pueden imponer sanciones pecuniarias civiles por incumplimiento con las disposiciones de la FLSA sobre el trabajo de menores de edad. Además, se pueden imponer sanciones pecuniarias civiles incrementadas por cada incumplimiento con el trabajo de menores que resulte en la muerte o una lesión seria de un empleado menor de edad, y tales evaluaciones pueden duplicarse cuando se determina que los incumplimientos fueron deliberados o repetidos. La ley también prohíbe tomar represalias o despedir a los trabajadores que presenten una queja o que participen en cualquier proceso bajo la FLSA.

### INFORMACIÓN ADICIONAL

- Ciertas ocupaciones y ciertos establecimientos están exentos de las disposiciones del salario mínimo, y/o de las disposiciones del pago de sobretiempo.
- Se aplican disposiciones especiales a trabajadores de Samoa Americana, del Estado Libre Asociado de las Islas Marianas del Norte y del Estado Libre Asociado de Puerto Rico.
- Algunas leyes estatales proporcionan protecciones más amplias a los trabajadores; los empleadores tienen que cumplir con ambas.
- Algunos empleadores clasifican incorrectamente a sus trabajadores como "contratistas independientes" cuando en realidad son empleados según la FLSA. Es importante conocer la diferencia entre los dos porque los empleados (a menos que estén exentos) tienen derecho a las protecciones del salario mínimo y del pago de sobretiempo bajo la FLSA y los contratistas correctamente clasificados como independientes no lo tienen.
- A ciertos estudiantes de tiempo completo, estudiantes alumnos, aprendices, y trabajadores con discapacidades se les puede pagar menos que el salario mínimo bajo certificados especiales expedidos por el Departamento de Trabajo.

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DIVISIÓN DE HORAS Y SALARIOS

DEPARTAMENTO DE TRABAJO DE LOS EE.UU. [www.dol.gov/agencies/whd](http://www.dol.gov/agencies/whd)

1-866-487-9243



WH1089 SPA REV 04/23

Superseded General Decision Number: NC20240088

State: North Carolina

Construction Type: Highway

Counties: Alamance, Anson, Cabarrus, Chatham, Davie, Durham, Forsyth, Gaston, Guilford, Mecklenburg, Orange, Person, Randolph, Rockingham, Stokes, Union and Yadkin Counties in North Carolina.

HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects & railroad construction; bascule, suspension & spandrel arch bridges designed for commercial navigation, bridges involving marine construction; and other major bridges).

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	<ul style="list-style-type: none"><li>. Executive Order 14026 generally applies to the contract.</li><li>. The contractor must pay all covered workers at least \$17.75 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2025.</li></ul>
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	<ul style="list-style-type: none"><li>. Executive Order 13658 generally applies to the contract.</li><li>. The contractor must pay all covered workers at least \$13.30 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2025.</li></ul>

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker

protections under the Executive Orders is available at  
<http://www.dol.gov/whd/govcontracts>.

Modification Number      Publication Date  
                                  0                                   01/03/2025

SUNC2014-003 11/14/2014

	Rates	Fringes
BLASTER.....	\$ 18.64	
CARPENTER.....	\$ 13.68 **	.05
CEMENT MASON/CONCRETE FINISHER...	\$ 13.93 **	
ELECTRICIAN		
Electrician.....	\$ 18.79	2.72
Telecommunications		
Technician.....	\$ 15.19 **	1.25
IRONWORKER.....	\$ 13.30 **	
LABORER		
Asphalt Raker and Spreader..	\$ 12.78 **	
Asphalt Screed/Jackman.....	\$ 14.50 **	
Carpenter Tender.....	\$ 12.51 **	.27
Cement Mason/Concrete		
Finisher Tender.....	\$ 11.04 **	
Common or General.....	\$ 10.40 **	.01
Guardrail/Fence Installer...	\$ 13.22 **	
Pipelayer.....	\$ 12.43 **	
Traffic Signal/Lighting		
Installer.....	\$ 15.65 **	.24
PAINTER		
Bridge.....	\$ 23.77	
POWER EQUIPMENT OPERATOR		
Asphalt Broom Tractor.....	\$ 10.00 **	
Bulldozer Fine.....	\$ 16.13 **	
Bulldozer Rough.....	\$ 14.36 **	
Concrete Grinder/Groover....	\$ 17.92	
Crane Boom Trucks.....	\$ 18.19	
Crane Other.....	\$ 19.83	
Crane Rough/All-Terrain.....	\$ 19.10	
Drill Operator Rock.....	\$ 14.28 **	
Drill Operator Structure....	\$ 20.89	
Excavator Fine.....	\$ 16.95 **	
Excavator Rough.....	\$ 13.63 **	
Grader/Blade Fine.....	\$ 19.84	
Grader/Blade Rough.....	\$ 15.47 **	
Loader 2 Cubic Yards or		
Less.....	\$ 13.31 **	
Loader Greater Than 2		
Cubic Yards.....	\$ 16.19 **	
Material Transfer Vehicle		
(Shuttle Buggy).....	\$ 15.44 **	
Mechanic.....	\$ 17.51 **	
Milling Machine.....	\$ 15.22 **	
Off-Road Hauler/Water		
Tanker.....	\$ 11.83 **	
Oiler/Greaser.....	\$ 14.16 **	
Pavement Marking Equipment..	\$ 12.05 **	

Paver Asphalt.....	\$ 15.97	**
Paver Concrete.....	\$ 18.20	
Roller Asphalt Breakdown....	\$ 12.79	**
Roller Asphalt Finish.....	\$ 13.76	**
Roller Other.....	\$ 12.08	**
Scraper Finish.....	\$ 12.65	**
Scraper Rough.....	\$ 11.50	**
Slip Form Machine.....	\$ 19.60	
Tack Truck/Distributor Operator.....	\$ 14.82	**

#### TRUCK DRIVER

GVWR of 26,000 or Less.....	\$ 11.45	**	
GVWR of 26,001 Lbs or Greater.....	\$ 13.57	**	.03

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

\*\*\*\*\*

\*\* Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$17.75) or 13658 (\$13.30). Please see the Note at the top of the wage determination for more information. Please also note that the minimum wage requirements of Executive Order 14026 are not currently being enforced as to any contract or subcontract to which the states of Texas, Louisiana, or Mississippi, including their agencies, are a party.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (iii)).

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The body of each wage determination lists the classifications and wage rates that have been found to be prevailing for the type(s) of construction and geographic area covered by the wage determination. The classifications are listed in alphabetical order under rate identifiers indicating whether the particular rate is a union rate (current union negotiated rate), a survey rate, a weighted union average rate, a state adopted rate, or a

supplemental classification rate.

#### Union Rate Identifiers

A four-letter identifier beginning with characters other than ""SU"", ""UAVG"", ?SA?, or ?SC? denotes that a union rate was prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2024. PLUM is an identifier of the union whose collectively bargained rate prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2024 in the example, is the effective date of the most current negotiated rate.

Union prevailing wage rates are updated to reflect all changes over time that are reported to WHD in the rates in the collective bargaining agreement (CBA) governing the classification.

#### Union Average Rate Identifiers

The UAVG identifier indicates that no single rate prevailed for those classifications, but that 100% of the data reported for the classifications reflected union rates. EXAMPLE: UAVG-OH-0010 01/01/2024. UAVG indicates that the rate is a weighted union average rate. OH indicates the State of Ohio. The next number, 0010 in the example, is an internal number used in producing the wage determination. The date, 01/01/2024 in the example, indicates the date the wage determination was updated to reflect the most current union average rate.

A UAVG rate will be updated once a year, usually in January, to reflect a weighted average of the current rates in the collective bargaining agreements on which the rate is based.

#### Survey Rate Identifiers

The ""SU"" identifier indicates that either a single non-union rate prevailed (as defined in 29 CFR 1.2) for this classification in the survey or that the rate was derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As a weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SUFL2022-007 6/27/2024. SU indicates the rate is a single non-union prevailing rate or a weighted average of survey data for that classification. FL indicates the State of Florida. 2022 is the year of the survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 6/27/2024 in the example, indicates the survey completion date for the classifications and rates under that identifier.

?SU? wage rates typically remain in effect until a new survey is conducted. However, the Wage and Hour Division (WHD) has the discretion to update such rates under 29 CFR 1.6(c)(1).

#### State Adopted Rate Identifiers

The ""SA"" identifier indicates that the classifications and prevailing wage rates set by a state (or local) government were adopted under 29 C.F.R 1.3(g)-(h). Example: SAME2023-007

01/03/2024. SA reflects that the rates are state adopted. ME refers to the State of Maine. 2023 is the year during which the state completed the survey on which the listed classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 01/03/2024 in the example, reflects the date on which the classifications and rates under the ?SA? identifier took effect under state law in the state from which the rates were adopted.

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#### WAGE DETERMINATION APPEALS PROCESS

1) Has there been an initial decision in the matter? This can be:

- a) a survey underlying a wage determination
- b) an existing published wage determination
- c) an initial WHD letter setting forth a position on a wage determination matter
- d) an initial conformance (additional classification and rate) determination

On survey related matters, initial contact, including requests for summaries of surveys, should be directed to the WHD Branch of Wage Surveys. Requests can be submitted via email to [davisbaconinfo@dol.gov](mailto:davisbaconinfo@dol.gov) or by mail to:

Branch of Wage Surveys  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

Regarding any other wage determination matter such as conformance decisions, requests for initial decisions should be directed to the WHD Branch of Construction Wage Determinations. Requests can be submitted via email to [BCWD-Office@dol.gov](mailto:BCWD-Office@dol.gov) or by mail to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2) If an initial decision has been issued, then any interested party (those affected by the action) that disagrees with the decision can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Requests for review and reconsideration can be submitted via email to [dba.reconsideration@dol.gov](mailto:dba.reconsideration@dol.gov) or by mail to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3) If the decision of the Administrator is not favorable, an



interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210.

=====  
END OF GENERAL DECISION"



# **FEDERAL CONSTRUCTION CONTRACT PROVISIONS**

**COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM**

**CITY OF KANNAPOLIS  
401 LAUREATE WAY  
KANNAPOLIS, NC 28081**

Revised: February 7, 2025

# **CDBG Compliance Provisions for Professional Services Contracts**

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### **1. Conflict of Interest**

- A. No officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who his/her tenure or for one year thereafter, shall have an interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed. Further, the Contractor will incorporate in all subcontracts the required language as set forth in this paragraph prohibiting conflict of interest.
- B. No member of or delegate to Congress, or other public official, shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend this contract if made with a corporation for its general benefit.

### **2. Legal Remedies Provision**

As stated in 24 CFR Part 85.36, contracts other than small purchases shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. Examples of legal remedies could be liquidated damages, consequential damages, arbitration and others not listed.

### **3. Termination Provision**

As stated in 24 CFR Part 85.36, all contracts in excess of \$10,000 shall contain suitable provisions for termination by the local grantee including the manner by which it will be affected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the Contractor. All contracts must contain a clause which meets this requirement.

### **4. Section 503 of the Rehabilitation Act of 1973 (29 USC 793)** (applicable to contracts and subcontracts over \$10,000)

- A. The Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is otherwise qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- B. The Contractor agrees to comply with rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

- C. In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- D. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the local government, provided by or through the contracting officer. Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.
- E. The Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.
- F. The Contractor will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the local government may direct to enforce such provisions, including action for noncompliance.

#### **5. Age Discrimination Act of 1975, as Amended**

The Contractor shall comply with the provisions of the Age Discrimination Act of 1975. No person shall, on the basis of age, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity receiving or benefiting from federal financial assistance.

#### **6. Section 504 of the Rehabilitation Act of 1973, as Amended**

The Contractor agrees that no otherwise qualified individual with disabilities shall, solely by reason of his disability, be denied the benefits, or be subjected to discrimination in employment or any program or activity that receives or benefits from federal financial assistance.

#### **7. Executive Order 11246, as Amended (Equal Opportunity Clause)** (applicable to contracts and subcontracts over \$10,000)

During the performance of this contract, the Contractor agrees as follows:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment

advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- B. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration without regard to race, color, religion, sex or national origin.
- C. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the local government's compliance officer advising the said labor union of workers' representatives of the Contractor's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended, and by rules, regulations, and relevant orders of the Secretary of Labor.
- E. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the local government and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- F. In the event of the Contractor's noncompliance with the non-discrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

**8. Section 3 of the Housing and Urban Development Act of 1968-Compliance in the Provision of Training, Employment and Business Opportunities**

- A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

- C. The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The Contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The Contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- E. The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- G. With respect to work performed in connection with Section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and sub contracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

#### **9. Copeland "Anti-Kickback" Act Provision**

As stated in 24 CFR Part 85.36, all contracts and subcontracts for construction or repair shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S. C. 874) as supplemented in the Department of Labor regulations (29 CFR Part 3). This act provides that each contractor or subcontractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The Contractor shall comply with all applicable "Anti-Kickback" regulations and shall insert appropriate

provisions in all subcontracts covering work under this contract to ensure compliance by the subcontractors with such regulations. The local government shall report all suspected or reported violations.

#### **10. Davis Bacon Act Provision**

As stated in 24 CFR Part 85.36, when required by the Federal grant program legislation, all construction contracts in excess of \$2,000 awarded by grantees and subgrantees shall include a provision for compliance with the Davis-Bacon Act (400 U.S.C. 276a-7) as supplemented by the Department of Labor regulations (29 CFR Part 5). Under this Act, Contractors shall be required to pay wages to laborers and mechanics at a rate no less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, Contractors shall be required to pay wages not less often than once a week. The grantee shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award for a contract shall be conditioned upon the acceptance of the wage determination. The grantee shall report all suspected or reported violations. This material is presented in form HUD-4010 and in the Labor Standards Handbook 1344.1 Rev.1. These provisions should be contained in each set of bid documents and referenced in each contract.

The Contractor will include Davis-Bacon Act provisions in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontractor or purchase order as the local government may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contract becomes involved in, or threatened with, litigation with a subcontractor or vendor as a result of such direction by the local government, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

#### **11. Contract Work Hours and Safety Standards Act**

Contracts awarded by grantees and subgrantees in excess of \$2,000 for construction contracts and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers shall comply with Section 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by the Department of Labor Regulations contained in 29 CFR Parts 3, 5 and 5a.

Under Section 103 of the Act, the Contractor and any of his subcontractors shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of forty hours. Work in excess of the standard work week is permissible, provided the worker is compensated at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in any work week. Section



5 of the Federal Labor Standards Provisions, HUD Form 4010 attached and incorporated herein, sets forth in detail the Section 103 requirements.

Section 107 of the Act provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to his health and safety, as determined under construction, safety and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market. This material is presented in the Labor Standards Handbook 1344.1 Rev. 1. The provisions should be contained in each bid document and referenced in each contract.

## **12. Build America Buy America Act (BABAA) Requirements**

The Contractor must comply with the requirements of the Build America, Buy America (BABA) Act, 41 USC 8301 note, and all applicable rules and notices, as may be amended, if applicable to the City's project. Pursuant to HUD's Notice, "Public Interest Phased Implementation Waiver for FY 2022 and 2023 of Build America, Buy America Provisions as Applied to Recipients of HUD Federal Financial Assistance" (88 FR 17001), any funds obligated by HUD on or after the applicable listed effective dates, are subject to BABA requirements, unless excepted by a waiver.

## **13. Fraud and Corruption Clauses**

### **Preventing Fraud and Corruption**

To prevent fraud and corruption, the City of Kannapolis has established internal controls, policies, and procedures to deter, prevent, and detect fraud and corruption such as;

- Verify all applicants' information provided including an acknowledgement of penalties for fraud, providing false statements, and corruption on applicable forms.
- Vendors, contractors, and suppliers must be active, in good standing, and authorized to transact business.
- Vendors, contractors, and suppliers are subject to screening, including verification of the individual's or company's status as a suspended or debarred party.
- Contractual agreements with Concord will contain a provision prohibiting fraudulent or corruptive acts and will include information about reporting fraud and corruption.
- Vendors, contractors, and suppliers will receive fraud and corruption awareness training.

### **Reporting Fraud and Corruption**

Any person who has a reasonable basis for believing fraudulent or corrupt acts have occurred has a responsibility to report the suspected act to the City of Kannapolis Community Development Manager, local HUD field office, and/or the Office of Inspector General immediately. Person(s) reporting potential abuse may elect to remain anonymous. Any applicant, vendor, contractor, or supplier who is found to have

committed fraud or provided false information will automatically be deemed ineligible. This designation may result in legal action, repayment of funds, or other penalties resulting from any investigation. Failure to report suspected fraudulent or corrupt activity in a timely manner may also result in being subject to disciplinary action as determined by the City of Kannapolis or any other investigating organizations.

#### **14. Access to Records and Record Retainage Clause**

In general, all official project records and documents must be maintained during the operation of this project and for a period of three years following close out in compliance with 4 NCAC 19L Rule.D911, Recordkeeping.

The State of North Carolina, the U.S. Department of Housing and Urban Development, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Contractor which are directly pertinent to this specific contract, for the purpose of audits, examinations, and making excerpts and transcriptions. All records connected with this contract will be maintained in a central location by the unit of local government and will be maintained for a period of five (5) years from the official date of the State's final closeout of the grant.

#### **15. Certification of Compliance with Clean Air and Water Acts**

(applicable to contracts and subcontracts over \$100,000)

The Contractor and all subcontractors shall comply with the requirements of the Clean Air Act, as amended, 42 U.S.C. 1857 et seq., the Federal Water Pollution Control Act, as amended 33 U.S.C. 1251 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15, as amended.

The Contractor and any of its subcontractors for work funded under this contract, which is in excess of \$100,000, agree to the following requirements:

1. A stipulation by the Contractor or subcontractors, that any facility to be utilized in the performance of any nonexempt contract or subcontract, is not listed on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR Part 15, as amended.
2. Agreement by the Contractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 U.S. C. 1857 c-8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 USC 1318) relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
3. A stipulation that as a condition for the award of the contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA,

indicating that a facility utilized, or to be utilized for the contract, is under consideration to be listed on the EPA List of Violating Facilities.

4. Agreement by the Contractor that he will include, or cause to be included, the criteria and requirements in paragraphs (1) through (4) of this section in every nonexempt subcontract and requiring that the Contractor will make such action as the government may direct as a means of enforcing such provisions.

#### **16. Lobbying Clause (Required by Section 1352, Title 31, U.S. Code)**

The Contractor certifies, to the best of his or her knowledge and belief that:

1. No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee or any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan or cooperative agreement.
2. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

#### **17. Energy Efficiency Clause**

The Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

#### **18. Certification of Non-Segregated Facilities**

(applicable to contracts and subcontracts over \$10,000)

By the submission of this bid, the bidder, offeror, applicant or subcontractor certifies that he/she does not maintain or provide for his/her establishments, and that he/she does not permit employees to perform their services at any location, under his/her control, where segregated facilities are maintained. He/she certifies further that he/she will not maintain or provide for employees any segregated facilities at any of his/her establishments, and he/she will not permit employees to perform their services at any location under his/her control where segregated facilities are maintained. The bidder, offeror, applicant or subcontractor agrees that a breach of this certification is a violation of the equal opportunity clause of this contract.

As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks,

locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are, in fact segregated on the basis of race, color, religion or national origin because of habit, local custom, or any other reason.

He/she further agrees that (except where he/she has obtained for specific time periods) he/she will obtain identical certification from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the equal opportunity clause; that he/she will retain such certifications in his/her files; and that he/she will forward the following notice to such proposed subcontractors (except where proposed subcontractors have submitted identical certifications for specific time periods).

#### **19. Certification of Eligibility**

By entering into this contract, the Contractor certifies that neither he/she nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3a of the Davis-Bacon Act.

No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of 29 CFR 5.12 (a)(1) or to participate in HUD programs pursuant to 24 CFR Part 24 or, if applicable, by virtue of Section 3 (a) of the Davis-Bacon Act.

The penalty for making false statements is prescribed in the U.S. Criminal Code, 18, U.S.C. 1001 and 18, U.S. C. 1010.

#### **20. Debarment, Suspension, and Ineligibility**

The Contractor represents and warrants that it and its subcontractors are not debarred, suspended, or placed in ineligibility status under the provisions of 24 CFR 24 (government debarment and suspension regulations). Contractors, subcontractors and/or individuals that are found by the Secretary of Labor to be in aggravated or willful violation of this labor standards provision of the Davis-Bacon Act (DBA) or Davis-Bacon and Related Acts (DBRA) will be ineligible (debarred) to participate in any DBA or DBRA contracts for up to three (3) years. Debarment includes the firm/company and/or any individuals that have a substantial interest in the debarred firm/company. Debarment proceedings can be recommended by the local government's contracting officer or can be initiated by the Department of Labor (DOL) on its motion. Debarment proceedings are described in the DOL Regulations 29 CFR 5.12.

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**A. APPLICABILITY**

The Project or Program to which the construction work covered by this Contract pertains is being assisted by the United States of America, and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

**1. Minimum wages and fringe benefits**

- i. All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of basic hourly wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. As provided in 29 CFR 5.5(d) and (e), the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act (40 U.S.C. 3141(2)(B)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(v) of these contract clauses; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under 29 CFR 5.5(a)(1)(iii)) and the Davis-Bacon poster (WH-1321) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

**ii. Frequently recurring classifications**

- A. In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in 29 CFR part 1, a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to 29 CFR 5.5(a)(1)(iii), provided that:
  1. The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;
  2. The classification is used in the area by the construction industry; and
  3. The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.
- B. The Administrator will establish wage rates for such classifications in accordance with 29 CFR 5.5(a)(1)(iii)(A)(3). Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

**iii. Conformance**

- A. The contracting officer must require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract be

classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate only when the following criteria have been met:

1. The work to be performed by the classification requested is not performed by a classification in the wage determination; and
  2. The classification is used in the area by the construction industry; and
  3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- B. The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.
- C. If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken will be sent by the contracting officer by email to [DBAconformance@dol.gov](mailto:DBAconformance@dol.gov). The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- D. In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer will, by email to [DBAconformance@dol.gov](mailto:DBAconformance@dol.gov), refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- E. The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division under 29 CFR 5.5 (a)(1)(iii)(C) and (D). The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to 29 CFR 5.5 (a)(1)(iii)(C) or (D) must be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- iv. **Fringe benefits not expressed as an hourly rate**  
Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- v. **Unfunded plans**  
If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, in accordance with the criteria set forth in 29 CFR 5.28, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
- vi. **Interest** In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

## 2. Withholding

### i. Withholding requirements

The U. S. Department of Housing and Urban Development may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in 29 CFR 5.5(a) for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in 29 CFR 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work (or otherwise working in construction or development of the project under a development statute) all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in 29 CFR 5.5(a)(3)(iv), HUD may on its own initiative and after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

### ii. Priority to withheld funds

The Department has priority to funds withheld or to be withheld in accordance with 29 CFR 5.5(a)(2)(i) or (b)(3)(i), or both, over claims to those funds by:

- A. A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- B. A contracting agency for its procurement costs;
- C. A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- D. A contractor's assignee(s);
- E. A contractor's successor(s); or
- F. A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901-3907.

## 3. Records and certified payrolls

### i. Basic record requirements

- A. **Length of record retention.** All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.
- B. **Information required** Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.
- C. **Additional records relating to fringe benefits.** Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(v) that the wages of any laborer or mechanic include the amount of any

costs reasonably anticipated in providing benefits under a plan or program described in 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act, the contractor must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

- D. Additional records relating to apprenticeship** Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

**ii. Certified payroll requirements**

- A. Frequency and method of submission** The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to HUD if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the certified payrolls to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to HUD. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system

- B. Information required** The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i)(B), except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (e.g., the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH-347 or in any other format desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347.pdf> or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the sponsoring government agency (or the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records).

- C. Statement of Compliance** Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:
1. That the certified payroll for the payroll period contains the information required to be provided under 29 CFR 5.5(a)(3)(ii), the appropriate information and basic records are being maintained under 29 CFR 5.5 (a)(3)(i), and such information and records are correct and complete;
  2. That each laborer or mechanic (including each helper and apprentice) working on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly



- from the full wages earned, other than permissible deductions as set forth in 29 CFR part 3; and
3. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.
  - D. **Use of Optional Form WH-347** The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 will satisfy the requirement for submission of the "Statement of Compliance" required by 29 CFR 5.5(a)(3)(ii)(C).
  - E. **Signature** The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.
  - F. **Falsification** The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 3729.
  - G. **Length of certified payroll retention** The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.
- iii. **Contracts, subcontracts, and related documents** The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.
- iv **Required disclosures and access**
- A. **Required record disclosures and access to workers** The contractor or subcontractor must make the records required under 29 CFR 5.5(a)(3)(i)–(iii), and any other documents that HUD or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by 29 CFR 5.1, available for inspection, copying, or transcription by authorized representatives of HUD or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.
  - B. **Sanctions for non-compliance with records and worker access requirements** If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to 29 CFR 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under 29 CFR part 6 any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.
  - C. **Required information disclosures** Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address of each covered worker, and must provide them upon request to HUD if the agency is a party to

the contract, or to the Wage and Hour Division of the Department of Labor. If the Federal agency is not such a party to the contract, the contractor, subcontractor, or both, must, upon request, provide the full Social Security number and last known address, telephone number, and email address of each covered worker to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to HUD, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

**4. Apprentices and equal employment opportunity**

**i. Apprentices**

- A. Rate of pay** Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- B. Fringe benefits** Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.
- C. Apprenticeship ratio** The allowable ratio of apprentices to journeymen on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to 29 CFR 5.5(a)(4)(i)(D). Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in 29 CFR 5.5(a)(4)(i)(A), must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.
- D. Reciprocity of ratios and wage rates** Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

- ii Equal employment opportunity** The use of apprentices and journeymen under this part must be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

**5 Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

**6 Subcontracts.** The contractor or subcontractor must insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (11), along with the applicable wage determination(s) and such other clauses or contract modifications as the U.S. Department of Housing and Urban Development may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate.

**7 Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8 Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

**9 Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

**10. Certification of eligibility.**

- i. By entering into this contract, the contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of 40 U.S.C. 3144(b) or 29 CFR 5.12(a).
- ii. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of 40 U.S.C. 3144(b) or 29 CFR 5.12(a).
- iii. The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, 18 U.S.C. 1001.

**11 Anti-retaliation** It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

- i. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, or 29 CFR parts 1, 3, or 5;
- ii. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, or 29 CFR parts 1, 3, or 5;
- iii. Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, or 29 CFR parts 1, 3, or 5; or
- iv. Informing any other person about their rights under the DBA, Related Acts, or 29 CFR parts 1, 3, or 5.

**B. Contract Work Hours and Safety Standards Act (CWHSSA)**

The Agency Head must cause or require the contracting officer to insert the following clauses set forth in 29 CFR 5.5(b)(1), (2), (3), (4), and (5) in full, or (for contracts covered by the Federal Acquisition Regulation) by reference, in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses must

be inserted in addition to the clauses required by 29 CFR 5.5(a) or 4.6. As used in this paragraph, the terms "laborers and mechanics" include watchpersons and guards.

1. **Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in 29 CFR 5.5(b)(1) the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchpersons and guards, employed in violation of the clause set forth in 29 CFR 5.5(b)(1), in the sum of \$31 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in 29 CFR 5.5(b)(1).
3. **Withholding for unpaid wages and liquidated damages**
  - i. **Withholding process** The U.S Department of Housing and Urban Development or the recipient of Federal assistance may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in 29 CFR 5.5(b) on this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act that is held by the same prime contractor (as defined in 29 CFR 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.
  - ii **Priority to withheld funds** The Department has priority to funds withheld or to be withheld in accordance with 29 CFR 5.5(a)(2)(i) or (b)(3)(i), or both, over claims to those funds by:
    - A. A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
    - B. A contracting agency for its procurement costs;
    - C. A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
    - D. A contractor's assignee(s);
    - E. A contractor's successor(s); or
    - F. A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901-3907.
4. **Subcontracts.** The contractor or subcontractor must insert in any subcontracts the clauses set forth in 29 CFR 5.5(b)(1) through (5) and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in 29 CFR 5.5(b)(1) through (5). In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss,

due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

- 5 Anti-retaliation** It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:
- i. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in 29 CFR part 5;
  - ii. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or 29 CFR part 5;
  - iii. Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or 29 CFR part 5; or
  - iv. Informing any other person about their rights under CWHSSA or 29 CFR part 5.
- C. CWHSSA required records clause** In addition to the clauses contained in 29 CFR 5.5(b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other laws referenced by 29 CFR 5.1, the Agency Head must cause or require the contracting officer to insert a clause requiring that the contractor or subcontractor must maintain regular payrolls and other basic records during the course of the work and must preserve them for a period of 3 years after all the work on the prime contract is completed for all laborers and mechanics, including guards and watchpersons, working on the contract. Such records must contain the name; last known address, telephone number, and email address; and social security number of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid; daily and weekly number of hours actually worked; deductions made and actual wages paid. Further, the Agency Head must cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph must be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview workers during working hours on the job.
- D. Incorporation of contract clauses and wage determinations by reference** Although agencies are required to insert the contract clauses set forth in this section, along with appropriate wage determinations, in full into covered contracts, and contractors and subcontractors are required to insert them in any lower-tier subcontracts, the incorporation by reference of the required contract clauses and appropriate wage determinations will be given the same force and effect as if they were inserted in full text.
- E. Incorporation by operation of law** The contract clauses set forth in this section (or their equivalent under the Federal Acquisition Regulation), along with the correct wage determinations, will be considered to be a part of every prime contract required by the applicable statutes referenced by 29 CFR 5.1 to include such clauses, and will be effective by operation of law, whether or not they are included or incorporated by reference into such contract, unless the Administrator grants a variance, tolerance, or exemption from the application of this paragraph. Where the clauses and applicable wage determinations are effective by operation of law under this paragraph, the prime contractor must be compensated for any resulting increase in wages in accordance with applicable law.

#### **F. HEALTH AND SAFETY**

The provisions of this paragraph (F) are applicable where the amount of the prime contract exceeds **\$100,000**.

1. No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his or her health and safety, as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.
2. The contractor shall comply with all regulations issued by the Secretary of Labor pursuant to 29 CFR Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96), 40 U.S.C. § 3701 et seq.
3. The contractor shall include the provisions of this paragraph in every subcontract, so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

# Certification Regarding Debarment and Suspension

U.S. Department of Housing  
and Urban Development

## Certification A: Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions

1. The prospective primary participant certifies to the best of its knowledge and belief that its principals;

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal debarment or agency;

b. Have not within a three-year period preceding this proposal, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

### Instructions for Certification (A)

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded**, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of these regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines this eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph (6) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

**Certification B: Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**Instructions for Certification (B)**

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded**, as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of these regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph (5) of these instructions, if a participant in a lower covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies including suspension and/or debarment.

Applicant		Date
Signature of Authorized Certifying Official		Title



### **SECTION 3 CONTRACT REQUIREMENTS (SECTION 3 CLAUSE)**

The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and sub contracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

## Certification of Eligibility Form

Project Name: Opal St./Water & Roadway Project

Project Bid Number: \_\_\_\_\_

By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of 29 CFR 5.12 (a)(1) or to participate in HUD programs pursuant to 24 CFR Part 24 or, if applicable, by virtue of Section 3(a) or the Davis-Bacon Act.

No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of 29 CFR 5.12 (a)(1) or to participate in HUD programs pursuant to 24 CFR Part 24 or, if applicable, by virtue of Section 3(a) of the Davis-Bacon Act.

The penalty for making false statements is prescribed in the U.S. Criminal Code, 18, U.S.C. 1001 and 18 U.S.C. 1010.

Name of Firm:	
Address of Firm:	
Date:	
Name and Title of Signatory:	
Signature:	
Federal Identification Number or Social Security Number:	

The Federal Excluded Parties List System (<https://www.sam.gov/portal/SAM/##11>) and the State of North Carolina Debarred Vendors List (<https://ncadmin.nc.gov/government-agencies/procurement/contracts/debarred-vendors>) have been checked and the above contractor or subcontractor has been determined to be eligible to participate in a CDBG-assisted project. (Dated printouts from these websites are attached to this document.)

Date Checked:	
Signature of Verifying Officer:	
Title of Verifying Officer:	

12/2023

### Section 3 Plan Certification

The Section 3 awarded contractor, \_\_\_\_\_ agrees to implement the following steps to increase opportunities for training and employment for low- and very-low income residents of the Section 3 covered area (Cabarrus County), and increase the utilization of business concerns within the Section 3 covered area or owned by Section 3 area resident in the City of Kannapolis:

- A. To ascertain, from the locality's CDBG program official, the exact boundaries of the Section 3 covered project area and where advantageous, seek the assistance of local officials in preparing and implementing the affirmative action plan.
- B. To attempt to recruit from, within the City of Kannapolis, the necessary number of lower income residents through: local advertising media, sign placed at the proposed site for the project, community organizations, and public and private institutions operating within or serving the project area.
- C. To maintain a list of all lower income residents who have applied either on their own or through a referral from any source, and to employ such persons, if otherwise eligible and if a vacancy exists.
- D. To insert this Section 3 Plan in all bid documents; and to require all bidders and subcontractors to submit a Section 3 Plan including utilization goals and the specific steps planned to accomplish these goals.
- E. To ensure that subcontracts, which are typically negotiated rather than awarded through a bid process, in areas other than Section 3 covered project areas, are also negotiated, whenever feasible, in a Section 3 covered project area.
- F. To formally contact unions, subcontractors and trade associations to secure their cooperation from this program.
- G. To insure that all appropriate project area business concerns are notified of pending sub-contractual opportunities.
- H. To maintain records, including copies of correspondence, memoranda, etc., which document that all of the abortive steps have been taken.
- I. To appoint or recruit an executive official of the company or agency as Equal Opportunity Officer to coordinate the implementation of the Section 3 Plan.

As officers and representatives of \_\_\_\_\_, we, the undersigned, have read and fully agree to this Section 3 Plan, and agree to actively pursue the full implementation of this program.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

## **SECTION 3 POLICY CONTRACTOR CERTIFICATION**

The U.S. Department of Housing and Urban Development (HUD) issued regulations that provide the directive to create job opportunities for low-income persons when HUD funds are expended on a construction project. These regulations are known as Section 3 Policy. The purpose of the Section 3 Policy is to ensure that the employment and other economic opportunities generated by the Federal financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed toward low- and very low-income persons.

Section 3 covered projects are construction, reconstruction, conversion or rehabilitation of housing, (including reduction and abatement of lead-based paint hazards, but excluding routine maintenance, repair and replacement) or other public construction which includes building and improvements assisted with HUD housing and community development assistance. Section 3 covered contracts do not include contracts for purchase of supplies and materials. However, whenever a contract for materials includes the installation of materials, the contract constitutes a Section 3 covered contract.

Contractors and their subcontractors must show compliance with the numerical goals set forth by the regulations. The numerical goals for new hires apply only to the number of new hires generated because of the financial assistance of the HUD programs. The numerical goals are not absolute numerical requirements. They are goals that each recipient and contractor should try to reach. The goals, if not met do not trigger sanctions against the recipients or contractor. However, if challenged on the issue of compliance with Section 3, the recipient or contractor should be ready to demonstrate that they tried to reach these goals. The employment goal for employment is 30 percent of new hires annually.

In addition, contractors/developers and subcontractors are required to show compliance with the goal that at least 10% of any building trade activity that is subcontracted, and 3% of non-building trade activity (construction management etc.) is awarded to eligible Section 3 business concerns.

**I certify that I have read the information above and understand the Section 3 requirements.**

Name of Contractor: \_\_\_\_\_

Company: \_\_\_\_\_

Signature: \_\_\_\_\_

Dates: \_\_\_\_\_

GENERAL NOTES:

ALL WORK SHALL BE DONE IN STRICT ACCORDANCE WITH THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION STANDARDS FOR ROADS AND STRUCTURES, LATEST EDITION, NCDEQ, AND THE CITY OF KANNAPOLIS, WHEN SPECIFICATIONS ARE IN CONFLICT, THE STRICTER SPECIFICATIONS SHALL APPLY.

THIS PLAN DOES NOT PURPORT TO SHOW ALL EXISTING UTILITIES, LINES, APPURTENANCES, ETC., AND THE LOCATIONS OF EXISTING UNDERGROUND UTILITIES, PIPES, VALVES, ETC., AS SHOWN ARE IN AN APPROXIMATE WAY ONLY AND HAVE NOT BEEN INDEPENDENTLY VERIFIED BY THE OWNER OR THE ENGINEER. THE CONTRACTOR SHALL DETERMINE THE EXACT LOCATION OF ALL EXISTING UTILITIES, LINES, PIPES, ETC., BEFORE COMMENCING WORK, AND AGREES TO BE FULLY RESPONSIBLE FOR ANY AND ALL DAMAGES WHICH MIGHT RESULT FROM THE CONTRACTOR'S FAILURE TO EXACTLY LOCATE AND PRESERVE ANY AND ALL UNDERGROUND UTILITIES, PIPES AND VALVES. THE CONTRACTOR SHALL NOTIFY THE ENGINEER OF ANY CONFLICTS WITH EXISTING OR PROPOSED FACILITIES TO DETERMINE IF AN ITEM WILL NEED TO BE RELOCATED.

THE ENGINEER HAS MADE NO EXAMINATION TO DETERMINE WHETHER ANY HAZARDOUS OR TOXIC MATERIALS ARE PRESENT OR CONTAINED IN, UNDER OR ON THE SUBJECT PROPERTY OR ITS WATERS, OR IF ANY HAZARDOUS OR TOXIC MATERIALS HAVE CONTAMINATED THIS OR OTHER PROPERTIES OR ITS WATERS IN ANY WAY WHATSOEVER, NO SUBSURFACE EXAMINATION MATERIALS AND WATERS HAS BEEN MADE BY THE ENGINEER, AND ACCORDINGLY, NO OPINION IS RENDERED AS TO ANY VIOLATION OF ANY ENVIRONMENTAL LAWS OR REGULATIONS, EITHER FEDERAL, STATE, OR LOCAL RELATED TO THE INFORMATION SHOWN ON THIS PLAN AND THE ENGINEER IS IN NO WAY LIABLE FOR ANY VIOLATION OF SUCH ENVIRONMENTAL LAWS SHOULD SUCH EXIST.

TO ENSURE PROPER LOCATION OF EXISTING UTILITIES, THE CONTRACTOR SHALL CONTACT NORTH CAROLINA 811 (1-800-632-4949), AT LEAST 48 HOURS PRIOR TO CONSTRUCTION. THE CONTRACTOR SHALL PROVIDE APPROPRIATE BARRICADES, WARNING LIGHTS, AND WARNING SIGNS TO ENSURE THE SAFETY OF THE PUBLIC AT ALL TIMES.

THE CONTRACTOR AGREES THAT HE SHALL ASSUME SOLE AND COMPLETE RESPONSIBILITY FOR JOB SITE CONDITIONS DURING THE COURSE OF CONSTRUCTION OF THE PROJECT, INCLUDING SAFETY OF ALL PERSONS AND PROPERTY, THAT THIS REQUIREMENT SHALL APPLY CONTINUOUSLY AND NOT BE LIMITED TO NORMAL WORKING HOURS, AND THE CONTRACTOR SHALL DEFEND, INDEMNIFY THE OWNER, HIS AGENTS, THE OWNERS REPRESENTATIVES AND THE ENGINEER HARMLESS FROM ANY AND ALL LIABILITY, REAL OR ALLEGED IN CONNECTION WITH THE PERFORMANCE OF WORK ON THIS PROJECT, EXCEPTING FROM LIABILITY ARISING FROM THE SOLE NEGLIGENCE ON THE OWNERS REPRESENTATIVE OR THE ENGINEER.

THE CONTRACTOR SHALL VERIFY ALL SOIL CONDITIONS PRIOR TO CONSTRUCTION, ANY SIGNIFICANT VARIATIONS SHALL BE REPORTED TO THE ENGINEER IMMEDIATELY. SOIL BORINGS HAVE BEEN PROVIDED ON THIS PROJECT. THE LOCATION OF SOIL BORINGS ARE SHOWN AND LABELED ON THE GRADING PLANS. THE SOILS ENGINEERING REPORT IS INCLUDED IN THE SPECIFICATIONS FOR THIS PROJECT. THE CONTRACTOR SHALL PAY SPECIAL ATTENTION TO ANY SPECIAL CONDITIONS CALLED FOR IN THE SOILS REPORT.

CITY OF KANNAPOLIS GENERAL NOTES

1. ALL WATER MAIN AND SANITARY SEWER WORK SHALL BE IN ACCORDANCE WITH STANDARD SPECIFICATIONS FOR WASTEWATER COLLECTION AND WATER DISTRIBUTION FROM LDSM. CONTRACTOR SHALL HAVE A COPY OF THESE SPECIFICATIONS ON SITE AT ALL TIMES.
2. ALL EXISTING WATER AND SEWER MAINS ARE OWNED AND OPERATED BY THE CITY OF KANNAPOLIS, THE SITE INSPECTOR MUST BE CONTACTED AT LEAST 48 HOURS PRIOR TO MAKING ANY CONNECTION TO THE EXISTING SYSTEM.
3. SANITARY SEWER LATERALS AND WATER METER LOCATIONS ARE APPROXIMATE AND ARE SUBJECT TO RELOCATION DUE TO FIELD LOCATIONS, UNDER NO CIRCUMSTANCE WILL CLEANOUTS AND METERS BE LOCATED IN DRIVEWAYS.
4. CONTRACTOR IS FULLY RESPONSIBLE FOR CONTRACTING ALL APPROPRIATE PARTIES ASSURING THAT UTILITIES ARE LOCATED PRIOR TO COMMENCEMENT OF CONSTRUCTION, CALL NORTH CAROLINA 811 (1-800-632-4949) FOR UTILITY LOCATING SERVICES AS REQUIRED BY LAW PRIOR TO COMMENCEMENT OF ANY WORK, CONTRACTOR SHALL VERIFY LOCATION AND DEPTH OF ALL EXISTING UTILITIES PRIOR TO CONSTRUCTION.
5. CONTRACTOR SHALL BE RESPONSIBLE FOR SEWER OVERFLOWS THAT OCCUR DUE TO ACTIVITIES INITIATED BY THEM AND SHALL BE RESPONSIBLE FOR, BUT NOT LIMITED TO, THE COSTS ASSOCIATED WITH PERFORMING REMEDIAL WORK OF/ FOR ENVIRONMENTAL IMPACTS AND/OR THE PAYING OF FINES ASSESSED BY REGULATORY AGENCIES AND/OR THIRD PARTY CLAIMS.
6. UNLESS OTHERWISE NOTED, WATER MAINS SHALL HAVE A MINIMUM COVER OF 36-INCHES.
7. BEDDING FOR THE SEWER MAINS SHOULD BE LDSM CLASS B BEDDING.
8. UNLESS OTHERWISE NOTED, WATER LINES SHALL BE PVC CSDO FOR 8" < 12" DIAMETER AND PVC SDR 13.5 FOR 2" < 4" DIAMETER PER LDSM STANDARDS.
9. UNLESS OTHERWISE NOTED, SEWER MAINS SHALL BE PVC SDR 35 PER LDSM STANDARDS.
10. LATERALS SHALL HAVE A NO-HUB CAP AND STAINLESS STEEL NO-HUB BAND AT THE CLEAN OUT.
11. DUCTILE IRON PIPE SHALL BE REQUIRED FOR BOTH WATER AND SANITARY SEWER IF THE FOLLOWING CLEARANCES ARE NOT MET:
  - WATERLINE CROSSING UNDER SANITARY SEWER (FOR ANY CLEARANCE),
  - 18-INCH VERTICAL FOR WATERLINE INSTALLED ABOVE SEWER LINE,
  - 10-FOOT HORIZONTAL SEPARATION FOR WATERLINE PARALLEL TO SEWER LINE (OR 18-INCH VERTICAL SEPARATION IN SEPARATE DITCHES),
  - FOR WATERLINE, 18-INCH CLEARANCE WITH STORM DRAINS,
  - FOR WATERLINE, 12-INCH CLEARANCE WITH GAS MAINS, TELEPHONE DUCTS, AND UNDERGROUND CABLES,
  - FOR SANITARY SEWER, 24-INCH CLEARANCE WITH STORM DRAINS.
12. INITIAL CONNECTION TO THE EXISTING WATER MAIN SHALL BE IN ACCORDANCE WITH THE CITY OF KANNAPOLIS DETAIL FOR A TEMPORARY BY-PASS CONNECTION FOR FILLING NEW WATER MAINS. THE TEMPORARY JUMPER CONNECTION SHALL BE REMOVED AND THE WATERLINE CONNECTED TO THE EXISTING SYSTEM ONLY AFTER THE PROPOSED SYSTEM HAS BEEN PRESSURE TESTED, CHLORINATED AND ACCEPTED BY THE CITY OF KANNAPOLIS. NO OTHER CONNECTIONS WILL BE ALLOWED TO THE EXISTING SYSTEM UNTIL THE PROPOSED SYSTEM HAS BEEN ACCEPTED.
13. NOTIFY THE CITY OF ANY WORK BEING PERFORMED ON THE WEEKENDS, NO WORK REQUIRING TESTING OR OBSERVATION BY THE CITY WILL BE PERMITTED WITHOUT WRITTEN PERMISSION.
14. NOISE ORDINANCE: 7:00AM TO 9:00 PM WEEKDAYS, 8:00AM TO 9:00PM WEEKENDS.

EROSION CONTROL GENERAL NOTES:

1. ALL SEDIMENT AND EROSION CONTROL MEASURES AND DEVICES SHALL BE CONSTRUCTED AND MAINTAINED IN ACCORDANCE WITH THE MOST CURRENT STANDARDS OF THE LAND QUALITY SECTION OF NC DEQ.
2. AS A MINIMUM REQUIREMENT, ALL GRADED AREAS NOT UNDER PAVEMENT AND WITHIN THE RIGHT-OF-WAY AND/OR EASEMENTS SHALL BE PREPARED, FERTILIZED AND LIMED, SEEDED, AND MULCHED IMMEDIATELY UPON COMPLETION OF CONSTRUCTION AS FOLLOWS (APPLICATION RATE: 1000 SQUARE FEET):
  - TYPE 1 SEEDING (LAWNS, SHOULDER, OR OTHER MAINTAINED AREAS):
    - 100 LBS. OF LIME
    - 15 LBS. OF 19-23-12 FERTILIZER
    - 4 LBS. OF TALL FESCUE, CONTAINING A BLEND OF 2 OR MORE FESCUES
    - 1 LB. OF SERICEA LESPEDEZA (USE UNSCARIFIED SEED AUGUST 15 TO FEBRUARY 1)
    - 1 LB. OF GERMAN MILLET (MAY 1 TO AUGUST 15)
    - 1 LB. OF RYE GRASS (PRIOR TO MAY 1 OR AFTER AUGUST 15)
3. SEEDING MIXTURES OTHER THAN THOSE LISTED ABOVE SHALL BE APPROVED BY THE CITY INSPECTOR PRIOR TO SEEDING.
4. PRIOR TO FINAL ACCEPTANCE BY THE CITY, THE CONTRACTOR OR HIS AGENT SHALL ULTIMATELY BE RESPONSIBLE FOR ADMINSTRATING THE CORRECTION OF ALL PROBLEMS ASSOCIATED WITH THE PROJECT.
5. THE CONTRACTOR SHALL HAVE A COPY OF THE APPROVED NC DOT ENDORSEMENT ON THE JOB SITE PRIOR TO BEGINNING ANY WORK WITHIN NC DOT RIGHT-OF-WAY.
6. ALL BACKFILL SHALL BE NON-PLASTIC IN NATURE, FREE FROM ROOTS, VEGETATIVE MATERIAL, WASTE, CONSTRUCTION MATERIAL, OR OTHER OBJECTIONABLE MATERIAL. SAID MATERIAL SHALL BE CAPABLE OF BEING COMPACTED BY MECHANICAL MEANS AND SHALL HAVE NO TENDENCY TO FLOW OR BEHAVE IN A PLASTIC MANNER UNDER THE TAMPING BLOWS OR PROOF ROLLING.
7. MATERIALS UNSUITABLE FOR BACKFILL PURPOSES OR AS REQUIRED BY THE CITY'S INSPECTOR SHALL BE REMOVED AND REPLACED WITH SELECT BACKFILL MATERIAL.

NARRATIVE DESCRIPTION AND GENERAL NOTES:

THIS PROJECT CONSIST OF PHASE I, THE REPLACEMENT OF APPROXIMATELY 1000 LF OF 6" PVC & DIP WATER MAIN IN OPAL STREET. ONCE THE WATER LINE IS INSTALLED AND PAVEMENT PATCHED, PHASE II IS THE REMOVAL OF EXISTING PAVEMENT FROM STA 0+13 TO STA. 7+50 COMPACT SUBGRADE AND PAVE PER DETAILS. FROM STA. 7+50 TO STA 10+58 PATCH AS NECESSARY AND OVERLAY.

IN ORDER TO ASSIST THE CONTRACTOR, THE ENGINEER WILL PROVIDE THE CONTRACTOR WITH AN ELECTRONIC COPY OF THE AUTOCAD DRAWING FOR USE IN STAKING OF THE PROPOSED IMPROVEMENTS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR ALL SURVEYING NECESSARY FOR CONSTRUCTION STAKEOUT.

THIS PROJECT IS BEING CONSTRUCTED IN ACCORDANCE WITH THE CITY OF KANNAPOLIS CONSTRUCTION STANDARDS AND SPECIFICATIONS, AND THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION STANDARD SPECIFICATIONS FOR ROADS AND STRUCTURES (ENGLISH), LATEST VERSION.

THE EXISTING SITE CONDITIONS, SEWER PROFILE, FEATURES AND EXISTING RIGHT-OF-WAY SHOWN ON THESE PLANS ARE DRAWN FROM ACTUAL SURVEYS BY ALLEY, WILLIAMS, CARMEN & KING INC. PROJECT DATUM DESCRIPTION: THE LOCALIZED COORDINATES ON THIS PROJECT ARE:

- (A) HORIZONTAL DATUM DESCRIPTION: BASED ON NC GRID NAD 83 (2011) STATE PLANE COORDINATES. ALL DISTANCES ARE IN HORIZONTAL GROUND FEET.
- (B) VERTICAL DATUM DESCRIPTION: THE ELEVATIONS ARE BASED ON NAVD 88 DATUM. CONTOURS SHOWN ARE FIELD RUN.

THIS PLAN DOES NOT PURPORT TO SHOW ALL EXISTING UTILITIES, LINES, APPURTENANCES, ETC., AND THE LOCATIONS OF EXISTING UNDERGROUND UTILITIES, PIPES, VALVES, ETC., AS SHOWN ARE IN AN APPROXIMATE WAY ONLY AND HAVE NOT BEEN INDEPENDENTLY VERIFIED BY THE OWNER OR THE ENGINEER. THE CONTRACTOR SHALL DETERMINE THE EXACT LOCATION OF ALL EXISTING UTILITIES, LINES, PIPES, ETC., BEFORE COMMENCING WORK, AND AGREES TO BE FULLY RESPONSIBLE FOR ANY AND ALL DAMAGES WHICH MIGHT RESULT FROM THE CONTRACTOR'S FAILURE TO EXACTLY LOCATE AND PRESERVE ANY AND ALL UNDERGROUND UTILITIES, PIPES AND VALVES. THE CONTRACTOR SHALL NOTIFY THE ENGINEER OF ANY CONFLICTS WITH EXISTING OR PROPOSED FACILITIES TO DETERMINE IF AN ITEM WILL NEED TO BE RELOCATED.

THE ENGINEER HAS MADE NO EXAMINATION TO DETERMINE WHETHER ANY HAZARDOUS OR TOXIC MATERIALS ARE PRESENT OR CONTAINED IN, UNDER OR ON THE SUBJECT PROPERTY OR ITS WATERS, OR IF ANY HAZARDOUS OR TOXIC MATERIALS HAVE CONTAMINATED THIS OR OTHER PROPERTIES OR ITS WATERS IN ANY WAY WHATSOEVER, NO SUBSURFACE EXAMINATION OF ANY TYPE HAS BEEN MADE BY THE ENGINEER, AND ACCORDINGLY, NO OPINION IS RENDERED AS TO ANY VIOLATION OF ANY ENVIRONMENTAL LAWS OR REGULATIONS, EITHER FEDERAL, STATE, OR LOCAL RELATED TO THE INFORMATION SHOWN ON THIS PLAN AND THE ENGINEER IS IN NO WAY LIABLE FOR ANY VIOLATION OF SUCH ENVIRONMENTAL LAWS SHOULD SUCH EXIST.

THE CONTRACTOR SHALL BE RESPONSIBLE FOR SEWER OVERFLOWS THAT OCCUR DUE TO ACTIVITIES INITIATED BY THEM AND SHALL BE RESPONSIBLE FOR, BUT NOT LIMITED TO, THE COSTS ASSOCIATED WITH PERFORMING REMEDIAL WORK OF/ FOR ENVIRONMENTAL IMPACTS AND/OR THE PAYING OF FINES ASSESSED BY REGULATORY AGENCIES AND/OR THIRD PARTY CLAIMS.

ANY PROPOSED WORK THAT DOES NOT HAVE A CORRESPONDING PAY ITEM IS CONSIDERED INCIDENTAL TO THE PROJECT.

SHEET INDEX

OPAL WATER STA 0-4+50	SHEET No. C-1.0
OPAL WATER STA 4+50-10+20	SHEET NO. C-1.1
OPAL PAVEMENT PLAN	SHEET No. C-2.0-2.1
DETAILS & SPECIFICATIONS	SHEET No. C-3.0-3.2

# OPAL STREET WATER IMPROVEMENTS AND PAVEMENT CITY OF KANNAPOLIS KANNAPOLIS, NORTH CAROLINA



alley, williams,  
carmen & king, inc.

CONSULTING ENGINEERS,  
SURVEYING & INSPECTION

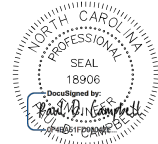
Firm License No. F40203  
120 S. MAIN STREET  
PO BOX 1248  
KANNAPOLIS, NC 28081  
704.938.1515  
www.awck.com

Prepared for:



City of Kannapolis  
401 Laureate Way  
Kannapolis, NC 28081

MAYOR: MR. M DARRELL HINNANT  
CITY COUNCIL MEMBERS: MRS. DIANNE BERRY  
MR. RYAN DAYVAULT  
MRS. JEANNE DIXON  
MR. DARRELL JACKSON  
MR. TOM KINCAID  
MR. DOUG WILSON  
CITY MANAGER: MIKE LEGG  
ASSISTANT CITY MANAGER: WILMER MELTON  
DIR. WATER RESOURCES: ALEX ANDERSON  
DIR. TRANSPORT AND ENVIRON. SER: MICHAEL RATTLER



11-8-24



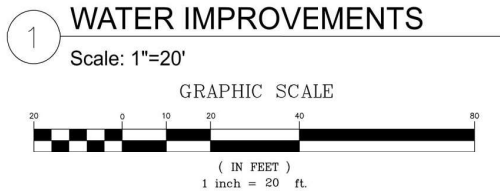
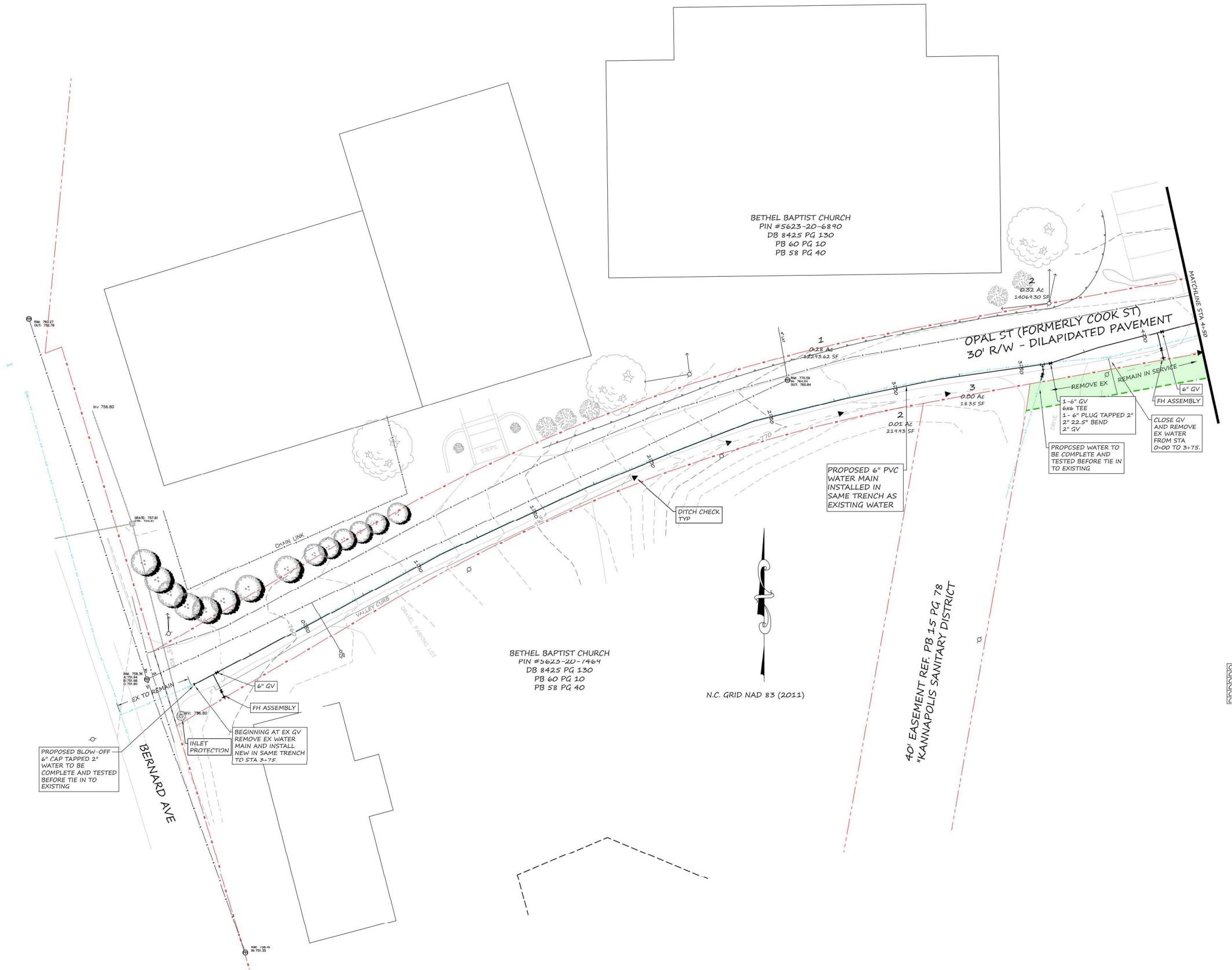
DATE: 8-21-24

JOB No. 24541

SET No.

24541





PLAN NOTES

ALL WORK TO BE DONE IN ACCORDANCE WITH CITY OF KANNAPOLIS UDO, LATEST EDITION. THERE ARE SUPPORTING SPECIFICATIONS FROM MULTIPLE AGENCIES, INCLUDING BUT NOT LIMITED TO: WSACC, NCDOT, AND NCDE&NR. THE MORE RESTRICTIVE SPECIFICATION SHALL BE ENFORCED.

KANNAPOLIS  
UTILITY NOTES

1. ALL WATER MAIN AND SANITARY SEWER WORK SHALL BE IN ACCORDANCE WITH STANDARD SPECIFICATIONS FOR WASTEWATER COLLECTION AND WATER DISTRIBUTION FROM LAND DEVELOPMENT STANDARDS MANUAL (LDSM).
2. ALL EXISTING WATER AND SEWER MAINS ARE OWNED AND OPERATED BY THE CITY OF KANNAPOLIS. CONTACT THE KANNAPOLIS PUBLIC WORKS DEPARTMENT AT 704-920-4200 PRIOR AT LEAST 48 HOURS PRIOR TO MAKING ANY CONNECTION TO THE EXISTING SYSTEM.
3. SANITARY SEWER LATERALS AND WATER METER LOCATIONS ARE APPROXIMATE AND ARE SUBJECT TO RELOCATION DUE TO FIELD LOCATIONS. UNDER NO CIRCUMSTANCES WILL CLEANOUTS AND METERS BE LOCATED IN DRIVEWAYS.
4. CONTRACTOR IS FULLY RESPONSIBLE FOR CONTACTING ALL APPROPRIATE PARTIES ASSURING THAT UTILITIES ARE LOCATED PRIOR TO COMMENCEMENT OF CONSTRUCTION. CALL NC ONE CALL AT 1-800-632-4849 FOR UTILITY LOCATING SERVICES 48 HOURS PRIOR TO COMMENCEMENT OF ANY WORK. CONTRACTOR SHALL VERIFY LOCATION AND DEPTH OF ALL EXISTING UTILITIES PRIOR TO CONSTRUCTION.
5. CONTRACTOR SHALL BE RESPONSIBLE FOR SEWER OVERFLOWS THAT OCCUR DUE TO ACTIVITIES INITIATED BY THEM AND SHALL BE RESPONSIBLE FOR, BUT NOT LIMITED TO THE COSTS ASSOCIATED WITH PERFORMING REMEDIAL WORK OF/OR ENVIRONMENTAL IMPACTS AND/OR THE PAYING OF FINES ASSESSED BY REGULATORY AGENCIES AND/OR THIRD PARTY CLAIMS.
6. ALL WATER MAINS SHALL HAVE A MINIMUM COVER OF 36-INCHES.
7. BEDDING FOR THE SEWER MAINS SHOULD BE LDSM CLASS B BEDDING.
10. UNLESS OTHERWISE NOTED, WATERLINES SHALL BE PVC C900 FOR 8"-12" DIAMETER AND PVC SDR 13.5 FOR 2'-4" DIAMETER PER LDSM STANDARDS.
11. UNLESS OTHERWISE NOTED, SEWER MAINS SHALL BE PVC SDR 35 PER LDSM STANDARDS.
12. DUCTILE IRON PIPE SHALL BE REQUIRED FOR BOTH WATER AND SANITARY SEWER IF THE FOLLOWING CLEARANCES ARE NOT MET:
  - WATERLINE CROSSING UNDER SANITARY SEWER (FOR ANY CLEARANCE)
  - 18-INCH VERTICAL FOR WATERLINE INSTALLED ABOVE SEWER LINE.
  - 10-FOOT HORIZONTAL SEPARATION FOR WATERLINE PARALLEL TO SEWER LINE (OR 18-INCH VERTICAL SEPARATION IN SEPARATE DITCHES).
  - FOR WATERLINE 12-INCH CLEARANCE WITH STORM DRAINS, GAS MAINS, TELEPHONE DUCTS, AND UNDERGROUND CABLES.
13. INITIAL CONNECTION TO THE EXISTING WATER MAIN SHALL BE IN ACCORDANCE WITH THE CITY OF KANNAPOLIS DETAIL FOR A TEMPORARY BY-PASS CONNECTION FOR FILLING NEW WATER MAINS. THE TEMPORARY JUMPER CONNECTION SHALL BE REMOVED AND THE WATERLINE CONNECTED TO THE EXISTING SYSTEM ONLY AFTER THE PROPOSED SYSTEM HAS BEEN PRESSURE TESTED, CHLORINATED AND ACCEPTED BY THE CITY OF KANNAPOLIS. NO OTHER CONNECTIONS WILL BE ALLOWED THE EXISTING SYSTEM UNTIL THE PROPOSED SYSTEM HAS BEEN ACCEPTED.
14. CONTRACTOR TO RECONNECT 9 EXISTING WATER CONNECTIONS TO NEW WATER LINE AFTER TESTING AND APPROVAL.
15. ANY STOCKPILE STAGING AREA SHALL BE SURROUNDED BY SILT FENCE AND CONSTRUCTION ENTRANCE SHALL BE INSTALLED AT ROADWAY ACCESS POINT.

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Prepared for:

City of Kannapolis  
401 Laureate Way  
Kannapolis, NC 28081

OPAL STREET WATER  
KANNAPOLIS, NORTH CAROLINA

WATER IMPROVEMENTS

BY									
REVISION									
DATE									
#									

SCALE: 1" = 20'

DATE: 11-8-24

JOB # 24541

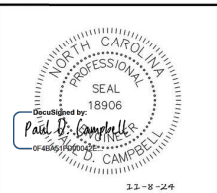
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401 Laureate Way  
Kannapolis, NC 28081



**OPAL STREET WATER**  
KANNAPOLIS, NORTH CAROLINA  
WATER IMPROVEMENTS

#	DATE	REVISION	BY

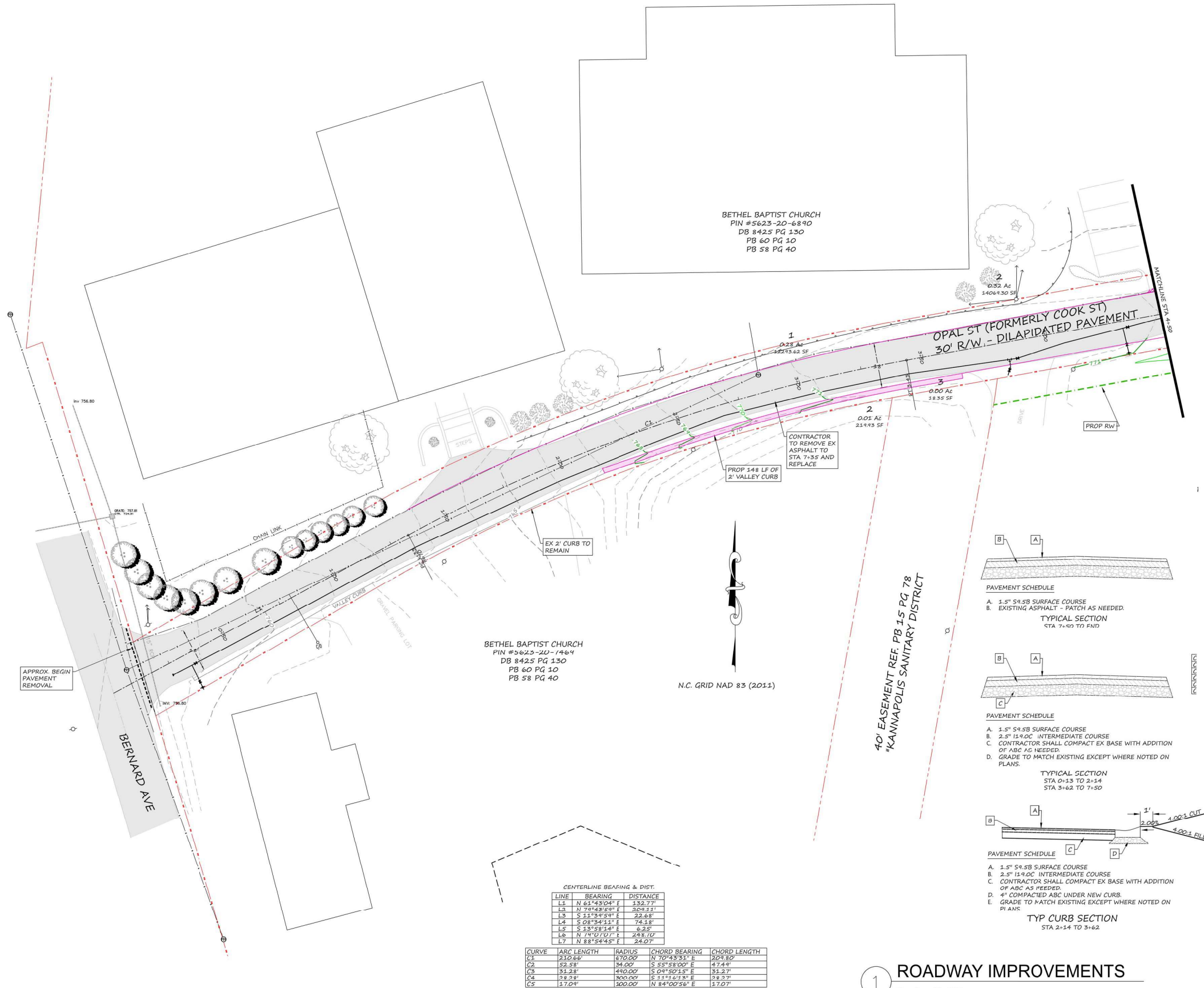
SCALE: 1" = 20'

DATE: 11-8-24

JOB # 24541

C - 1.1





PLAN NOTES

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- FROM STA 0+13 TO 7+50 PAVEMENT TO BE REMOVED AND BASE COMPACTED WITH ADDITION OF ABC AS NEEDED.
- FROM STA 7+50 TO END EX ASPHALT TO BE PATCHED AS NEEDED AND OVERLAID.

KANNAPOLIS UTILITY NOTES

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Prepared for:

City of Kannapolis  
401 Laureate Way  
Kannapolis, NC 28081



OPAL STREET WATER

KANNAPOLIS, NORTH CAROLINA

ROADWAY IMPROVEMENTS

BY									
REVISION									
DATE									
#									

SCALE: 1" = 20'

DATE: 11-8-24

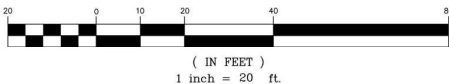
JOB # 24541

C - 2.0

ROADWAY IMPROVEMENTS

Scale: 1"=20'

GRAPHIC SCALE









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OPAL STREET WATER

KANNAPOLIS, NORTH CAROLINA

DETAILS AND SPECIFICATIONS

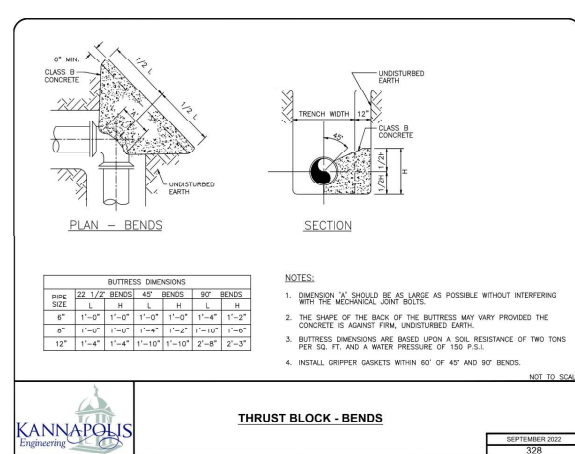
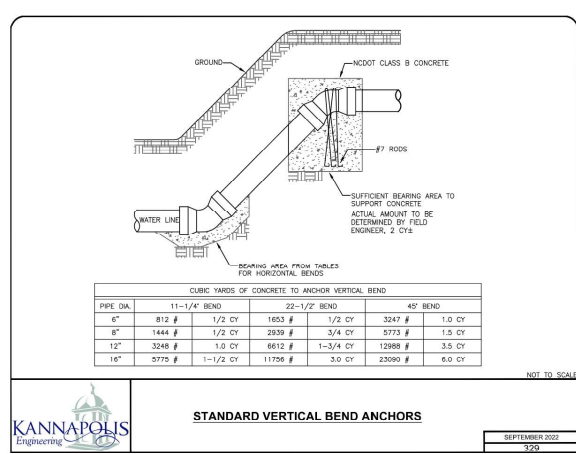
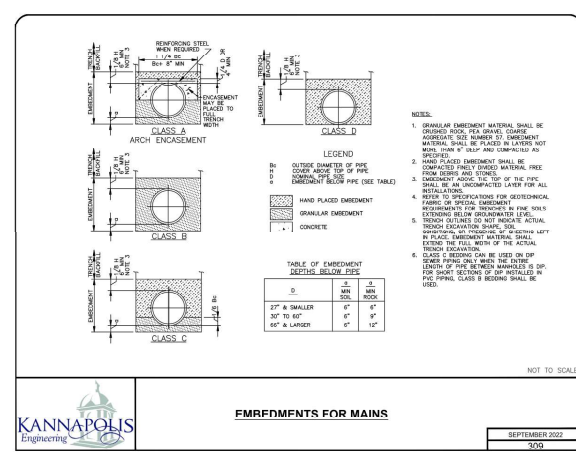
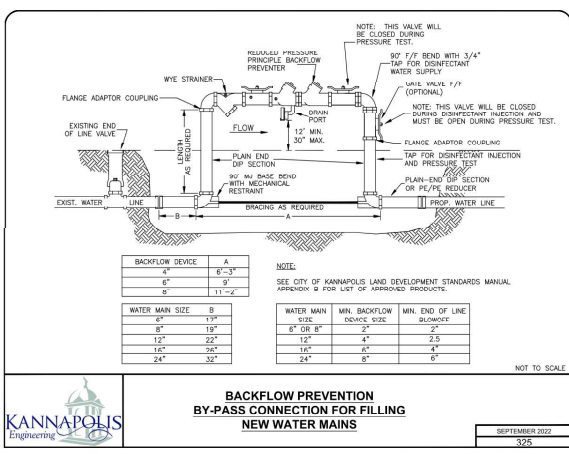
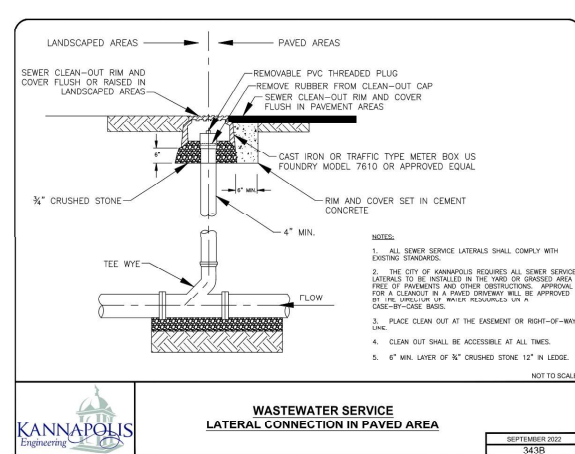
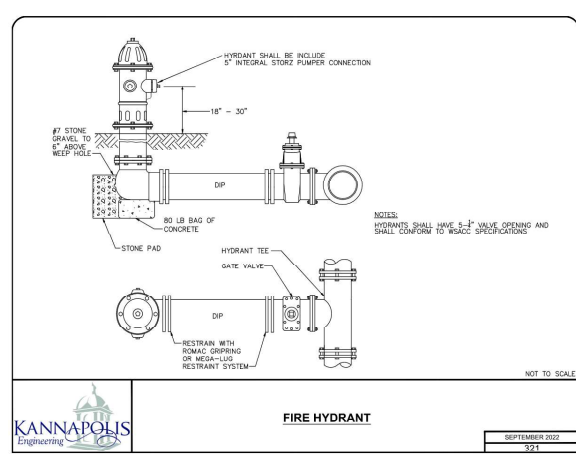
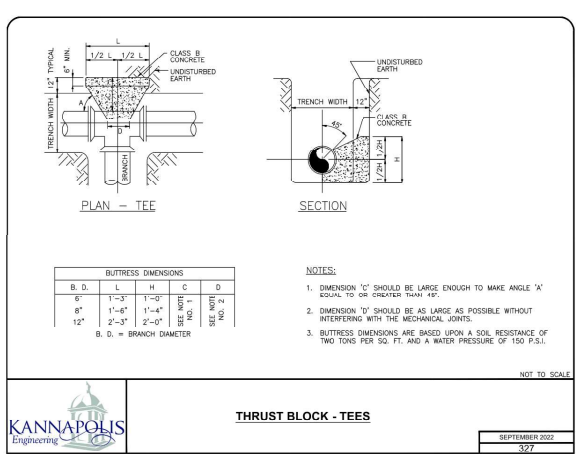
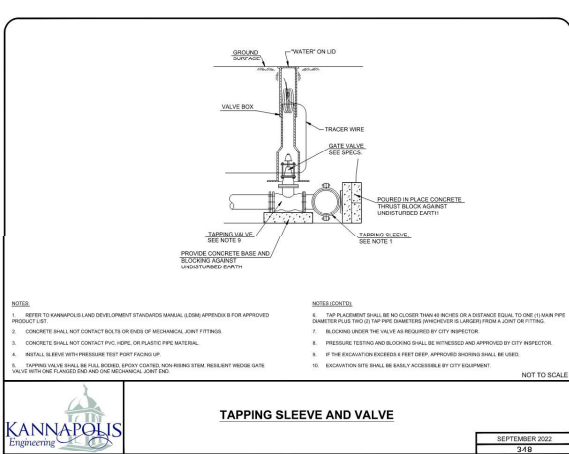
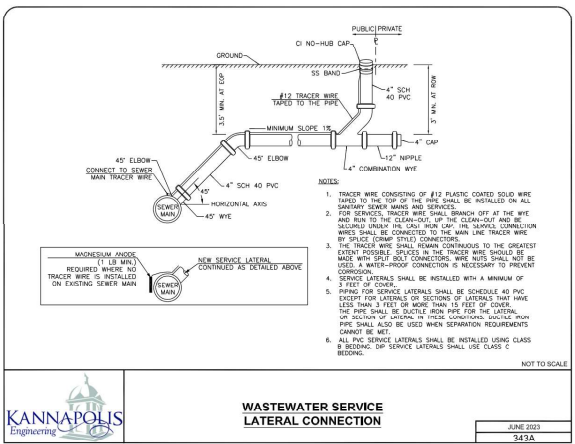
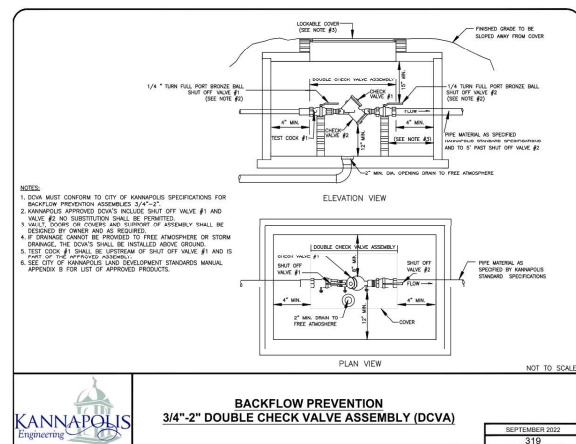
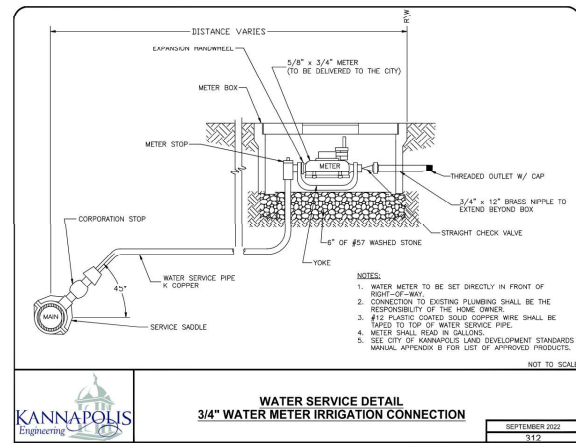
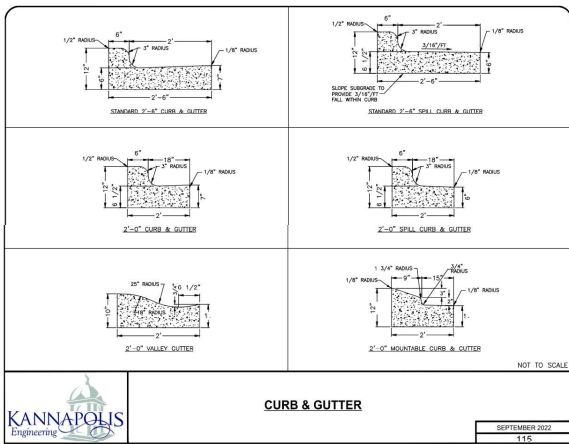
BY	
REVISION	
DATE	
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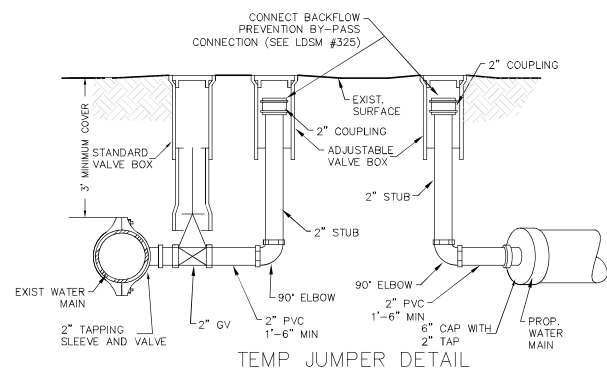
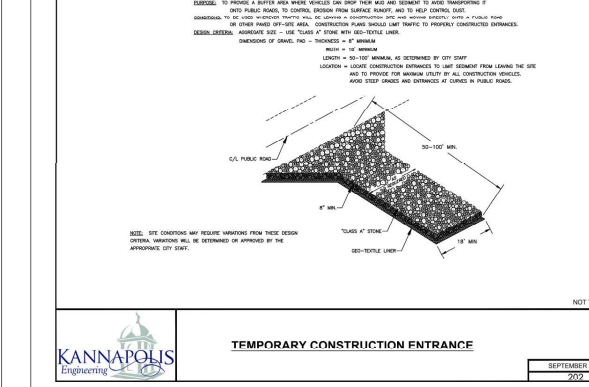
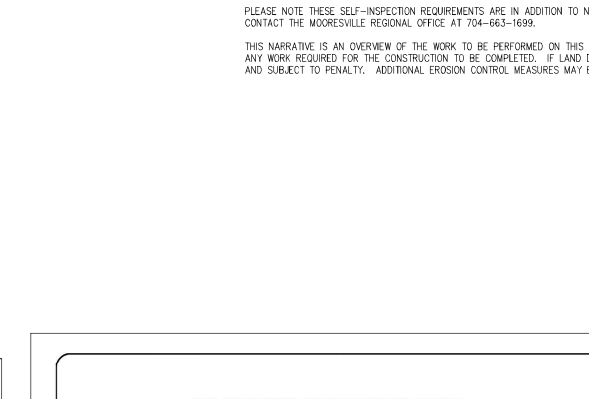
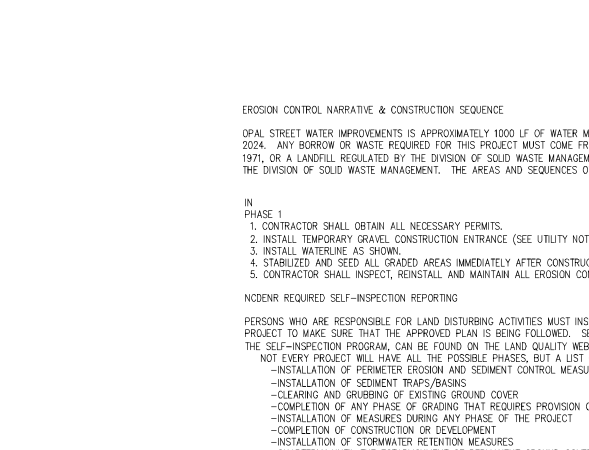
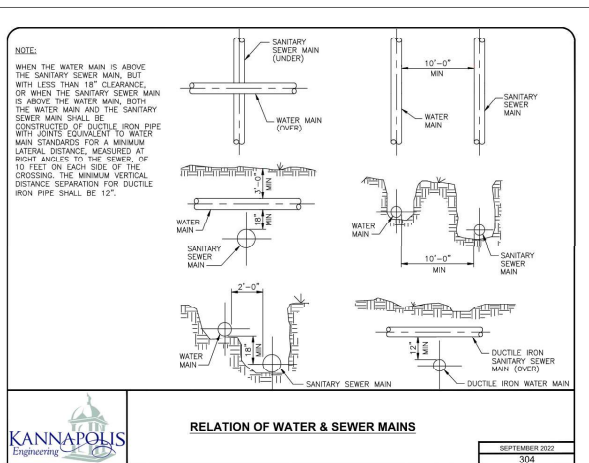
DATE: 11-8-24

JOB # 24541

C - 3.0








1. CONTRACTOR TO ATTACH TEMPORARY JUMPER DURING WORKING HOURS. TEMPORARY JUMPER TO BE REMOVED WHEN NOT IN USE.
2. CONTRACTOR SHALL MAINTAIN TRAFFIC BARRELS AROUND JUMPER AREA DURING WORKING HOURS.
3. CONTRACTOR TO MAINTAIN ONE LANE OF TRAVEL DURING WORKING HOURS.
4. SEE CITY OF KANNAPOLIS LAND DEVELOPMENT STANDARDS MANUAL APPENDIX B FOR APPROVED MATERIALS LIST.

1. ALL WATER MAIN AND SANITARY SEWER WORK SHALL BE IN ACCORDANCE WITH STANDARD SPECIFICATIONS FOR WASTEWATER COLLECTION AND WATER DISTRIBUTION FROM LAND DEVELOPMENT STANDARDS MANUAL (LDSM).
2. ALL EXISTING WATER AND SEWER MAINS ARE OWNED AND OPERATED BY THE CITY OF KANNAPOLIS. CONTACT THE KANNAPOLIS PUBLIC WORKS DEPARTMENT AT 703-942-1234 FOR MORE INFORMATION.



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Prepared for

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Kannapolis, NC 28081



OPAL STREET WATER  
KANNAPOLIS, NORTH CAROLINA

## DETAILS AND SPECIFICATIONS

[illegible]

SCALE: NTS

DATE: 11-8-24

JOB # 24541

C - 3.1

## 1 TEMPORARY SEDIMENT FENCES

2 TEMPORARY CONSTRUCTION ENTRANCE  
NTS

