

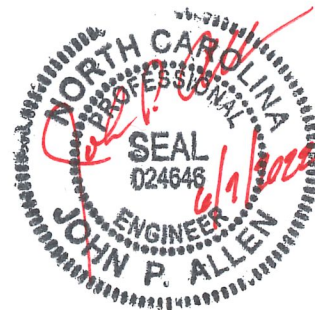
SPECIFICATIONS AND  
CONTRACT DOCUMENTS

VOLUME I

ANN STREET TO GREEN STREET  
SANITARY SEWER RELOCATION



JUNE 2022



Fayetteville Public Works Commission  
Water Resources Engineering  
PWC Operations Center  
955 Old Wilmington Rd  
Fayetteville, NC 28301  
910-223-4730

**SPECIFICATIONS AND CONTRACT DOCUMENTS  
ANN ST. TO GREEN ST.  
SANITARY SEWER RELOCATION**

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## INVITATION TO BID

### ANN ST. TO GREEN ST. SANITARY SEWER RELOCATION FAYETTEVILLE, NORTH CAROLINA

FOR

FAYETTEVILLE PUBLIC WORKS COMMISSION, NC

Cumberland County  
North Carolina

Pursuant to Section 143-129 of the General Statutes of North Carolina, sealed proposals are solicited and will be received by the Fayetteville Public Works Commission ("PWC" or "Owner"), PWC Administration Building, outside by the entrance doors, 955 Old Wilmington Road, Fayetteville, NC 28301, ATTN: Trent Ensley **before 2:00 p.m. on Thursday, June 30, 2022**, and then publicly opened and read for construction of the proposed sanitary sewer relocation. This project consists of the installation of approximately 90 linear feet of twenty four (24) inch steel sanitary sewer along an existing easement between Ann Street and Green Street, including two (2) new manholes and two (2) new aerial pipe supports; removal and disposal of approximately 90 linear feet of existing eighteen (18) inch cast iron sanitary sewer main, two (2) concrete manholes, two (2) existing concrete aerial pipe supports, and one (1) steel aerial pipe support; and all other necessary items to complete the work as described herein and shown on the approved construction plans.

Proposals must be enclosed in a secondary sealed envelope addressed to Fayetteville Public Works Commission, Fayetteville, North Carolina 28301. The outside of the envelope must be marked **SEALED BID: ANN ST. TO GREEN ST. SANITARY SEWER RELOCATION** and shall indicate the name, address, and state license number of the bidder. Proposals must be submitted on the printed form, or exact copies thereof, contained in the Contract Documents.

A mandatory pre-bid conference will be held at 2:00 p.m. on Tuesday, June 14, 2022, in the Skills Lab, 1st floor, Fayetteville, Public Works Commission (PWC) Operations Center, 955 Old Wilmington Road, Fayetteville, NC 28301. Questions will be fielded at the pre-bid conference and all prospective bidders are encouraged to attend the conference. Individual telephone inquiries are prohibited. PWC assumes no responsibility to fully inform absentees of clarifications not issued by addendum.

Each proposal shall be accompanied by a cash deposit or certified check drawn on a bank or trust company insured by Federal Deposit Insurance Corporation, payable to Fayetteville Public Works Commission of an amount equal to not less than five percent (5%) of the proposal or in lieu thereof a bidder may offer a bid bond of five percent (5%) of the bid executed by a surety company licensed under the laws of North Carolina to execute the contract in accordance with the bid bond and upon failure to forthwith make payment, the surety shall pay the obligee an amount equal to the amount of said bond. Said deposit shall be retained by the Owner as liquidated damages in event of failure of the successful bidder to execute the contract within ten days after the award or give satisfactory surety as required by law.

Performance and Payment Bonds are required in the amount of 100% of the contract amount and shall be furnished by the Contractor.

All Contractors are notified that North Carolina Statutory provisions as to licensing of Contractors will be observed in receiving, reading and awarding the Contracts. (Chapter 87 of the North Carolina Statutes)

The License Classification shall be:

**Part 1: Public Utilities (Water and Sewer) - Unlimited**  
**Unclassified - Unlimited**

Fayetteville Public Works Commission will be seeking FEMA reimbursement for this project. All Bidders are notified that the requirements and provisions for FEMA reimbursement for Construction, Procurement, and Professional Services shall be adhered to in the submission of all bids and shall be made a part of this contract.

The Bidder to whom the contract is awarded shall comply with the statutory requirements of these provisions as specified within the contract documents.

Plans and Contract Documents, will be open to public inspection in the offices of the PWC Procurement Department, 1<sup>st</sup> Floor, PWC Administration Building, 955 Old Wilmington Road, Fayetteville, NC 28301. Plans and specifications including Contract Documents will be available at: <https://www.faypwc.com/purchasing/> In addition to the FSU Construction Resource Office: <https://www.uncfsu.edu/academics/colleges-schools-and-departments/broadwell-college-of-business-and-economics/outreach-centers/construction-resource-office>.

In collaboration with the North Carolina Institute of Minority Economic Development, the Construction Resource Office at Fayetteville State University offer services and support to help small, minority, veteran, and women-owned businesses identify and compete for construction-related projects.

The CRO

- Research, view and print project drawings to scale free of charge
- Software to prepare your bid
- Certification and pre-qualification assistance

Please email the FSU CRO to make an appointment: [fsucro@uncfsu.edu](mailto:fsucro@uncfsu.edu)

Public Works Commission of the City of Fayetteville and the City of Fayetteville reserve the right to reject any or all proposals waive all informalities concerning bid, or award bid to the lowest responsible bidder or bidders, taking into consideration quality, performance, and the time specified in the proposals for the performance of the contract.

The bidder to whom the contract may be awarded must comply fully with the requirements of North Carolina General Statutes, Section 143-129, as amended.

No bids may be withdrawn after the scheduled closing time for the receipt of proposals for a period of ninety (90) days.

FAYETTEVILLE PUBLIC WORKS COMMISSION

Trent Ensley  
Procurement Manager

## **DIVISION I GENERAL REQUIREMENTS**

### **00100 – INSTRUCTIONS TO BIDDERS**

#### **A. DEFINED TERMS**

Terms used in these Instructions to Bidders are defined in 00600 Definitions and Terminology section of these Contract Documents. The term "Successful Bidder" means the lowest responsive, responsible Bidder to whom Owner (on the basis of Owner's evaluation as hereinafter provided) makes an award.

#### **B. GENERAL**

Sealed Bids, in accordance with the Bidding Documents, will be received in person or via special courier service or U.S. Postal Service, at the offices of the PWC Procurement Department, 1st Floor, Fayetteville Public Works Commission Operations Center, 955 Old Wilmington Road, Fayetteville, North Carolina, 28301, no later than the time and date specified in the Invitation to Bid.

1. In the solicitation or awarding of contracts, the Owner shall not discriminate because of the race, religion, color, sex, age, disability or national origin of the Bidder.
2. The Owner welcomes and encourages the participation of minority-owned businesses (See Appendix) in purchasing transactions made by the Owner.

#### **C. COPIES OF BIDDING DOCUMENTS**

1. Complete sets of Bidding Documents and Supplementary Project Information in the number and for the sum as stated in the Invitation to Bid, may be obtained from the Design Engineer.
2. Complete sets of Bidding Documents shall be used in preparing Bids. Neither Owner nor Design Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.
3. The Owner and Design Engineer, in making available copies of Bidding Documents do so only for the purpose of obtaining Bids on the Work and do not confer a license or grant for any other use.

#### **D. CONTRACTOR'S LICENSE**

1. No General Contractor shall engage in contracting work in the State of North Carolina unless it has been licensed under the provisions of the North Carolina Statutes.
2. Bidders are prohibited from contracting for, or bidding upon, the construction, removal, repair or improvements to or upon real property owned, controlled or leased by the City of Fayetteville without a North Carolina contractor's license.

3. Each bidder shall indicate its North Carolina Contractor's License number on the bid envelope and the Bid Form.

License Classification shall be:

<b>Public Utilities Water and Sewer</b>	<b>Unlimited</b>
<b>Unclassified</b>	<b>Unlimited</b>

#### **E. EXAMINATION OF CONTRACT DOCUMENTS AND SITE**

1. Before submitting a Bid, each Bidder shall (a) examine the Contract Documents thoroughly, (b) visit the site to familiarize himself with local conditions that may in any manner affect cost, progress or performance of the Work, (c) familiarize himself with federal, state and local laws, ordinances, rules and regulations that may in any manner affect cost, progress or performance of the Work, and (d) study and carefully correlate Bidder's observations with the Contract Documents, and (e) give the PWC Procurement Manager written notice of all conflicts, errors or discrepancies in the Contract Documents.
2. Bidder should consult the Specifications for the identification of those reports of investigations and tests of subsurface and latent physical conditions at the site or reports that otherwise may affect cost, progress, or performance of the Work which may have been utilized by Design Engineer in preparation of the Drawings and Specifications. Owner will make copies of such reports if available at the cost (non-refundable) of reproduction to any Bidder requesting them. These reports are not intended to constitute any explicit or implicit representation as to the nature of the subsurface and latent physical conditions, which may be encountered at the site or to constitute explicit or implicit representations as to any other matter, contained in any report. Such reports are not guaranteed as to accuracy or completeness and are not part of the Contract Documents. Before submitting his Bid each Bidder will, at his own expense, make such investigations and tests as the Bidder may deem necessary to determine his Bid for performance of the Work in accordance with the Contract Documents.
3. On request, the Owner will provide each Bidder access to the site to conduct such investigations and tests on request 48-hours in advance, as each Bidder deems necessary for submission of his Bid.
4. The lands upon which the Work is to be performed right-of-way for access thereto, and other lands available for use by the Contractor in performing the Work are identified in these Contract Documents.
5. The submission of a Bid constitutes an incontrovertible representation by the Bidder that he has complied with every requirement of this Section and that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance of the Work.

#### **F. INTERPRETATIONS AND ADDENDA**

1. All questions about the meaning or intent of the bid or Contract Documents shall be submitted via email to Shelby Lesane, Procurement Advisor, at [shelby.lesane@faypwc.com](mailto:shelby.lesane@faypwc.com). In order to receive consideration, questions must be received by Owner no later than three (3) business days after the pre-bid conference held prior to the date fixed for the receipt of Bids. Any interpretations of questions so raised, which in the opinion of Project Engineer require interpretations, will be issued by

Addenda mailed or delivered to all parties recorded by Owner and/or Design Engineer as having received the Contract Documents, not later than one (1) day prior to receipt of Bids. An Addendum extending the date for the receipt of Bids or an Addendum withdrawing the Invitation to Bid may be issued any time prior to the date set for the receipt of Bids. Owner and Design Engineer will not be responsible for oral interpretations or clarifications, which anyone presumes to make on their behalf. **Bidders are expressly prohibited from contacting any PWC official or employee associated with this project, except as noted above. Violation of this prohibition is grounds for the immediate disqualification of the bidder.**

2. The Owner may issue such additional Addenda as may be necessary to clarify, correct or change the Contract Documents. Such Addenda, if any, will be issued in the manner and within the time stated in Paragraph 1 of this Section.
3. Each Bidder shall be responsible for determining that all Addenda issued by the Owner have been received before submitting a Bid for the Work.
4. Each Bidder shall acknowledge the receipt of each Addendum on the Bid Form.

#### **G. TAXES**

1. The Successful Bidder shall pay all county, city, state and federal taxes required by laws in effect at the time Bids are received and resulting from the Work or traceable thereto, under whatever name levied.
2. Said taxes shall not be in addition to the contract price between the Owner and the Successful Bidder, as the taxes shall be an obligation of the Successful Bidder and not of the Owner, and the Owner shall be held harmless for same by the Successful Bidder.

#### **H. SUBMISSION OF BIDS**

1. All Bidders shall use the enclosed Bid Form in submitting their bid prices. The Owner will not accept oral Bids or Bids received by email or telephone or Telecopier (FAX machine) for this Bid.
2. All prices must be F.O.B. delivered to the point as indicated by this Bid. The Owner will grant no allowance for boxing, crating, or delivery unless specifically provided for in this Bid.
3. The Bid Form must be completed in blue or black ink or by typewriter. Discrepancies between amounts shown in words and amounts shown in figures will be resolved in favor of the amounts shown in words. Discrepancies in the multiplication of units of Work and the unit prices will be resolved in favor of the correct multiplication 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.



4. Proposals sent by mail should be registered mail. The sealed Proposal, marked as indicated above, should be enclosed in an additional sealed envelope similarly marked and addressed to:

SEALED BID: ANN ST. TO GREEN ST.  
SANITARY SEWER RELOCATION  
Fayetteville Public Works Commission  
Attn: Procurement Department  
Shelby Lesane, Procurement Advisor  
955 Old Wilmington Road  
Fayetteville, North Carolina 28301

5. Mark envelope in the lower left-hand corner with the project title, hour, and due date of Bid, and the Bidder's North Carolina contractor registration number.
6. Bids sent by mail and arriving after the time for opening of Bids shall not be considered as valid Bids. In such instances, the Bidders shall have no claim against the Owner.
7. All items contained in the Bid Proposal Checklist (Section 00300 Contract Forms) shall be completely filled out and submitted with the bid. Failure to submit any of the items requested with the Bid Form may be just cause for rejection of the Bid by Owner.
8. All erasures, insertions, additions, and other changes made by the Bidder to the Bid Form shall be signed or initialed by the Bidder. Bids containing any conditions, omissions, erasures, alterations, or items not called for in the Bid, may be rejected by the Owner as being incomplete or nonresponsive.
9. The Bid Form must be signed in order to be considered. If the Bidder is a corporation, the Bid must be submitted in the name of the corporation, not simply the corporation's trade name. In addition, the Bidder must indicate the corporate title of the individual signing the Bid.
10. The Bid Form, the Bid security, if any, and any other documents required, shall be enclosed in a sealed opaque envelope. Any notation or notations on the exterior of the envelope purporting to alter, amend, modify, or revise the bid contained within the envelope shall be of no effect and shall be disregarded.
11. The date and time of the receipt of Bids shall be determined by the date stamp from the Procurement Department. Bidders are responsible for ensuring that their Bids are stamped by Procurement Department personnel by the deadline indicated.
12. All Bids received in the Procurement Department by the deadline indicated will be kept in a locked box until the time and date set for the opening of Bids.
13. All late Bids shall be returned unopened to the sender.

## **I. BID SECURITY**

1. Each Bid shall be accompanied by Bid security in the form of either a cashier's or certified check or an acceptable Bid Bond in the amount of five percent (5%) of the Bid amount, and made payable to the Fayetteville Public Works Commission, North Carolina.

2. The Bid security is a guarantee that if the contract is awarded by the Owner to the Bidder, the Bidder shall enter into the contract with the Owner for the work mentioned in this Bid or forfeit the Bid security to the Owner, not as a penalty, but as liquidated damages.
3. No forfeiture under a Bid security shall exceed the lesser of (a) the difference between the Bid for which the Bid security was written and the next low Bid of another Bidder, or (b) the face amount of the Bid security (Code of North Carolina, Section 11-57B).
4. All bonds shall be executed by a surety company selected by the Bidder, which is legally authorized to do business in the State of North Carolina (NCGS Chapter 44 A-26), and the bond shall be the same in both form as well as substance as AIA Document A310, Bid Bond.
5. The Bidder shall require the attorney-in-fact, who executed the required bond on behalf of the surety company, to affix thereto a certified and current copy of the power of attorney.
6. The bond premium shall be paid by the Bidder and the cost shall be included in the Bid price.
7. Any inspection of purchasing transaction records shall be subject to reasonable restrictions to ensure the security and integrity of the records.

#### **J. MODIFICATION OF BIDS**

1. A Bid may be modified or withdrawn by the Bidder any time prior to the time and date set for the receipt of Bids. The Bidder shall notify the Fayetteville Public Works Commission Procurement Department in writing of its intentions.
2. Modified and withdrawn Bids may be resubmitted to the Fayetteville Public Works Commission Procurement Department up to the time and date set for the receipt of Bids.

#### **K. SUBSTITUTE MATERIAL AND EQUIPMENT**

1. The Contract, if awarded, will be on the basis of material and equipment described in the Drawings or required in the Specifications without consideration of possible substitute or “or-equal” items. The procedure for submittal of substitute or “or-equal” items for consideration is set forth in the General Conditions.

#### **L. SUBCONTRACTORS**

1. Contractor shall subcontract no more than forty-nine percent (49%) of the value of this Contract.
2. Each Bidder shall submit to Owner with its bid the List of Subcontractors, Suppliers, other persons, and organizations proposed for those portions of the Work for which such identification is required. If Owner after due investigation has reasonable objection to any proposed Subcontractor, Supplier, other person or organization, Owner may, before Notice of Award is given, request apparent Successful Bidder to submit an acceptable substitute without an increase in the Bid.
3. If the apparent Successful Bidder declines to make such a substitution, Owner may award the Contract to the next lowest responsible Bidder that proposes to use acceptable Subcontractors, Suppliers, and other persons, and organizations. The declining to make requested substitutions will not constitute grounds for sacrificing the bid security of any Bidder. Any Subcontractor, Supplier, other person, or

organization listed and to whom the Owner or, does not make written objection prior to the giving of the Notice of Award will be deemed acceptable to Owner, subject to revocation as provided in the General Conditions.

#### **M. OPENING OF BIDS**

1. Bids will be opened publicly and read aloud on the date set for the receipt of Bids in the Invitation to Bid.
2. Any Bidder, upon request, shall be afforded the opportunity to inspect Bid records within a reasonable time after the opening of all Bids but prior to award, except in the event that the Owner decides not to accept any of the Bids and to reopen the contract. Otherwise, Bid records shall be open to public inspection only after award of the Contract.
3. Any inspection of procurement transaction records shall be subject to reasonable restrictions to ensure the security and integrity of the records.

#### **N. WITHDRAWAL OF BID DUE TO ERROR**

1. If the Bidder desires to withdraw his/her proposal, he/she must do so before the time fixed for the opening, without prejudice by communicating his purpose in writing to the Owner, and when reached it shall be handed to him or to his authorized agent unread. After bids are open, bids may only be withdrawn in strict accordance with N.C.G.S. Section 143-129-1.

#### **O. BIDS TO REMAIN OPEN**

1. All Bids shall remain open for ninety (90) days after the day of the Bid Opening.

#### **P. AWARD OF CONTRACT**

1. Owner reserves the right to reject any and all Bids, to waive any and all informalities, and to disregard all nonconforming, nonresponsive, or conditional Bids.
2. In case of a tie Bid, the tie shall be decided by lot.
3. It is the intent of the Owner to recommend the award of this contract to the lowest, responsive, responsible bidder provided the Bid has been submitted in accordance with the requirements of the bidding documents and does not exceed the funds available. In determining the lowest, responsive, responsible bidder, the Owner may consider, among other things, the Bidder's past performance conduct on other contracts, and other information provided by the Bidder as noted below.
4. For the purpose of determining the lowest, responsive, responsible bidder, the Basis of Award shall be the total of the Base Bid and Alternate(s) (if applicable) as selected by the Owner.
5. Owner may consider the operating costs, maintenance considerations, performance date, and guarantees of materials and equipment.
6. Owner may conduct such investigations as he deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications and financial ability of the Bidders, as well as other considerations, to include but not limited to resources available to the Bidder to perform the work

effectively, proposed Subcontractors and other persons and organizations to do the work in accordance with the Contract Documents to Owner's satisfaction within the prescribed time.

7. Owner reserves the right to reject the Bid of any Bidder who does not pass any such evaluation to Owner's satisfaction.
8. If the Contract is to be awarded, Owner will give the Successful Bidder a Notice of Award within ninety (90) days after the day of the Bid Opening.
9. The Bidder to whom the contract is awarded shall, within ten (10) days after prescribed documents are presented for signature, execute and deliver to the Owner the Contract Documents and any other forms or bonds required by the Bid.
10. The Bidder is required to complete the attached forms that forms will allow the Owner to verify that the Bidder is qualified to perform the Work described in these Contract Documents. **All forms shall be completed and submitted with the Bid.** Failure to submit all the required forms shall be considered grounds for the Owner to reject the bid.

The Owner, through an Evaluation Committee, will review all of the bids and qualification data to determine the lowest, responsive, responsible bidder. The Owner reserves the right to not award the Contract to the lowest bidder if the information provided is not complete, does not meet the satisfaction of the Owner, or has been falsified. The Owner will not request any additional information in order to allow the Contractor to complete bid.

11. During the evaluation phase, bid proposals will be reviewed by the Evaluation Committee to ascertain which proposals technically and otherwise address all the requirements of these Contract Documents. Proposals determined to be technically non-responsive or not sufficiently responsive may be disqualified. Once qualified proposals have been determined, the Evaluation Committee may interview selected Bidders to clarify specific matters presented in the proposals. These discussions will allow both the Bidder to elaborate on his/her proposal and for the Evaluation Committee to request other pertinent information. The Evaluation Committee will use information gained during such discussions, if any, together with information presented in the proposal to determine the lowest responsive, responsible bidder.
12. The Owner may conduct such investigations/verifications as deemed necessary to establish the responsibility, qualification, and financial ability of the Bidder. Should the Owner adjudge that the apparent low bidder is not the lowest, responsive, responsible bidder by virtue of the information furnished, said apparent low bidder will be so notified and his/her bid security shall be returned to him/her without prejudice. Failure or refusal to furnish any items of information requested by the Owner shall be considered as non-responsive and therefore basis for rejection of the bid.

#### **Q. PERFORMANCE AND OTHER BONDS**

1. The General Conditions set forth Owner's requirements as to Performance and other Bonds.

#### **R. SMALL DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**

NCDOT Disadvantaged Business Enterprise (DBE) and Historically NC DOA Underutilized Business (HUB) firms with current certifications are acceptable for listing in the bidder's submittal of SDBE participation and will be considered to meet the contract goal. Firms that are certified through NCDOT are listed at the "Vendor Directory" which can be accessed through the following: <https://www.ebs.nc.gov/VendorDirectory/default.html> Firms that are certified through NC DOA

are listed at the "HUB Vendor Search" which can be accessed through the following <https://www.doa.state.nc.us/HUB/searchhub.htm>

Bidder shall submit, with his Proposal, the SDBE documentation requested in these specifications. It is strongly recommended that the Bidder attend the Pre-Bid Conference, as important information will be reviewed. Failure to submit proper documentation may result in disqualification of the proposal.

#### **S. E-VERIFY**

1. Contractor/Vendor hereby acknowledges that "E-Verify" is the federal E-Verify program operated by the US Department of Homeland Security and other federal agencies which is used to verify the work authorization of newly hired employees pursuant to federal law and in accordance with Article 2, Chapter 64 of the North Carolina General Statutes.
2. Contractor/Vendor further acknowledges that all employers, as defined by Article 2, Chapter 64 of the North Carolina General Statutes, must use E-Verify and after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify in accordance with NCGS §64-26(a).
3. Contractor/Vendor hereby pledges, attests, and warrants through execution of this Agreement that Contractor/Vendor complies with the requirements of Article 2, Chapter 64 of the North Carolina General Statutes and further pledges, attests, and warrants that any subcontractors currently employed by or subsequently hired by Contractor/Vendor shall comply with any and all E-Verify requirements. Failure to comply with the above requirements shall be considered a breach of this Agreement.

#### **T. IRAN DIVESTMENT ACT**

1. As mandated by N.C.G.S. 147-86.59(a), Contractor/Vendor hereby certifies that it is not listed on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C.G.S. 147-86.58. Contractor/Vendor further certifies that in accordance with N.C.G.S. 146-86.58(b) that it shall not utilize any subcontractor found on the State Treasurer's Final Divestment List. Contractor/Vendor certifies that the signatory to this Purchase Order authorized by the Contractor/Vendor to make the foregoing statement.

\*\*\* END OF SECTION \*\*\*

## BID PROPOSAL CHECKLIST

- 1. Enter Contractor's License Number where called for in the Bid Form and on the outside of the sealed envelope containing the Bid.
- 2. Photocopy of Contractor's License.
- 3. Bid Bond or other security.
- 4. Bid Form Section 00300.
- 5. Provide the responsible North Carolina Registered Agent for Insurance Claims. Include contact information.
- 6. Provide the proposed responsible Bonding Company name. Include contact information.
- 7. List of proposed Subcontractors and material suppliers exceeding 5% of the Contract Value.
- 8. Non-Collusive Affidavit.
- 9. Nondiscrimination Clause.
- 10. Affidavit of Organization and Authority and Sworn Statement.
- 11. Equal Employment Opportunity Acknowledgment.
- 12. Certification of Primary Participant regarding Debarment, Suspension, and other Responsible matters.
- 13. FTA Certification regarding Lobbying.
- 14. MWBE Contract Provisions Form.
- 15. Affidavit A – Listing of Good Faith Efforts et al.
- 16. Affidavit B – (Only if the Contractor will perform **ALL ELEMENTS OF THE WORK** on this project with their own forces **AND** will complete **ALL ELEMENTS OF THIS PROJECT WITHOUT THE USE OF SUBCONTRACTORS, MATERIAL SUPPLIERS, OR PROVIDERS OF PROFESSIONAL SERVICES.**
- 17. Affidavit C or Affidavit D of the MWBE Participation Program as appropriate.
- 18. Identification of Minority Business Participation Form.
- 19. The Completed Contractor Qualification Form.

**\*\*FAILURE TO SUBMIT THE ABOVE FORMS WITH THE BID FORM MAY BE JUST CAUSE FOR REJECTION OF THE BID BY THE OWNER\*\***

## BID PROPOSAL

### PROJECT: ANN ST. TO GREEN ST. SANITARY SEWER RELOCATION

#### THIS BID IS SUBMITTED TO:

Fayetteville Public Works Commission  
Shelby Lesane, Procurement Advisor  
955 Old Wilmington Road  
Fayetteville, North Carolina 28301

- A. The undersigned BIDDER proposes and agrees, if this Bid is accepted, to enter into a Contract with OWNER in the form included in the Contract Documents to perform and furnish all Work specified or indicated in the Contract Documents for the Contract Price and within the Contract Time indicated in this Bid and in accordance with the Contract Documents.
- B. BIDDER accepts all of the terms and conditions of the Instructions to Bidders, including, without limitation, those dealing with the disposition of payment and performance bonds, and insurance certificates. This bid will remain open for ninety (90) days after the day of Bid opening. BIDDER will sign the Contract and submit the Contract Security and other documents required by the Contract Documents within ten (10) days after the date of receipt by the BIDDER.
- C. In submitting this Bid, Bidder represents, as more fully set forth in the Contract, that:
  - 1. BIDDER has examined copies of all the Contract Documents and of the following addenda, receipt of all which is acknowledged on the bid summary page:
  - 2. BIDDER has examined the site and locality where the Work is to be performed, the legal requirements (federal, state, and local laws, ordinances, rules and regulations) and the conditions affecting cost, progress of performance of the work and has made such independent investigations as BIDDER deems necessary.
  - 3. BIDDER acknowledges that OWNER does not assume responsibility for the accuracy of dimensions or completeness of information and data shown or indicated in the Bidding Documents with respect to existing facilities.
  - 4. BIDDER has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site of the Work (except underground facilities) and all drawings of physical conditions in or relating to existing surface or subsurface structures, pipelines, and utilities at or contiguous to the site are provided within these Contract Documents. Geotechnical Reports and other information regarding subsurface conditions are identified in the attached appendices and detailed in Article 4 of the General Conditions. BIDDER acknowledges that the OWNER does not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Bidding Documents with respect to underground facilities at or contiguous to the site of Work. BIDDER had obtained and carefully studied (or assumes responsibility for have done so) all such additional or supplementary examinations investigations, explorations, tests, studies, and data that are necessary to identify and understand conditions (surface, subsurface, and underground facilities) at or contiguous to the site of Work or otherwise which may affect cost, progress, performance, or furnishing the Work or which relate to any aspect of means, methods, techniques, sequences, and procedures of construction to be employed by Bidder

and safety precautions and programs incident thereto. BIDDER waives all rights to claim that any additional examinations, investigations, explorations, tests, studies, or data are necessary for the proper submission of the Bid for the performance and furnishing of the Work in accordance with the Contract Time, Contract Price, and other terms and conditions of the Contract Documents.

5. BIDDER hereby certifies that, if awarded the Contract for construction of the Project, he will take all possible actions to minimize costs to the OWNER which are related to any disruptions in any part of the Work resulting from unforeseeable conditions which may be encountered and work changes or additions which may be made.
6. BIDDER has correlated the information known to BIDDER, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, exploration, tests, studies, and data with the Contract Documents.
7. BIDDER has given OWNER written notice of all conflicts, errors, ambiguities, or discrepancies that BIDDER has discovered in the Contract Documents and the written resolution thereof by OWNER is acceptable to BIDDER, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work for which this Bid is submitted.
8. By bidding in response to this invitation, the BIDDER represents that in the preparation and submission of this Bid, said BIDDER did not, either directly or indirectly, enter into any combination or arrangement with any person, firm or corporation or enter into any agreement, participate in any collusion, or otherwise take any action in the restraint of free, competitive bidding in violation of the Sherman Act (15 U.S.C. Section 1).
9. Bid form must be completed in blue or black ink or by typewriter. The Bid price of each item on the form must be stated in both words and numerals. In case of a conflict, words shall take precedence. Discrepancies in the multiplication of units of work and unit prices will be resolved in favor of the correct multiplication 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.
10. BIDDER understands that the award of contract will be made on the basis of the total Bid amount which will be determined as the sum of the unit price and lump sum Bid Items.
11. BIDDER understands that quantities are estimated and are not guaranteed; they are solely for comparing Bids and establishing the total Bid amount. The Contract Price will be modified by Change Order, and final payment will be based on the quantities of work actually furnished and installed by the successful BIDDER.
12. BIDDER shall complete the Work for the prices indicated on the following pages.



**BASE BID**

Item No.	Ref. No.	Item	Estimated Quantities	Unit	Unit Price	Cost Extension
1	L-1	Mobilization and Demobilization (max. 10% of construction cost)	1	LS		
2	L-2	Traffic Control & Traffic Plan	1	LS		
3	L-3	Erosion and Sediment Control	1	LS		
4	L-4	Install exterior coating (as specified)	1	LS		
4	L-5	Demolish and dispose of existing 15" Cast Iron Sewer Main and existing aerial pipe supports	1	LS		
5	U-1	Install new 16" Steel (flanged joints) sewer main	109	LF		
6	U-2	Install aerial pipe supports	2	EA		
7	U-3	Install 4" sanitary sewer lateral with new cleanout	10	LF		
8	U-4	Furnish and Install new 4' diameter standard manhole	1	EA		
9	U-5	Install new 5' diameter precast doghouse manhole	1	EA		
10	U-5	Install new 6' diameter precast doghouse manhole	1	EA		
11	U-6	Install 5' Chain Security Link Fence	20	LF		
12	U-7	Remove and Replace Ornate Iron Fence	40	LF		
13	U-8	Bypass Pumping	5	days		
14	U-9	Structural Stream Bank Stabilization	120	TN		
15	U-10	Abandon existing manhole	1	EA		

16	U-11	Clearing and Grubbing	.10	AC		
17	U-12	Sod	1590	SY		
18	U-13	Select Material (Backfill)	15	CY		
19	U-14	Undercut Excavation	2	CY		
20	U-15	Testing	109	LF		

TOTAL BASE BID

\$ \_\_\_\_\_

**- BID SUMMARY-**

**TOTAL BID PRICE FOR BASE BID:**

\$ \_\_\_\_\_

The BIDDER has received, acknowledged, and used the following addenda in completing the Bid. (Initial and Date as appropriate).

Addendum No. 1 _____	Dated _____
Addendum No. 2 _____	Dated _____
Addendum No. 3 _____	Dated _____
Addendum No. 4 _____	Dated _____
Addendum No. 5 _____	Dated _____

The undersigned BIDDER certifies that they are a licensed as a Contractor under the provisions of the Act of North Carolina Legislature, Session 1952 as amended regulating the practice of General Contracting, and that their license number is \_\_\_\_\_ (License Number).

The undersigned BIDDER hereby agrees to accept an award of the Contract based on the Total Contract Amount as accepted by the OWNER and as indicated on the Notice of Award.

D. BIDDER agrees that Work shall be completed within the time frame indicated in the Agreement as follow:

1. All work described herein to be complete, including restoration and all punch list items within 120 consecutive calendar days from the start date stipulated on the Notice to Proceed.
2. The BIDDER acknowledges that time is of the essence in this Contract and that the OWNER will suffer financial loss if the Work is not complete within the time specified in Paragraph D.1 above plus any extensions thereof allowed in accordance with these Contract Documents. BIDDER also recognizes the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by the OWNER if the Work is not complete on time. Accordingly, instead of requiring any such proof, the OWNER and the CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) the CONTRACTOR shall pay the OWNER \$500.00 per calendar day for each day that expires after the time specified in Paragraph D.1, plus any proper time extension, until the Work is finally complete.

E. The following documents are attached to and made part of this bid:

Required Bid Security in the form of either a cashier's check or certified check or Bid Bond in the amount of 5% of maximum Bid price.

F. Communications concerning this Bid shall be addressed to:  
(CONTRACTOR's Name, Address and Telephone Number)

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

G. The terms used in this Bid which are defined in Section 00600 – Definitions and Terminology of these Contract Documents have the meanings assigned to them therein, which are incorporated by reference as if fully set forth herein.

H. An individual contractor is required to furnish his social security number and sole proprietorship, partnership and corporation are required to furnish their employer identification numbers to the Fayetteville Public Works Commission. Please indicate this information on this Bid Form as follows:

Social Security Number: \_\_\_\_\_

Federal Employer Identification Number: \_\_\_\_\_

SUBMITTED ON \_\_\_\_\_, 20\_\_.

AN INDIVIDUAL

BY \_\_\_\_\_ (SEAL)  
(Individual's Name and Signature)

**Doing Business as:** \_\_\_\_\_

**North Carolina Contractor Registration Number:** \_\_\_\_\_

**Business Address:** \_\_\_\_\_

**Phone Number:** \_\_\_\_\_

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

\_\_\_\_\_  
NOTARY PUBLIC

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

A PARTNERSHIP

BY \_\_\_\_\_ (SEAL)  
(Firm Name)

\_\_\_\_\_  
(General Partner and Signature)

**North Carolina Contractor Registration Number:** \_\_\_\_\_

**Business Address:** \_\_\_\_\_

**Phone Number:** \_\_\_\_\_

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

\_\_\_\_\_  
NOTARY PUBLIC

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

A CORPORATION

BY \_\_\_\_\_  
(Corporation Name) (State of Incorporation)

BY \_\_\_\_\_ (SEAL)  
(Name and Title of Person Authorized to Sign and Signature)

ATTEST: \_\_\_\_\_  
(Secretary or Assistant Secretary and Signature)

North Carolina Contractor Registration Number: \_\_\_\_\_

Business Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

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

\_\_\_\_\_  
NOTARY PUBLIC

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

---

A JOINT VENTURE

BY \_\_\_\_\_  
(Name and Signature)

North Carolina Contractor Registration Number: \_\_\_\_\_

Business Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

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

\_\_\_\_\_  
NOTARY PUBLIC

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

(Each joint venturer must sign. The name of signing for each individual, partnership, and corporation that is a party to the joint venture should be in the manner indicated above.)

**BID BOND**

This is a Bid Bond that is subject to the provisions of Article 3 of Chapter 44A of the North Carolina General Statutes.

This Bond is Executed on \_\_\_\_\_, 20\_\_\_\_\_.

The name of the PRINCIPAL is \_\_\_\_\_  
\_\_\_\_\_

The name of the SURETY is \_\_\_\_\_  
\_\_\_\_\_

The Fayetteville Public Works Commission is the OWNER

The amount of the Bond is \_\_\_\_\_  
\_\_\_\_\_ (Dollars) (\$\_\_\_\_\_)

KNOW ALL MEN BY THESE PRESENTS, the Principal and Surety above named are hereby held and firmly bound unto the above named OWNER hereinafter called the OWNER in the penal sum of the amount stated above in lawful money of the United States, for the payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns.

The condition of the above obligation is such that whereas the Principal has submitted to the OWNER a certain Bid attached hereto and hereby made a part hereof to enter into a Contract in writing, for the construction of:

**ANN ST. TO GREEN ST. SANITARY SEWER RELOCATION**

NOW, THEREFORE

- (a) If said Bid shall be rejected, or in the alternate,
- (b) If said Bid shall be accepted and the Principal shall execute and deliver a Contract in the Form of Contract attached hereto (properly completed in accordance with said Bid) and shall furnish a bond for his faithful performance of said Contract, and for the payment of all persons performing labor or furnishing materials in connection herewith, and shall in all other respects perform the agreement created by acceptance of said Bid, then this obligation shall be void, otherwise the same shall remain in force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein state.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its Bond shall in no way be impaired or affected by any extension of time within the OWNER may accept such Bid; and said surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the Principal and the Surety have hereto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

ATTEST:

\_\_\_\_\_  
(Principal Secretary)  
(SEAL)

\_\_\_\_\_  
Principal

BY: \_\_\_\_\_(3)

\_\_\_\_\_  
(Address)  
\_\_\_\_\_

\_\_\_\_\_  
Witness as to Principal

\_\_\_\_\_  
Surety

\_\_\_\_\_  
(Address)  
\_\_\_\_\_

\_\_\_\_\_  
(Address)  
\_\_\_\_\_

ATTEST:

\_\_\_\_\_  
N.C. Resident Agent  
(SEAL)

\_\_\_\_\_  
Witness as to Surety

\_\_\_\_\_  
(Address)  
\_\_\_\_\_

- (1) Correct name of contractor
- (2) A Corporation, a Partnership or an Individual, as the case may be
- (3) If contractor is a Partnership, all partners should execute bond



**LIST OF SUBCONTRACTORS**

In compliance with the Instructions to Bidders and the Supplementary Conditions, the undersigned submits the following names of Subcontractors to be used in performing the Work.

The Bidder certifies that all Subcontractors listed are eligible to perform the Work and that all Subcontractors performing more than five percent of the work are listed.

<u>Subcontractor's Work</u>	<u>Subcontractor's Name</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

\_\_\_\_\_ Bidder's Signature

**AFFIDAVIT OF ORGANIZATION AND AUTHORITY SWORN STATEMENT**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

\_\_\_\_\_ being the first duly sworn on oath deposes and says that the Bidder on the attached Bid Form id organized as indicated below and that all statements herein made are made on behalf of such Bidder and that this deponent is authorized to make them.

(Fill Out Applicable Paragraph)

**1. CORPORATION**

The bidder is a corporation organized and existing under the laws of the State of \_\_\_\_\_ and its President is \_\_\_\_\_, and its Secretary is \_\_\_\_\_, and does have a corporate seal. The \_\_\_\_\_ is authorized to sign construction Contract and Bids for the company by action of its Board of Directors taken \_\_\_\_\_, a certified copy of which is hereto attached. (Strike out last sentence if not applicable.)

**2. PARTNERSHIP**

The Bidder is a Partnership consisting of \_\_\_\_\_ and \_\_\_\_\_, partners doing business under the name of \_\_\_\_\_.

**3. SOLE TRADER**

The Bidder is an individual and if operating under a trade name, such trade name is as follows: \_\_\_\_\_

**4. ADDRESS**

The business address of the Bidder is as follows:

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

Its phone number is \_\_\_\_\_.

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

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

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

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

**EQUAL EMPLOYMENT OPPORTUNITY ACKNOWLEDGEMENT**

During the performance of this Contract the Contractor agrees as follows:

- a. The Contractor will not discriminate against any employee or applicant 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 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 of the 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 for employment 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 understanding, a notice to be provided, advising the labor union or worker's representative of the Contractor's commitments under the Equal Employment Opportunity Section of this Contract, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of such 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 OWNER Contracts.
- e. The Contractor will include the provisions of the section in every subcontract or purchase order unless exempted by rules, regulations or orders of the OWNER so that such provisions will be binding upon each Subcontractor or vendor.

(Use the following form for signatures by a CORPORATION):

ATTEST: \_\_\_\_\_ BY: \_\_\_\_\_  
 (Assistant) Secretary Vice-President  
 (CORPORATE SEAL)

(Use the following form for signatures by an INDIVIDUAL):

BY: \_\_\_\_\_ (Seal)

WITNESS:

\_\_\_\_\_

**(THE ACKNOWLEDGEMENT OF THE ABOVE SIGNATURE MUST BE NOTARIZED USING THE FORM ON THE FOLLOWING PAGE)**

(See the following form for acknowledgment signature by a Corporation):

NORTH CAROLINA (Enter correct State and County if different than shown)

\_\_\_\_\_ COUNTY

I, \_\_\_\_\_, A Notary Public in and for the aforesaid State and County, certify that \_\_\_\_\_ personally appeared before me this day and acknowledged that he is (Asst.) Secretary of \_\_\_\_\_, a corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its (Vice) President, sealed with its corporate seal, and attested by himself as its (Asst.) Secretary.

WITNESS my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

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

My commission expires \_\_\_\_\_.  
(SEAL)

(Use the following form for acknowledgement signature by a partnership or an individual.)

NORTH CAROLINA (Enter correct State and County if different than shown)

\_\_\_\_\_ COUNTY

I, the undersigned Notary Public, do hereby certify that \_\_\_\_\_, personally appeared before me this day and acknowledge the due execution of the foregoing instrument.

WITNESS my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

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

My commission expires \_\_\_\_\_.  
(SEAL)

**NONDISCRIMINATION CLAUSE**

It is specifically agreed as part of the consideration of the signing of this Contract that the parties hereto named, their agents, employees or servants will not discriminate in any manner on the basis of age, handicap, race, color, creed, sexual orientation or national origin with reference to the subject matter of this Contract, no matter how remote.

This provision being incorporated for the benefit of the Fayetteville Public Works Commission and its residents may be enforced as set out in said ordinances, enforcement of this provision shall be by action for specific performance, injunctive relief, or other remedy as by reference to the subject matter of this Contract.

(Use the following form for signatures by a CORPORATION):

\_\_\_\_\_  
Corporate Name

ATTEST:

\_\_\_\_\_  
(Assistant) Secretary

BY: \_\_\_\_\_  
(Vice) President

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Printed Name)

(Corporate Seal)

(Use the following form for signatures by an INDIVIDUAL)

BY: \_\_\_\_\_

\_\_\_\_\_  
(Printed Name)

WITNESS:

\_\_\_\_\_  
\_\_\_\_\_  
(Printed Name)

**NON-COLLUSIVE AFFIDAVIT**

State of \_\_\_\_\_)

County of \_\_\_\_\_)

\_\_\_\_\_ Being first duly sworn, deposes and says that:

(1) He is the \_\_\_\_\_ of  
(Owner, Partner, Officer, Representative or Agent)  
\_\_\_\_\_ The BIDDER that has submitted the  
attached BID;

(2) He is fully informed respecting the preparation and contents of the attached BID and of all pertinent circumstances  
respecting such Bid;

(3) Such BID is genuine and is not a collusive or sham BID;

(4) Neither the said BIDDER nor any of its officers, partners, owners, agents, representatives, employees, or parties  
in interest, including this affiant, have in any way colluded, conspired, connived or agreed, directly or indirectly,  
with any other BIDDER, firm, or person to fix the price or prices in the attached BID or of any other BIDDER,  
or to fix any overhead, profit, cost elements of the BID price or the BID price of any other BIDDER, or secure  
through any collusion, conspiracy, connivance, or unlawful agreement any advantage against the Fayetteville  
Public Works Commission, or any person interested in the proposed Contract;

(5) The price or prices quoted in the attached BID are fair and proper and are not tainted by any collusion, conspiracy,  
connivance, or unlawful agreement on the part of the BIDDER or any other of its agents, representatives, owners,  
employees or parties in interest, including this affidavit.

BY: \_\_\_\_\_

ITS \_\_\_\_\_  
(Title)

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

\_\_\_\_\_ My Commission expires \_\_\_\_\_.  
(Notary Public)

## F.T.A. CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

*(To be submitted with each bid or offer exceeding \$100,000)*

The undersigned \_\_\_\_\_ certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an 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 Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to 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 undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*.)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

\_\_\_\_\_ Signature of Contractor's Authorized Official

\_\_\_\_\_ Name and Title of Contractor's Authorized  
Official

\_\_\_\_\_ Date

**ANN ST. TO GREEN ST.  
SANITARY SEWER RELOCATION  
CONTRACTOR QUALIFICATION FORM**

**\*\*\*MUST BE COMPLETED AND INCLUDED WITH BID\*\*\***

*The Fayetteville Public Works Commission reserves the right to request information from the contractor to complete its assessment of the contractor or subcontractors qualifications. Partially complete forms may be considered non-responsive based on the quantity and quality of information provided. Wholly incomplete forms will be considered non-responsive and will result in rejection of the bid.*

**CONTRACTOR DOCUMENTATION**

<b>(1) Name of Prime Contractor and NC License Number:</b>	Name:  NC License No.:
a. Within the <b>last five (5) years</b> , has the contractor been involved in any judgments, claims, or arbitration with regard to construction contracts? <b>If so, provide list and describe each event fully. Attach additional information, as necessary.</b>	<input type="checkbox"/> Yes (provide list and describe each event fully)  <input type="checkbox"/> No
b. Within the <b>last five (5) years</b> , has any officer or principal of the organization ever been an officer or principal of another organization when it failed to complete a construction contract? <b>If so, provide list and describe each event fully. Attach additional information, as necessary.</b>	<input type="checkbox"/> Yes (provide list and describe each event fully)  <input type="checkbox"/> No
<b>(2) Name of Sewer Bypass Pumping Subcontractor (if applicable) and NC License Number (If Prime Contractor intends to complete all work, skip to Item 3).</b>	Name: NC License No.:
a. Within the <b>last five (5) years</b> , has the subcontractor been involved in any judgments, claims, or arbitration with regard to construction contracts? <b>If so, provide list and describe each event fully. Attach additional information, as necessary.</b>	<input type="checkbox"/> Yes (provide list and describe each event fully)  <input type="checkbox"/> No
b. Within the <b>last five (5) years</b> , has any officer or principal of the subcontractor's organization ever been an officer or principal of another organization when it failed to complete a construction contract? <b>If so, provide list and describe each event fully. Attach additional information, as necessary.</b>	<input type="checkbox"/> Yes (provide list and describe each event fully)  <input type="checkbox"/> No
<b>(3) Name of Guided Bore Subcontractor (if applicable) and NC License Number (If Prime Contractor intends to complete all work, skip to Item 3).</b>	Name: NC License No.:



**ANN ST. TO GREEN ST.  
SANITARY SEWER RELOCATION  
CONTRACTOR QUALIFICATION FORM**

**\*\*\*MUST BE COMPLETED AND INCLUDED WITH BID\*\*\***

*The Fayetteville Public Works Commission reserves the right to request information from the contractor to complete its assessment of the contractor or subcontractors qualifications. Partially complete forms may be considered non-responsive based on the quantity and quality of information provided. Wholly incomplete forms will be considered non-responsive and will result in rejection of the bid.*

<p>a. Within the <b>last five (5) years</b>, has the subcontractor been involved in any judgments, claims, or arbitration with regard to construction contracts? <b>If so, provide list and describe each event fully. Attach additional information, as necessary.</b></p>	<p><input type="checkbox"/> Yes (provide list and describe each event fully)</p> <p><input type="checkbox"/> No</p>	
<p>b. Within the <b>last five (5) years</b>, has any officer or principal of the subcontractor's organization ever been an officer or principal of another organization when it failed to complete a construction contract? <b>If so, provide list and describe each event fully. Attach additional information, as necessary.</b></p>	<p><input type="checkbox"/> Yes (provide list and describe each event fully)</p> <p><input type="checkbox"/> No</p>	
<p>(4) Provide list of other <b>Subcontractors</b> and field of specialty (erosion control, access, etc.), if applicable. Additional subcontractors can be attached to the qualifications form, if necessary.</p>		
<p>a. Subcontractor Name: Specialty:</p>	<table border="1" style="width: 100%; height: 20px;"> <tr><td> </td></tr> </table>	
<p>b. Subcontractor Name: Specialty:</p>	<table border="1" style="width: 100%; height: 20px;"> <tr><td> </td></tr> </table>	
<p>c. Subcontractor Name: Specialty:</p>	<table border="1" style="width: 100%; height: 20px;"> <tr><td> </td></tr> </table>	
<p>d. Subcontractor Name: Specialty:</p>	<table border="1" style="width: 100%; height: 20px;"> <tr><td> </td></tr> </table>	

**SEWER BYPASS SUBCONTRACTOR EXPERIENCE AND RESOURCES**

**\*NOTE: The following information (Items 1 through 4) SHALL be completed by Prime Contractor if the sewer main bypass will be completed with its own forces.**

- (1) The sewer bypass subcontractor shall be trained and certified to install, operate, and maintain the sewer bypass equipment with at least **five (5) years** of experience obtained over the **last five (5) years**. Provide not less than **four (4)** completed projects completed in the last **two (2) years**, where the projects were of similar size and scope to the Work described in these Contract Documents. At least **one (1)** of the completed projects must have been completed in the last **twelve (12) months**.
- (2) The sewer bypass subcontractor shall perform the bypass pumping operation utilizing its own equipment and labor forces. The bypass pumping superintendent shall be an employee of the bypass subcontractor. **Second tier subcontractors will not be allowed.**

a. Project Name:			
Location:			
Superintendent:			
Pipe Size/Material:		Length:	

Start Date:		End Date:	
Client:			
Client Contact Name:		Client Phone:	
Completed with own equipment and labor forces:			<input type="checkbox"/> Yes <input type="checkbox"/> No
If "No" was checked above, provide name of the Contractor completing work:			
Scope/ <b>Project Cost</b> /Additional Information:			
Contractor Completing Work Associated with Sewer Bypass:			
b. Project Name:			
Location:			
Superintendent:			
Pipe Size/Material:		Length:	
Start Date:		End Date:	
Client:			
Client Contact Name:		Client Phone:	
Completed with own equipment and labor forces:			<input type="checkbox"/> Yes <input type="checkbox"/> No
If "No" was checked above, provide name of the Contractor completing work:			
Scope/ <b>Project Cost</b> /Additional Information:			
Contractor Completing Work Associated with Sewer Bypass:			
c. Project Name:			
Location:			
Superintendent:			
Pipe Size/Material:		Length:	
Start Date:		End Date:	
Client:			
Client Contact Name:		Client Phone:	
Completed with own equipment and labor forces:			<input type="checkbox"/> Yes <input type="checkbox"/> No
If "No" was checked above, provide name of the Contractor completing work:			
Scope/ <b>Project Cost</b> /Additional Information:			
Contractor Completing Work Associated with Sewer Bypass:			

d. Project Name:			
Location:			
Superintendent:			
Pipe Size/Material:		Length:	
Start Date:		End Date:	
Client:			
Client Contact Name:		Client Phone:	
Completed with own equipment and labor forces:			<input type="checkbox"/> Yes <input type="checkbox"/> No
If "No" was checked above, provide name of the Contractor completing work:			
Scope/ <b>Project Cost</b> /Additional Information:			
<p>Contractor Completing Work Associated with Sewer Bypass:</p>			
e. Project Name:			
Location:			
Superintendent:			
Pipe Size/Material:		Length:	
Start Date:		End Date:	
Client:			
Client Contact Name:		Client Phone:	
Completed with own equipment and labor forces:			<input type="checkbox"/> Yes <input type="checkbox"/> No
If "No" was checked above, provide name of the Contractor completing work:			
Scope/ <b>Project Cost</b> /Additional Information:			
<p>Contractor Completing Work Associated with Sewer Bypass:</p>			
(3) Provide the names of the <b>proposed bypass pumping superintendent and crew (technicians, etc.)</b> who are qualified and available to perform the work stated in this proposal:	Proposed Superintendent:		Certified and Trained: <input type="checkbox"/> Yes <input type="checkbox"/> No
	Crew:		<input type="checkbox"/> Yes <input type="checkbox"/> No

(4) All sewer bypass pumping operations shall be performed under the constant direction of a superintendent employed by the sewer bypass subcontractor who shall remain on site and be in responsible charge throughout the bypass pumping operation. Provide not less than **three (3)** completed bypass pumping operations completed in the last **three (3) years**, where the projects were of similar size and scope to the Work described in these Contract Documents, and where the proposed bypass pumping superintendent – as listed above – acted in full capacity as superintendent for the bypass pumping subcontractor. The reference projects shall be sufficient to provide evidence of the Superintendent’s competency and qualifications. At least **one (1)** of the reference projects must have been completed in the last **twelve (12) months**.

a. Project:			
Start Date:		End Date:	
Pipe Size/Material:		Length:	
Client:			
Client Contact Name:		Client Phone:	
b. Project:			
Start Date:		End Date:	
Pipe Size/Material:		Length:	
Client:			
Client Contact Name:		Client Phone:	
c. Project:			
Start Date:		End Date:	
Pipe Size/Material:		Length:	
Client:			
Client Contact Name:		Client Phone:	
d. Project:			
Start Date:		End Date:	
Pipe Size/Material:		Length:	
Client:			
Client Contact Name:		Client Phone:	
e. Project:			
Start Date:		End Date:	
Pipe Size/Material:		Length:	
Client:			
Client Contact Name:		Client Phone:	
Start Date:		End Date:	
f. Project:			
Start Date:		End Date:	
Pipe Size/Material:		Length:	
Client:			
Client Contact Name:		Client Phone:	

## GUIDED BORE SUBCONTRACTOR EXPERIENCE AND RESOURCES

**\*NOTE: The following information (Items 1 through 4) SHALL be completed by Prime Contractor if the sewer main bypass will be completed with its own forces.**

- (1) The guided bore subcontractor shall be trained and certified to install, operate, and maintain the guided bore equipment with at least **five (5) years** of experience obtained over the **last five (5) years**. Provide not less than **four (4)** completed projects completed in the last **two (2) years**, where the projects were of similar size and scope to the Work described in these Contract Documents. At least **one (1)** of the completed projects must have been completed in the last **twelve (12) months**.
- (2) The guided bore subcontractor shall perform the guided bore operation utilizing its own equipment and labor forces. The guided bore superintendent shall be an employee of the boring subcontractor.  
**Second tier subcontractors will not be allowed.**

a. Project Name:			
Location:			
Superintendent:			
Pipe Size/Material:	Length:		
Start Date:	End Date:		
Client:			
Client Contact Name:	Client Phone:		
Completed with own equipment and labor forces:			<input type="checkbox"/> Yes <input type="checkbox"/> No
If "No" was checked above, provide name of the Contractor completing work:			
Scope/ <b>Project Cost</b> /Additional Information:			
<p>Contractor Completing Work associated with Guided Bore:</p>			
b. Project Name:			
Location:			
Superintendent:			
Pipe Size/Material:	Length:		
Start Date:	End Date:		
Client:			
Client Contact Name:	Client Phone:		
Completed with own equipment and labor forces:			<input type="checkbox"/> Yes <input type="checkbox"/> No
If "No" was checked above, provide name of the Contractor completing work:			
Scope/ <b>Project Cost</b> /Additional Information:			
<p>Contractor Completing Work associated with Guided Bore:</p>			
c. Project Name:			
Location:			
Superintendent:			

Pipe Size/Material:		Length:	
Start Date:		End Date:	
Client:			
Client Contact Name:		Client Phone:	
Completed with own equipment and labor forces:			<input type="checkbox"/> Yes <input type="checkbox"/> No
If "No" was checked above, provide name of the Contractor completing work:			
<b>Scope/Project Cost/Additional Information:</b>			
<p>Contractor Completing Work associated with Guided Bore:</p>			
d. Project Name:			
Location:			
Superintendent:			
Pipe Size/Material:		Length:	
Start Date:		End Date:	
Client:			
Client Contact Name:		Client Phone:	
Completed with own equipment and labor forces:			<input type="checkbox"/> Yes <input type="checkbox"/> No
If "No" was checked above, provide name of the Contractor completing work:			
<b>Scope/Project Cost/Additional Information:</b>			
<p>Contractor Completing Work associated with Guided Bore:</p>			
e. Project Name:			
Location:			
Superintendent:			
Pipe Size/Material:		Length:	
Start Date:		End Date:	
Client:			
Client Contact Name:		Client Phone:	
Completed with own equipment and labor forces:			<input type="checkbox"/> Yes <input type="checkbox"/> No
If "No" was checked above, provide name of the Contractor completing work:			
<b>Scope/Project Cost/Additional Information:</b>			

Contractor Completing Work associated with Guided Bore:

<p>(3) Provide the names of the <b>proposed bypass pumping superintendent and crew (technicians, etc.)</b> who are qualified and available to perform the work stated in this proposal:</p>	Proposed Superintendent:	Certified and Trained: <input type="checkbox"/> Yes <input type="checkbox"/> No
	Crew:	<input type="checkbox"/> Yes <input type="checkbox"/> No

(4) All guided bore operations shall be performed under the constant direction of a superintendent employed by the guided bore subcontractor who shall remain on site and be in responsible charge throughout the boring operation. Provide not less than **three (3)** completed guided bore operations completed in the last **three (3) years**, where the projects were of similar size and scope to the Work described in these Contract Documents, and where the proposed guided bore superintendent – as listed above – acted in full capacity as superintendent for the boring subcontractor. The reference projects shall be sufficient to provide evidence of the Superintendent’s competency and qualifications. At least **one (1)** of the reference projects must have been completed in the last **twelve (12) months**.

a. Project:			
Start Date:		End Date:	
Pipe Size/Material:		Length:	
Client:			
Client Contact Name:		Client Phone:	
b. Project:			
Start Date:		End Date:	
Pipe Size/Material:		Length:	
Client:			
Client Contact Name:		Client Phone:	
c. Project:			
Start Date:		End Date:	
Pipe Size/Material:		Length:	
Client:			
Client Contact Name:		Client Phone:	
d. Project:			
Start Date:		End Date:	
Pipe Size/Material:		Length:	
Client:			
Client Contact Name:		Client Phone:	
e. Project:			
Start Date:		End Date:	
Pipe Size/Material:		Length:	

Client:			
Client Contact Name:		Client Phone:	
Start Date:		End Date:	
f. Project:			
Start Date:		End Date:	
Pipe Size/Material:		Length:	
Client:			
Client Contact Name:		Client Phone:	

*The Fayetteville Public Works Commission may conduct such investigations/verifications as deemed necessary to establish the responsibility, qualification and financial ability of the Bidder. Should the Fayetteville Public Works Commission adjudge that the apparent low bidder is not the lowest responsive, responsible bidder by virtue of the above information furnished, said apparent low bidder will be so notified and his bid security shall be returned to him without prejudice. Failure or refusal to furnish any items of information requested by the Fayetteville Public Works Commission shall be considered as non-responsive and therefore basis for rejection of the bid.*

Submitted By (print):	Date:
Title:	
Company:	
Signature:	



## PERFORMANCE AND DELIVERY

### PROJECT: ANN ST. TO GREEN ST. SANITARY SEWER RELOCATION

Deadline for Bid Receipt:	<b><u>2:00 p.m., Thursday, June 30, 2022</u></b> Outside by entrance doors PWC Administration Building, 1 <sup>st</sup> Floor 955 Old Wilmington Road Fayetteville, NC 28301
Pre-Bid Conference:	<b><u>2:00 p.m., Tuesday, June 14, 2022</u></b> Skills Lab PWC Administration Building, 1 <sup>st</sup> Floor 955 Old Wilmington Road Fayetteville, NC 28301
Deadline for Questions from Bidders <sup>1</sup>	<b><u>5:00 p.m., Friday, June 17, 2022</u></b> All Questions must be submitted in writing.
Deadline for Addenda issued by Project Engineer <sup>2</sup>	<b><u>5:00 p.m., Tuesday, June 23, 2022</u></b>
Date of Availability:	Date when the contract is executed by both the successful bidder and the City
Contract Time:	120 Calendar Days
Liquidated Damages:	\$500 per calendar day
Bid Acceptance Period:	Ninety (90) Calendar Days unless otherwise noted

<sup>1</sup> Questions regarding this bid shall be submitted in writing to the attention of Nikole Bohannon, Procurement Advisor, by e-mail ([nikole.bohannon@faypwc.com](mailto:nikole.bohannon@faypwc.com)) no later than the date and time stated above. Bidders are expressly prohibited from contacting any PWC official or employee associated with this Request for Proposals, except as noted above. Violation of this prohibition is grounds for the immediate disqualification of the bidder.

<sup>2</sup> Any addenda to these Contract Documents will be issued by the Project Engineer no later than the date and time stated above.

**NOTICE OF AWARD**

TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

PROJECT DESCRIPTION:   **Ann St. to Green St.  
Sanitary Sewer Relocation**

The OWNER has considered the BID submitted by you for the above-described work in response to its Advertisement for Bids \_\_\_\_\_ and Information for Bidders.

You are hereby notified that your Bid has been accepted for items in the amount of \$ \_\_\_\_\_.

You are required by the Information for Bidders to execute the Contract and furnish the required Contractor's Performance Bond, Payment Bond, and Certificates of Insurance within ten (10) calendar days from the date of this NOTICE to you.

If you fail to execute said Contract and to furnish said Bonds within ten (10) days from the date of this NOTICE, said OWNER will be entitled to consider all your rights arising out of the OWNER'S acceptance of your Bid as abandoned and as a forfeiture of your Bid Bond. The OWNER will be entitled to such other rights as may be granted by law.

You are required to return an acknowledged copy of this NOTICE OF AWARD to the OWNER.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

OWNER:           FAYETTEVILLE PUBLIC WORKS COMMISSION

By:               Trent Ensley

Title:            Procurement Manager

**ACCEPTANCE OF AWARD**

**ANN ST. TO GREEN ST.  
SANITARY SEWER RELOCATION**

Receipt of the above NOTICE OF AWARD is hereby acknowledged this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

CONTRACTOR:

\_\_\_\_\_

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

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

## CONSTRUCTION AGREEMENT

THIS CONSTRUCTION AGREEMENT (“Agreement”) is made by and between the City of Fayetteville (the “City”), by and through the Fayetteville Public Works Commission (“PWC”), a North Carolina public authority, and [REDACTED] (“Contractor”), a [REDACTED] (*specify type of legal entity, state of formation, and if not formed in NC, confirm NC registration to do business*) (each of each of PWC and Contractor is a “Party” and both are collectively the “Parties”) as of the date of execution last written below (the “Effective Date”). The Parties agree as follows:

1. The Construction Project. Contractor shall furnish and bear solely the entire cost of all labor and materials necessary for the construction and/or renovation of the Project (defined hereinbelow) as specified in the Contract Documents (defined hereinbelow) and complete all Work on the Project in a workmanlike manner in strict accordance with the Contract Documents, schedule delivery of the new materials, furnish and bear solely the entire cost of all supervision, contract administration, equipment, tools, and other means necessary to complete the Project, perform every obligation imposed by the Contract Documents, and be solely responsible for the clean-up and disposal of all materials and debris relating to or arising from the construction and renovation, subject to any exceptions that are specifically set forth in the Contract Documents. Except as otherwise specifically provided in the Contract Documents, Contractor is solely responsible for all construction means, methods, techniques, sequences, procedures, safety precautions or programs, supervising, coordinating, and performing all the Work necessary to complete the Project; provided, however, PWC shall have the right, without incurring any liability to the Contractor, to suspend Contractor’s performance when a PWC employee, in his or her opinion, observes a safety violation involving a threat to life or imminent danger of bodily injury, and the suspension shall remain in effect until Contractor remedies the safety violation.

2. Terms. Capitalized terms used in this Agreement have the meaning specified below:

“Business Day” means each calendar day that is not a Saturday, Sunday, holiday observed by the federal government for its employees, or holiday observed by the State of North Carolina for its employees.

“Completion of the Project” means: (i) the Project is completed in accordance with this Agreement, except for punch list items; (ii) PWC has received any required temporary or final certificate of occupancy from the governmental agency with jurisdiction over the Project; and (iii) the registered architects or engineers (the “Designer(s)”) who designed portions or components of the Project have issued certificates of Completion of the Project as to those portions or components.

“Contract Documents” means the following documents that were either made available to Contractor by PWC during the bid solicitation process (including Drawings) or executed by the Parties or both, which are all incorporated by reference herein:

- a. This Agreement
- b. Invitation to Bid
- c. Instructions to Bidders

- d. Bid Proposal Forms (including Checklist, Bid Proposal Form, Bid Proposal Supplemental Forms, and Contractor Qualification Form)
- e. Performance and Delivery
- f. Notice of Award
- g. Acceptance of Award
- h. Performance Bond
- i. Payment Bond
- j. Certificates of Insurance
- k. Power of Attorney
- l. Definitions and Terminology
- m. General Conditions
- n. Special Provisions (including Special Conditions, Measurement and Payment, Submittals, Quality Control, and Project Closeout)
- o. Appendices (including A – FEMA Funded Project Requirements, B – Sanitary Sewer Permit, C – USACE Nationwide Permit 3, and D – NCDEQ Div. of Water Resources GC No. 4132)
- p. Technical Specifications

The following documents may be delivered or issued on or after the Effective Date of the Agreement and may not be attached to this Agreement, but are considered Contract Documents when executed by the Parties:

- q. Notice to Proceed and Acceptance of Notice
- r. Work Change Directive(s)
- s. Change Order(s)
- t. Field Order(s)

There are no Contract Documents other than those identified in this Agreement. The Contract Documents may only be amended, modified, or supplemented as provided in this Agreement in a writing signed by the Parties.

“Fault” means a breach of contract by Contractor, negligent, reckless, or intentional act(s) or omission(s) constituting a tort under applicable statutes or common law by one or more Responsible Persons, or violation(s) of applicable statute(s) or regulation(s) by a Responsible Person.

“Project” means installing approximately ninety (90) linear feet of twenty four inch (24”) steel sanitary sewer along an existing easement between Ann Street and Green Street, which will include, but not be limited to, installing two (2) new manholes and two (2) new aerial pipe supports; removing and disposing of approximately ninety 90 linear feet of existing eighteen inch (18”) cast iron sanitary sewer main, two (2) concrete manholes, two (2) existing concrete aerial pipe supports, and one (1) steel aerial pipe support; and all other necessary items to complete the project as more specifically set forth in the Contract Documents.

“Responsible Person” means the Contractor and each of its employees, agents, representatives, subcontractors, or other persons and entities for which Contractor may be liable or responsible as a result of any statutory, tort, or contractual duty.

The terms used in this Agreement shall have the meaning as stated herein and in the Definitions and Terminology. In the event of a conflict between the terms of this Agreement and any other component(s) of the Contract Documents, the terms of this Agreement shall govern.

3. Contract Price. PWC shall pay Contractor for completion of the Project in accordance with the Contract Documents the amount identified in the accepted Bid Form of Contractor, being in the total amount of \$ [REDACTED] (the "Price"). Contractor understands and acknowledges that the Price is derived from a specific appropriation of funds provided for the Project. Contractor agrees and acknowledges the Price is equal to the aggregate cost of all Work to be done on the Project, including all labor, materials, equipment, apparatus, and supplies, set in accordance with the amount specified on the Bid Form submitted by Contractor and accepted by PWC.

4. Contract Times. The Parties shall perform their obligations under this Agreement in compliance with all scheduling deadlines set forth in the Contract Documents. The Contractor shall commence the Work to be performed under this Agreement on a date to be specified in accordance with the Notice to Proceed issued by PWC. Contractor shall achieve Completion of the Project no later than [REDACTED], plus any extensions thereof allowed in accordance with the General Conditions (the "Completion Date").

5. Payment. PWC shall pay Contractor in installment payments plus a final payment, as set forth in the Contract Documents. For each applicable installment payment, Contractor shall submit an application for payment in accordance with the Contract Documents. An application for payment will be processed by PWC as provided in the Contract Documents. Such installment payments shall reflect the actual cost of the Work, not to exceed in total the Price, and the allocable portion of the total Price for said installment. PWC shall make payment to the Contractor, less any applicable retainage set forth in the Contract Documents; provided, however, that PWC may withhold all or a portion of a payment on account of (1) incomplete work, (2) defective or nonconforming work, (3) claims filed or a reasonable basis to believe that such claims will be filed imminently, (4) failure of the Contractor to make payments properly for labor, services, materials, equipment or subcontracts, (5) damages caused to PWC or another party by one or more Responsible Persons, or (6) failure to comply with the terms and conditions of this Agreement. In the final payment, PWC shall pay the balance of the Price, including all retained amounts, less any Liquidated Damages and other applicable damage and claim amounts, to Contractor within forty-five (45) days of Completion of the Project; provided, however, that PWC may withhold a reasonable sum from the final payment to ensure correction of any final items or condition on the Project.

6. Retainage. Subject to any restrictions applicable to any federal grant funds that may be utilized for the Project, PWC may, in its discretion, retain up to five percent (5%) of any periodic payment due Contractor; provided, however, when the Project is fifty percent (50%) complete, PWC, with written consent of the surety, shall not retain any further retainage from periodic payments due Contractor if Contractor continues to perform satisfactorily and any nonconforming work identified in writing prior to that time by PWC or the Designer has been corrected by Contractor and accepted by PWC or the Designer, and provided further that full payment, less authorized deductions, shall also be made for those line item trades that have reached one hundred percent (100%) completion of their contract obligations by or before the Project is fifty percent (50%) complete if Contractor has performed satisfactorily in accordance with G.S. 143-134.1(b2), contingent upon PWC's receipt of an approval or certification from the Designer that the work performed by the subcontractor is acceptable and in accordance with the Contract Documents. If PWC determines Contractor's performance is unsatisfactory, PWC may, in its discretion, reinstate retainage for each subsequent periodic application for payment as authorized in this Section up to the maximum amount of five percent (5%). The Project shall be deemed

fifty percent (50%) complete when Contractor's gross project invoices, excluding the value of materials stored off-site, equal or exceed fifty percent (50%) of the Price, except the value of materials stored on-site shall not exceed twenty percent (20%) of Contractor's gross project invoices for the purpose of determining whether the Project is fifty percent (50%) complete. Within 60 days after the submission of a pay request and one of the following occurs, as specified in the Contract Documents, PWC, with written consent of the surety, shall release to Contractor all retainage on payments held by PWC: (i) PWC receives a certificate of substantial completion from the Designer in charge of the Project; or (ii) PWC receives beneficial occupancy or use of the Project; provided, however, PWC may in its discretion retain sufficient funds to secure Completion of the Project or corrections on any work. If PWC retains funds, the amount retained shall not exceed two and one-half times the estimated value of the work to be completed or corrected. Any reduction in the amount of the retainage on payments shall be with the consent of Contractor's surety. The existence of any third-party claims against Contractor or any additive change orders to the Construction Documents shall not be a basis for delaying the release of any retainage on payments. Notwithstanding anything in this Section to the contrary, following fifty percent (50%) completion of the Project, PWC shall be authorized to withhold additional retainage from a subsequent periodic payment, not to exceed five percent (5%), in order to allow PWC to retain two and one-half percent (2.5%) total retainage through the Completion of the Project. In the event that PWC elects to withhold additional retainage on any periodic payment subsequent to release of retainage on a line-item of work pursuant to G.S. 143-134.1(b2), Contractor may also withhold from the subcontractors remaining on the project sufficient retainage to offset the additional retainage held by PWC, notwithstanding the actual percentage of retainage withheld by PWC of the Project as a whole. Neither PWC's nor Contractor's release of retainage on payments as part of a payment in full on a line-item of work pursuant to G.S. 143-134.1(b2) shall affect any applicable warranties on work done by Contractor or subcontractor, and the warranties shall not begin to run any earlier than either PWC's receipt of a certificate of substantial completion from the Designer in charge of the Project or PWC receives beneficial occupancy.

7. Liquidated Damages. Time is of the essence with respect to performance of each of the Parties' obligations under this Agreement. Contractor recognizes and acknowledges that PWC will suffer financial and other losses if the Project is not completed by the Completion Date. The Parties recognize and agree that the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by PWC if the Project is not completed by the Completion Date. Accordingly, instead of requiring any such proof, Contractor and PWC agree that in the event Contractor fails to achieve Completion of the Project by the Completion Date, Contractor shall pay to PWC as liquidated damages to compensate PWC for damages related to the delayed Completion of the Project one thousand dollars (\$1000.00) per day ("Liquidated Damages") for each calendar day Contractor fails to achieve completion of the work by the Completion Date.

8. Contractor's Representations and Warranties. In order to induce PWC to enter into this Agreement, Contractor makes the following representations and warranties to PWC:

- a. Contractor is duly licensed in the State of North Carolina to complete all work necessary for the Project, is duly organized, validly existing and in good standing and has all requisite powers, rights, and authority to execute, enter into, and perform this Agreement in accordance with the terms and conditions of this Agreement, and this Agreement constitutes a legal, valid, and binding obligation of Contractor enforceable against it in accordance with its terms.

- b. Contractor has read the Contract Documents, and acknowledges and understands all data, materials, specifications, and requirements identified in the Contract Documents.
- c. Contractor has visited the site for the Project, conducted a thorough, visual examination of the site and adjacent areas, and become familiar with and is satisfied as to the general, local, and site conditions that may affect cost, progress, and performance in completing the Project.
- d. Contractor is familiar with and is satisfied as to all laws and regulations that may affect cost, progress, and performance to complete the Project.
- e. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the site and all drawings of physical conditions relating to existing surface or subsurface structures at the site that have been identified in the Contract Documents and any accompanying reports and drawings, and (2) reports and drawings relating to hazardous environmental conditions, if any, at or adjacent to the site that have been identified in the Contract Documents and any accompanying reports and drawings.
- f. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, if any, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor's safety precautions and programs.
- g. Based on the information and observations referred to in subsection e. of this Section, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the work at the Price commencing on the commencement date and in accordance with the other terms and conditions of the Contract.
- h. Contractor is aware of the general nature of work to be performed by PWC and others at the Site that relates to the work as indicated in the Contract Documents.
- i. Contractor has given PWC's Designer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by the Designer is acceptable to Contractor.
- j. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the work.
- k. Contractor's entry into this Agreement constitutes an incontrovertible representation by Contractor that, without exception, all prices in the Agreement are premised upon performing and furnishing the work required by the Contract Documents.



1. Contractor has no business or personal relationship with any PWC Commissioner, officer, director, manager, or supervisor and Contractor covenants to disclose immediately to PWC any such relationship that develops during the performance of work on the Project.

9. Contractor's Payment Obligations. Contractor shall pay all of its obligations arising out of or in connection with the Project in a timely manner to all persons supplying materials in the prosecution of the work and to all laborers and others employed thereon.

10. Performance and Payment Bonds. Contractor shall obtain and deliver to PWC a performance bond in the amount of one hundred percent (100%) of the Price, conditioned upon the faithful performance of the Project and all work in accordance with the Contract Documents, which bond shall be solely for the protection of PWC. Contractor shall obtain and deliver to PWC a payment bond in the amount of one hundred percent (100%) of the Price, conditioned upon the prompt payment for all labor or materials for which the Contractor or one or more of its subcontractors is liable, which payment bond shall be solely for the protection of the persons furnishing materials or performing labor for which the Contractor is liable. The performance bond and the payment bond shall be executed by one or more surety companies legally authorized to do business in the State of North Carolina, shall become effective upon the awarding of the construction contract by PWC to Contractor, and shall at all times comply with the requirements set forth in Article 3 of North Carolina General Statutes Chapter 44A. In the event PWC deems the surety or sureties upon any bond necessary for this Agreement and the completion of the Project, or if for any reason, such bond ceases to be adequate to cover the performance and/or payment of the work, Contractor shall, at its expense, within five (5) days after the receipt of notice from PWC, furnish an additional bond or bonds in such form and amount, and with such surety or sureties as shall be satisfactory to PWC. In such event no further payment to Contractor shall be deemed to be due under this Agreement until new or additional security for the performance and payment of the Project shall be furnished in manner and form satisfactory to PWC. Contractor understands and acknowledges that PWC, as a public authority, is not subject to the provisions of Articles 1 and 2 of Chapter 44A of the General Statutes, in accordance with G.S. 44A-34 and applicable law.

11. Contractor's Damage Repair Obligations. Contractor shall be responsible for all damages to the property of the City of Fayetteville and of PWC that may result from the normal procedure of a Responsible Person's actions in the prosecution of the work or that may be caused by or result from the negligence of a Responsible Person during the progress of or connected with the prosecution of the work, whether within the limits of the work or elsewhere. Contractor shall promptly restore all such property so damaged to a condition as good as it was immediately prior to Contractor initiating the work on the Project.

12. Defective Work. The Project shall be subject to observation and approval by PWC, Designer, and representatives of governmental agencies with jurisdiction over the Project. PWC and Designer shall be entitled to enter at all reasonable times the premises subject to construction or renovation to inspect the work performed by or on behalf of Contractor, provided that such entry and inspection does not materially interfere with the progress of construction. Contractor shall correct promptly, at no cost to PWC, all work reasonably rejected by PWC or by its representatives. Should Contractor fail to correct rejected work, PWC may, acting in its sole discretion, correct such work and the Contractor shall pay PWC's actual costs of correction and any other applicable amounts identified in the Contract Documents.

13. As-Built Drawings. Contractor shall maintain during the progress of the Project as-built drawings indicating the current status of the Project as actually performed. Upon Completion of the Project, Contractor shall prepare a final version of such as-built drawings and submit them to PWC for approval.

14. Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties, their legal representatives, successors, and assigns. Contractor may not assign, transfer, convey, or encumber, whether voluntarily or by operation of law, this Agreement or any obligations, rights under, or interests in this Agreement to a third party without the prior written consent of PWC; and, specifically, but without limitation, money that may become due and money that is 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.

15. Indemnity. Contractor shall indemnify, defend, and hold harmless PWC and its Commissioners, officers, employees, agents, and representatives and the City of Fayetteville and its elected officials, managers, employees, agents, and representatives and Designer (collectively "Indemnitees") from and against all claims, actions, liabilities, damages, losses, costs, and expenses (including, without limitation, injury to or death of any persons and damage to property, economic and consequential damages and attorneys' fees) asserted by one or more third parties against one or more of the Indemnitees if the Fault of one or more Responsible Persons is a proximate cause of the loss, damage, or expense indemnified. Contractor's obligation to indemnify, defend, and hold harmless the Indemnitees shall survive the termination of this Agreement.

16. Insurance. Contractor shall maintain during the completion of the Project and for at least three (3) years thereafter the insurance coverage set forth in the Contract Documents, which insurance shall be placed with insurance companies authorized to do business in the State of North Carolina and rated A minus VII or better by the current edition of Best's Key Rating Guide or otherwise approved in writing by PWC. Prior to initiating any work on the Project, Contractor shall deliver certificates of insurance confirming each such coverage required by the Contract Documents, and Contractor shall direct its insurers to provide annually to PWC certificates confirming each such coverage during the coverage period. PWC shall be named as an additional insured in the comprehensive automobile and commercial liability insurance policies. Commercial general liability coverage shall be written on an "occurrence" basis. Contractor shall not reduce or allow the required insurance coverages to lapse without PWC's prior written approval. All policies for insurance must be endorsed to contain a provision giving PWC a thirty (30) calendar day prior written notice by certified mail of any cancellation of that policy or material reduction in coverage. Should a notice of cancellation be issued for non-payment of premiums or any part thereof, or should Contractor fail to provide and maintain certificates as set forth herein, PWC shall have the right, but shall not have the obligation, to pay such premium to the insurance company or to obtain such coverage and to deduct such payment from any sums that may be due or become due to Contractor, or to seek reimbursement for said payments from Contractor. Any such sums paid by PWC shall be due and payable immediately by Contractor upon notice from PWC. The insurance provisions of this Agreement shall not be construed as a limitation on Contractor's responsibilities and liabilities pursuant to the terms and conditions of this Agreement. Contractor's obligation to maintain insurance for three (3) years after Completion of the Project shall survive the termination of this Agreement.

17. Warranty. The Contractor hereby grants to PWC a warranty on all materials and workmanship involved in the Project for a period of one (1) year from the Completion Date and a period of two (2) years from the Completion Date for any latent structural defects. PWC shall give written notice to Contractor of any claim under this Section within the time specified hereinabove. This warranty shall be in addition to, and not in derogation of, all other rights and privileges which PWC may have under law, equity, or instrument, and shall survive the Completion Date and the final settlement and shall be binding on Contractor notwithstanding any provision in any other writing executed by PWC heretofore or contemporaneous with the execution of the Agreement or prior to the Completion Date.

18. Waiver. No failure on the part of any party to exercise, and no delay in exercising, any right, power, or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other or further cumulative and not exclusive of any remedies provided by law. This Agreement shall be binding upon and inure to the benefit of the parties, their legal representatives, successors, and assigns. This Agreement may not be assigned, transferred, conveyed, or encumbered, whether voluntarily or by operation of law, by either party without the prior written consent of the other party, which consent shall not be unreasonably withheld.

19. Law. THIS AGREEMENT SHALL BE GOVERNED BY AND INTERPRETED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NORTH CAROLINA WITHOUT GIVING EFFECT TO THE CHOICE OF LAW PROVISIONS THEREOF. The Contractor shall at all times comply with all applicable Federal, state, and local laws and building codes in the performance of its obligations under the Agreement.

20. Dispute Resolution. In the event of any dispute, controversy, or claim of any kind or nature arising under or in connection with this Agreement (a "Dispute") and involving any two or more of the following parties, PWC, Designer, Contractor or any subcontractor of Contractor, the party initiating the Dispute shall serve written notice of a Dispute on the party(ies) to the dispute, and those parties shall endeavor to settle the dispute first through direct, informal discussions between the parties' selected representatives. Any such representative(s) shall have binding authority to settle the Dispute. In the event the parties do not settle the Dispute within ten (10) days from the date of written notice of the Dispute, any party to the Dispute may, by written notice to the other party(ies), engage a mediator certified under the laws of the State of North Carolina to mediate the Dispute within thirty (30) days of such notice. The parties to the Dispute shall attend mediation in good faith. In the event mediation is unsuccessful, any party to the dispute may initiate arbitration proceedings. Any controversy or claim arising out of or relating to the Contract Documents, or the breach thereof, shall be settled by binding arbitration administered by the American Arbitration Association under its Construction Industry Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. All of the foregoing dispute resolution procedures shall be held in Cumberland County, North Carolina. The costs of the mediator and arbitrator in a dispute resolution process shall be divided equally among the parties to the process; provided, however, PWC shall bear at least one-third of the cost if PWC is a party to the dispute resolution and the remainder of the cost shall be divided equally among the other parties participating in the dispute resolution. PWC shall, in its contractual arrangements with Designer, and Contractor shall, in its contracts with subcontractors and they in their contracts with lower-tier subcontractors authorize and direct such parties to participate in the dispute resolution procedures set forth in this Section. Unless otherwise directed in writing by PWC, Contractor shall continue the Project and maintain compliance with the scheduling deadlines set forth in the Contract Documents during any dispute resolution proceedings. If Contractor continues to perform, PWC shall make payments due for the

continued performance in accordance with this Agreement. The provisions of this Section shall not extend any applicable statutes of limitation or repose.

21. Execution; Modification; Entire Agreement; Severability. This Agreement may be executed in counterparts with the same effect as if the signatures to each counterpart were upon a single instrument, and all such counterparts together shall be deemed an original of this Agreement. For purposes of this Agreement, a facsimile copy or scanned copy or photocopy of a party's signature shall be sufficient to bind such party. This Agreement shall be subject to execution by electronic means in accordance with Article 40 of Chapter 66 of the North Carolina General Statutes. No oral communication, promise, understanding, or agreement before, contemporaneous with, or after the execution of this Agreement shall affect or modify any of the terms and conditions and obligations of the Contract Documents. The Contract Documents shall be modified only by a subsequent writing signed by both Parties. The Contract Documents shall be conclusively considered to contain and express all the terms and conditions agreed upon by the Parties, notwithstanding any prior or contemporaneous written communication, promise, understanding or agreement. Should any provision of this Agreement or any of the Contract Documents at any time be in conflict with any law, statute, rule, regulation, order, or ruling and thus be unenforceable, or be unenforceable for any other reason, then the remaining provisions of this Agreement shall remain in full force and effect and the court or arbitrator shall give the offending provision the fullest meaning and effect permitted by law. The titles of the Sections throughout this Agreement are for convenience only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction, or meaning of the provisions of this instrument.

22. Notices. Any notice which either Party is required or desires to give the other hereunder shall be deemed sufficiently given if, in writing, it is delivered personally, or sent by certified U.S. mail, return-receipt requested, postage prepaid, to the addresses listed herein below, or such other address as either Party shall give to the other Party by written notice in accordance herewith. Any notice given herein by personal delivery shall be deemed delivered when received. Any properly addressed notice given herein by certified mail shall be deemed delivered on third Business Day after the same is deposited in an official United States Post Office, postage prepaid, or if sooner upon the date when the return receipt therefore is signed, or refusal to accept the mailing by the addressee is noted thereon by the postal authorities.

To PWC:  
Fayetteville Public Works Commission  
Attn: Elaina L. Ball, CEO/General Manager  
PO Box 1089  
Fayetteville, NC 28302

To Contractor:  
[INSERT MAILING ADDRESS]

23. Termination. PWC may terminate this Agreement immediately if during the progress of the work or during the warranty period, the Contractor:

- a. Persistently fails to prosecute the work properly and in accordance with this contract, including but not limited to include failure to provide sufficient crews, equipment, or resources, or failure to adhere to the schedule;

- b. Demonstrates disregard for the policies, procedures, or requirements of PWC;
- c. Demonstrates complete disregard of the authority of PWC or its designated representatives; or
- d. Violates in any substantial way the provisions and requirements of this Agreement.

Such termination shall be effective upon written notice to Contractor and its surety. PWC may terminate the contract for its convenience by providing Contractor at least seven (7) calendar days prior written notice, in which event Contractor shall be paid for all work completed, plus other expenses as mutually agreed upon between PWC and Contractor.

24. Compliance. Contractor hereby acknowledges that “E-Verify” is the federal E-Verify program operated by the US Department of Homeland Security and other federal agencies which is used to verify the work authorization of newly hired employees pursuant to federal law and in accordance with Article 2, Chapter 64 of the North Carolina General Statutes. Contractor further acknowledges that all employers, as defined by Article 2, Chapter 64 of the North Carolina General Statutes, must use E-Verify and after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify in accordance with N.C.G.S. §64-26(a). Contractor hereby pledges, attests, and warrants through execution of this Agreement that Contractor complies with the requirements of Article 2, Chapter 64 of the North Carolina General Statutes and further pledges, attests, and warrants that all subcontractors currently employed by or subsequently hired by Contractor shall comply with all E-Verify requirements. Failure to comply with the above requirements shall be considered a breach of this Agreement. Contractor hereby further acknowledges that the execution and delivery of this Agreement constitutes Contractor’s certification to PWC and to the North Carolina State Treasurer that, as of the date of the Effective Date of this Agreement, Contractor is not listed on (a) the Final Divestment List created and maintained by the North Carolina Department of State Treasurer pursuant to the Iran Divestment Act of 2015, Chapter 147, Article 6E of the General Statutes of North Carolina (the “Iran Divestment Act”); or (b) the list of companies that the North Carolina State Treasurer determines to be engaged in a boycott of Israel in accordance with Article 6G of Chapter 147 of the General Statutes of North Carolina. Contractor represents and warrants to Commission that Contractor, and all persons and entities owning (directly or indirectly) an ownership interest in it: (i) are not, and will not become, a person or entity with whom a party is restricted from doing business with under regulations of the Office of Foreign Asset Control (“OFAC”) of the Department of the Treasury (including, but not limited to, those named on OFAC’s Specially Designated and Blocked Persons list) or under any statute, executive order (including, but not limited to, the September 24, 2001, Executive Order 13224 Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action; and (ii) are not knowingly engaged in, and will not knowingly engage in, any dealings or transactions or be otherwise associated with such persons or entities described in clause (i) above. Contractor also shall at all times during the term of this Agreement comply with Executive Order 11246, including but not limited to the Equal Opportunity Clause requirements set forth in 41 C.F.R. § 60-1.4. Contractor shall abide by the requirements of 41 CFR 60–300.5(a) and 60–741.5(a) prohibiting discrimination against qualified individuals on the basis of protected veteran status or disability and requiring affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized representatives.

The City of Fayetteville, by and through the  
Fayetteville Public Works Commission

**[CONTRACTOR FULL LEGAL NAME]**

By: \_\_\_\_\_  
Elaina L. Ball, CEO/General Manager

By: \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_  
(Printed Name) (Title)

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

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

**This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act (N.C. Gen. Stat. § 159-1 et seq.).**

By: \_\_\_\_\_  
Rhonda Haskins, Chief Financial Officer

Approved as to form:

\_\_\_\_\_  
James P. West, Chief Legal Officer

**PERFORMANCE BOND**

Date of Contract: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

Name/Address of Principal: \_\_\_\_\_

\_\_\_\_\_

Name/Address of Surety: \_\_\_\_\_

\_\_\_\_\_

Name of Contracting Body: Fayetteville Public Works Commission

Amount of Bond (Printed): \_\_\_\_\_

Project: **Ann St. to Green St.  
Sanitary Sewer Relocation**

KNOW ALL MEN BY THESE PRESENTS, That We, the Principal and Surety above named, are held and firmly bound unto the above named Contracting Body, hereinafter called the Contracting Body, in the penal sum of the amount stated above the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these present.

THE CONDITION OF THIS OBLIGATION IS SUCH that whereas the Principal entered into a certain Contract with the Contracting Body, identified as shown above and hereto attached.

NOW, THEREFORE, if the Principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of said Contract during the original term of said Contract and any extensions there of that may be granted by the Contracting Body, with or without notice to the Surety, and during the life of any Guaranty required under the Contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of said Contract that may hereafter be made, notice of which modifications to the Surety being hereby waived, then, this obligation to be void; otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their several seals on the date indicated above, the name and corporate seal of each corporate party being hereto affixed, and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Executed in \_\_\_\_\_ counterparts.

Witness:

\_\_\_\_\_  
(Proprietorship or Partnership)

ATTEST: (Corporation)

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

Title: \_\_\_\_\_  
(Corporate Secretary or Assistant Secretary, Only)

Witness:

\_\_\_\_\_

Countersigned:

\_\_\_\_\_

\_\_\_\_\_  
N.C. Licensed Resident Agent

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
(Name and Address – Surety Agency)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
(Surety Company Name and NC Regional  
Or Branch Office Address)

CONTRACTOR:

\_\_\_\_\_  
(Contractor: Trade or Corporate Name)

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

Title: \_\_\_\_\_  
(Owner, Partner, or Corporate President or  
Vice President, Only)

**(CORPORATE SEAL)**

SURETY COMPANY:

\_\_\_\_\_

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

Title: \_\_\_\_\_  
(Attorney in Fact)

**(SURETY CORPORATE SEAL)**



**PAYMENT BOND**

Date of Contract: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

Name/Address of Principal: \_\_\_\_\_

\_\_\_\_\_

Name/Address of Surety: \_\_\_\_\_

\_\_\_\_\_

Name of Contracting Body: Fayetteville Public Works Commission

Amount of Bond (Printed): \_\_\_\_\_

Project: **Ann St. to Green St.  
Sanitary Sewer Relocation**

KNOW ALL MEN BY THESE PRESENTS, that we, the PRINCIPAL and SURETY above named, are held and firmly bound unto the above named Contracting Body, hereinafter called the Contracting Body, in the penal sum of the amount stated above, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that whereas the Principal entered into a certain Contract with the Contracting Body, identified as shown above and hereto attached.

NOW, THEREFORE, if the Principal shall promptly make payment to all persons supplying labor and material in the prosecution of the work provided for in said Contract, and any and all duly authorized modifications of said Contract that may hereafter be made, notice of which modifications to the Surety being hereby waived, then, this obligation to be void; otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their several seals on the date indicated above, the name and corporate seal of each corporate party being hereto affixed, and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Executed in \_\_\_\_\_ counterparts.

Witness:

\_\_\_\_\_  
(Proprietorship or Partnership)

ATTEST: (Corporation)

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

Title: \_\_\_\_\_  
(Corporate Secretary or Assistant Secretary, Only)

Witness:

\_\_\_\_\_

Countersigned:

\_\_\_\_\_

\_\_\_\_\_  
N.C. Licensed Resident Agent

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
(Name and Address – Surety Agency)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
(Surety Company Name and NC Regional  
Or Branch Office Address)

CONTRACTOR:

\_\_\_\_\_  
(Contractor: Trade or Corporate Name)

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

Title: \_\_\_\_\_  
(Owner, Partner, or Corporate President or  
Vice President, Only)

**(CORPORATE SEAL)**

SURETY COMPANY:

\_\_\_\_\_

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

Title: \_\_\_\_\_  
(Attorney in Fact)

**(SURETY CORPORATE SEAL)**

CERTIFICATES OF INSURANCE  
(ATTACH)

ANN ST. TO GREEN ST.  
SANITARY SEWER RELOCATION

CONTRACT FORMS  
**00500-18**

POWER OF ATTORNEY  
(ATTACH)

ANN ST. TO GREEN ST.  
SANITARY SEWER RELOCATION

CONTRACT FORMS  
**00500-19**

**NOTICE TO PROCEED**

TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATE: \_\_\_\_\_

PROJECT: **Ann St. to Green St.  
Sanitary Sewer Relocation**

You are hereby notified to commence work in accordance with the Contract dated on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ on or before the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and you are to complete all work within **180** consecutive calendar days thereafter. The date of Final Completion therefore is \_\_\_\_\_

Fayetteville Public Works Commission

By: \_\_\_\_\_  
Trent Ensley  
Procurement Manager

**ACCEPTANCE OF NOTICE**

Receipt of the above NOTICE TO PROCEED is hereby acknowledged this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

CONTRACTOR

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

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

**DIVISION 1**  
**GENERAL REQUIREMENTS**  
**00600 – DEFINITIONS AND TERMINOLOGY**

**1.01 Defined Terms**

A. The Following Terms will be used throughout these Contract Documents.

1. **Addenda** - Written or graphic instruments issued prior to the opening of Bids, which clarify, correct, or change the Bidding Requirements or the Contract Documents.
2. **Application for Payment** - The form acceptable to OWNER 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.
3. **Bid** - The offer or proposal of a bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
4. **Bidder** - The person, firm, or corporation who submits a Bid for Work directly to OWNER.
5. **Bidding Documents** - The Bidding Requirements and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).
6. **Bidding Requirements** - The Advertisement or Invitation to Bid, Instructions to Bidders, Bid security form, if any, and the Bid form with any supplements.
7. **Bonds** – Bid, Performance, and Payment bonds and other instruments of security.
8. **Change In Work Delays** - Delays due to changes in the Work that alters the original scope of the Contract and impacts the critical path (delays the controlling operation).
9. **Change Order** - A document recommended by PROJECT 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 Contract.
10. **Change Order Request (COR)** - A written document submitted by the CONTRACTOR requesting an adjustment to the Contract sum or an extension of the Contract time for approval by the OWNER.
11. **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.
12. **Claim (Property Damage)** - Any form of injury or damage caused to the property, either personal or real due to the negligence of the CONTRACTOR as detailed by claimant.
13. **Contract** – The Construction Agreement, and also referred to as “Agreement,” which is 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.

14. **Contract Documents** - Has the meaning ascribed to it in the Construction Agreement.
15. **Contract Price** - The monies payable by OWNER to CONTRACTOR for completion of the Work in accordance with the CONTRACT and all executed Change Orders.
16. **Contract Time** - The number of days or the dates stated in the Contract to complete the Work so that it is ready for final payment as evidenced by PROJECT ENGINEER written recommendation of final payment.
17. **CONTRACTOR** - The individual or entity with whom OWNER has entered into the Contract.
18. **Critical Path** - The sequence of activities in the schedule for which an adjustment in the duration of any activity results in a corresponding adjustment in the overall schedule duration.
19. **Drawings** - The drawings which show the scope, extent and character of the Work to be furnished and performed by CONTRACTOR and which have been prepared or approved by PROJECT ENGINEER and are referred to in the Contract Documents. Shop drawings are not Drawings as so defined.
20. **Day** - The word “day” shall constitute a calendar day of 24 hours measured from midnight to the next midnight.
21. **Defective** - The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract Documents or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents, or has been damaged prior to PROJECT ENGINEER recommendation of final payment (unless responsibility for the protection thereof has been assumed by OWNER at Final Completion in accordance with Section 00700 – General Conditions Article 12).
22. **DESIGN ENGINEER** - The Engineering firm identified on the Contract Drawings and their duly authorized agents, such agents acting within the scope of the particular duties entrusted to them in each case.
23. **DESIGN ENGINEER's Consultant** - An individual or entity having a Contract with DESIGN ENGINEER to furnish services as DESIGN ENGINEER’s independent professional associate or consultant with respect to the Project.
24. **Effective Date of the Contract** - The date indicated in the Contract on which it becomes effective.
25. **Excusable Delay** – Any delay beyond the control and without the fault or negligence of CONTRACTOR caused by events or circumstances such as, but not limited to, acts of God or of public enemy, acts of government other than OWNER, fires, floods, epidemics, quarantine restrictions, freight embargoes, hurricanes, tornadoes, unusually severe weather, or new sinkholes. Above average rainfall or snowfall may be considered an excusable delay in accordance with Section 00700 – General Conditions Article 11.
26. **Free Haul Limit** – area within 2 miles of the project limits, one way.
27. **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 in connection with the Work.

- 28. Hazardous Waste** - The term Hazardous Waste shall have the meaning provided in the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
- 29. Inexcusable Delay** - Any delay caused either by (A) events or circumstances within the control of CONTRACTOR, such as inadequate manpower, slow submittals, etc., which might have been avoided by the exercise of care, prudence, foresight, or diligence on the part of CONTRACTOR, or (B) labor disputes.
- 30. Laws and/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.
- 31. Liens** - Charges, security interests, or encumbrances upon Project funds.
- 32. Milestone** - A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Final Completion of all the Work.
- 33. Notice of Award** - The written notice by OWNER to the bidder stating that upon timely compliance by the successful bidder with the conditions precedent listed therein, OWNER will sign and deliver the Contract.
- 34. 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.
- 35. Non-Compliance Notice (NCN)** – A written notice given by the OWNER to CONTRACTOR indicting a violation in Contract Terms.
- 36. OWNER** – the Fayetteville Public Works Commission, which is the public entity with whom CONTRACTOR has entered into the Contract and for whom the Work is to be provided. OWNER is the City of Fayetteville, acting by and through its Fayetteville Public Works Commission, acting through its authorized representatives, primarily the Water Resources Engineering Department located at 955 Old Wilmington Road, Fayetteville, NC. Also referred to as “PWC.”
- 37. Partial Utilization** - Use by OWNER of a completed part of the Work for the purpose for which it is intended (or a related purpose) prior to completion of all the Work.
- 38. OWNER’s Consultant** - An individual or entity having a Contract with the OWNER to furnish services as the OWNER’s independent professional associate or consultant with respect to the Project.
- 39. Project** - The Work to be performed under the Contract Documents.
- 40. PROJECT COORDINATOR** - The authorized representative of PROJECT ENGINEER who may be assigned to the Site or any part thereof.
- 41. PROJECT ENGINEER** - Person assigned by OWNER, to coordinate, manage, monitor, and shall administer the construction program working with DESIGN ENGINEER on engineering questions concerning the Project. The PROJECT ENGINEER has the authority to approve any changes in scope of Work.
- 42. Recovery Plan** - Documentation submitted by the CONTRACTOR describing when a project is anticipated be completed to include revisions to schedule and additional workforce.



43. **Request for Information (RFI)** - A written document from the CONTRACTOR to the PROJECT ENGINEER requesting clarification or information concerning the Contract Documents and/or the Contract Drawings.
44. **Request for Proposal (RFP)** - A written document from the OWNER requesting the CONTRACTOR submit a proposal for work outside the scope of the Contract and its provisions.
45. **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.
46. **Shop Drawings/Submittals** - 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.
47. **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.
48. **Specifications** - That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.
49. **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.
50. **Special Provisions** - That part of the Contract Documents which amends or supplements the Contract Documents.
51. **Supplier** - A manufacturer, fabricator, supplier, distributor, material man, 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 any Subcontractor.
52. **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.
53. **Weather Delays** - Delays that affect the standard daily production of the contract 50% or more as established by the submitted baseline schedule, or the accepted amended schedule.
54. **Work** - The entire completed 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.
55. **Work Change Directive** - Work initiated in the field affecting Contract Price and/or Contract Times. The PROJECT COORDINATOR and/or PROJECT ENGINEER may give CONTRACTOR a directive to proceed with Work which shall be included in a subsequent Change Order.

## 1.02 Terminology

### A. Intent of Certain Terms or Adjectives

1. Whenever in the Contract Documents the terms “as allowed,” “as approved,” or terms of like effect or import are used, or the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination PROJECT ENGINEER as to the Work, it is intended that such action or determination will be solely to evaluate, in general, the completed Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed 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 shall not be effective to assign to PROJECT 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 the Contract Documents.

### B. 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.

- C. Unless stated otherwise in the Contract Documents, words or phrases which have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

— END OF SECTION —

**DIVISION 1  
GENERAL REQUIREMENTS  
00700 – GENERAL CONDITIONS**

**PART 1. PRELIMINARY MATTERS**

**1.01 Scope of Work**

- A. The Contractor shall furnish all implements, machinery, tools, equipment, materials, labor, and all other incidentals necessary to perform the Work as required under the terms of these Contract Documents.

**1.02 Performance and Payment Bonds**

- A. The Contractor, at the time of the execution of the Contract shall be required to furnish a Performance Bond and Payment Bond in an amount equal to at least one-hundred percent (100%) of the Price as security for the faithful performance of the Contract and as security for the payment of all persons performing labor and furnishing materials and equipment in connection with the Contract in accordance with N.C.G.S. Chapter 44A, Article 3.
- B. The corporate surety furnishing the bonds shall be authorized to do business in the state of North Carolina. All contract payment bonds and contract performance bonds shall be executed on “Performance Bond” and “Payment Bond” forms provided in the Contract Documents (or attached thereto) and be countersigned by a regularly authorized agent of the corporate surety who is resident in North Carolina and who is licensed by the North Carolina Department of Insurance.
- C. In all Performance and Payment Bonds, the provision that no suit, action, or proceeding by reason of any default whatsoever shall be brought on this Bond after a specified number of months shall be fixed at twelve (12) months. The face value of the Bond shall be one-hundred percent (100%) of the Price for a period of twelve (12) months following the day when the last of the labor was performed, or equipment was furnished, or final settlement was made with the Contractor, whichever occurs last.
- D. Whenever the Surety or Sureties on the bond so furnished shall be deemed by the Commission to be insufficient or unsatisfactory, the Contractor, within ten (10) days after receipt of notice to that effect shall furnish and deliver a new bond to the Commission in the same penalty and on the same conditions with Surety satisfactory to the Commission and this duty shall continue on the part of the Contractor, whenever and so often as the Commission shall require a new bond with a satisfactory Surety or Sureties. If the Contractor shall fail to furnish such bond, within ten (10) days after said notice is mailed to his address, the Commission through its proper agent or agents, may stop all further work under said Contract and complete the unfinished work at the expense of the Contractor.

**1.03 Insurance**

- A. The insurance required for this contract is as follows:
  - 1. Commercial General Liability ISO #CG 00 01 10 93: The Contractor shall take out and maintain during the life of this contract commercial general liability insurance with limits of \$1,000,000 per occurrence; \$2,000,000 aggregate other than products/completed operations; \$2,000,000 aggregate for products/completed.
  - 2. Automobile Liability ISO #CA 00 01 12 93: The Contractor shall take out and maintain during the life of this contract automobile liability insurance in an amount not less than \$1,000,000 combined single limit per accident for bodily injury and property damage from owned, non-owned, and hired automobiles.
  - 3. Workers' Compensation and Employers' Liability Insurance: The Contractor shall take out and maintain during the life of this contract workers' compensation insurance as required by the laws of the State of North Carolina and Employers' Liability with limits of \$100,000 each accident, \$500,000 policy limit and \$100,000 each employee for all employees employed on the project. In case any

employee(s) engaged in work under this contract is or are not protected under the Workers' Compensation Statute, the Contractor shall provide adequate coverage for the protection of employees not otherwise protected.

4. Property Insurance: If contracted to construct a building, the Contractor shall purchase and maintain "Builder's Risk" insurance. This insurance shall include the interests of the Fayetteville, Public Works Commission, the Contractor and Subcontractors and shall be written on a one hundred percent (100%) completed value basis (full value as of the date that all construction is finished and includes the Contractor's total cost plus profit), and to remain in force until the project is completed and accepted by the Fayetteville Public Works Commission.

Regardless of the nature of the work to be performed, coverage must also be provided for the theft or damage of building materials and supplies, which are not permanently attached and stored on site for any period of time. This coverage shall be an "Installation Floater," and where no building construction is involved, the amount of the coverage shall equal the value of the materials stored on site. It is the responsibility of the Contractor to inform the policy provider of any and all change orders, which increase the building's value. Any penalties or losses incurred due to the Contractor's failure to adequately insure the building during construction will be the Contractor's responsibility. Owner's and Contractor's Protective Liability I.S.O.#CG 00 09 10 93: The Contractor shall secure and maintain during the life of the contract, an Owner's and Contractor's Protective Liability insurance policy for the Fayetteville Public Works Commission, with minimum limits of \$1,000,000 per occurrence/\$2,000,000 aggregate.

B. Acceptability of Insurance

All insurance policies shall be written by insurers authorized to do business in North Carolina and meet the conditions set forth in the Agreement and these General Conditions. PWC shall have the discretion to determine the acceptability of Contractor's Insurance.

C. Additional Provision

As an integral part of this agreement, Contractor agrees to purchase and maintain during the life of this contract contractual liability insurance in the amount required in the general liability insurance requirements and to furnish proper evidence thereof.

D. Other Provisions

1. Any deductible or self-insured retention must be declared to and approved by the Fayetteville Public Works Commission.
2. The policies are to contain, or be endorsed to contain, the following provisions:
  - a. Commercial General Liability Coverage
    - i. The Fayetteville Public Works Commission, its officials, employees and volunteers are to be covered as additional insured as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, leased or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the Fayetteville Public Works Commission, its officials, employees or volunteers.
    - ii. The Contractor's insurance coverage shall be primary insurance as respects the Fayetteville Public Works Commission, its officials, employees and volunteers. Any insurance or self-insurance maintained by the Fayetteville Public Works Commission, its officials, employees or volunteers shall be excess of Contractor's insurance and shall not contribute with it.
    - iii. Coverage shall state that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

b. All Coverages

- i. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to:

Fayetteville Public Works Commission  
Attn: Trent Ensley, Procurement Manager  
P.O. Box 1089  
Fayetteville, NC 28302-1089

Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Fayetteville Public Works Commission, its officials, employees, and volunteers. In the event the Fayetteville Public Works Commission is damaged by the failure of the Contractor to maintain such insurance and to so notify the Fayetteville Public Works Commission, the Contractor shall bear all reasonable costs properly attributable thereto.

c. Subcontractors

Contractor shall include all subcontractors as insurers under its policies OR shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

d. No Waiver of Immunity

Any insurance coverage required by the terms of this contract shall not be deemed a contract of insurance purchased by the Fayetteville Public Works Commission nor a waiver of the Fayetteville Public Works Commission's immunity pursuant to NCGS 160A-485.

**1.04** Copies of Documents

- A. OWNER shall furnish to CONTRACTOR up to five (5) copies of the Contract Documents.
- B. Additional copies will be furnished by the DESIGN ENGINEER upon request, at the cost of reproduction.

**1.05** Commencement of Contract Times; Notice to Proceed

- A. The Contract Times will commence to run on the date specified in the issued Notice to Proceed.

**1.06** Starting the Work

- A. CONTRACTOR shall start to perform the work on the date when the Contract Times commence to run as indicated on the Notice to Proceed. Failure to start work within fifteen (15) calendar days of the commencement of Contract time will be documented as a substantial violation of the Contract Provisions and the following action will be taken:
  1. The OWNER will request in writing the CONTRACTOR mobilize personnel, equipment, and material within ten (10) calendar days.
  2. If the CONTRACTOR fails to mobilize as requested within the given timeframe, OWNER will consider the CONTRACTOR in violation of the agreement and terminate for cause in accordance with the provisions of the Contract.
  3. If the CONTRACTOR mobilizes, they shall be required to submit a Recovery Plan detailing the intent to regain any lost time to date and finish the Project by the Final Completion date as listed in the specified time frame detailed in the Contract. This Recovery Plan shall include a new progress schedule and any additional subcontractor submissions for approval.

**1.07** Before Starting Construction

- A. CONTRACTOR's Review of Contract Documents: 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 PROJECT ENGINEER any conflict, error, ambiguity, or discrepancy, which CONTRACTOR may discover. The PROJECT ENGINEER shall obtain a written interpretation or clarification from DESIGN ENGINEER and provide CONTRACTOR written clarification.

CONTRACTOR cannot proceed until a written response is received. However, CONTRACTOR shall not be liable to the OWNER, PROJECT ENGINEER, or DESIGN ENGINEER for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless CONTRACTOR knew or reasonably should have known thereof.

- B. Interpretations of Contract Documents: On all plans, drawings, etc., the figured dimensions shall govern in case of any discrepancy between the scales and figures. The Contractor shall take no advantage of any error or omission in the Plans or of any discrepancy between the Plans and Specifications, and the PROJECT ENGINEER shall make any such corrections and interpretations as may be deemed necessary for the fulfillment of the intent of the Specifications and of the Plans as construed by him, and any decision by PROJECT ENGINEER shall be final.
- C. Schedules: Five (5) business days prior to the pre-construction conference, CONTRACTOR shall submit to PROJECT ENGINEER schedules as outlined in Section 01310 within these Contract Documents.
- D. Shop Drawings and Samples: Requirements regarding Shop Drawings and Samples as well as submittal procedures are covered under Section 01300 within these Contract Documents.

**1.08**    Pre-construction Conference

- A. Prior to commencement of Work at the site, a pre-construction conference attended by OWNER, CONTRACTOR, DESIGN ENGINEER, PROJECT ENGINEER, and others shall be held. The OWNER will contact the CONTRACTOR to establish a mutually agreeable date and time to conduct the conference. The purpose of the conference is to discuss general project items, including, but not limited to:
  - 1. CONTRACTOR's responsible person and contact information
  - 2. Emergency contact information
  - 3. Submittal schedule
  - 4. Contract issues
  - 5. Safety
  - 6. Project schedule
  - 7. Progress Meetings
  - 8. Sales Tax Certificate/Pay Applications
  - 9. Warranty requirements
  - 10. Site restoration and clean-up

**1.09**    Quality of Materials

- A. The source of supply of each of the materials shall be approved by the PROJECT ENGINEER before delivery is started. Representative preliminary samples of the character and quality herein described shall be submitted by the CONTRACTOR when indicated or directed, for examination or test; and written approval of the quality of such materials from the respective sources of supply. Only materials conforming to the requirements of these Contract Documents shall be used in the Work. All materials proposed to be used may be inspected at any time during progress of the preparation and use. All materials shall be approved before being incorporated in the Work.

A.        *PART 2. CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE*

**2.01**        Intent

- A. The Contract Documents are complementary; what is called for by one is as binding as if called for by all.
- B. The approved Drawings and Technical Specifications will show the location, details, and dimensions of the

Work, which shall be performed in strict accordance therewith. Any deviation from the Contract Documents will be determined by the PROJECT ENGINEER and authorized in writing.

- C. Any labor, documentation, services, materials, or equipment that is required to produce the intended result shall be provided, whether or not specifically called for, at no additional cost to OWNER.
- D. Should any construction or conditions which are not covered by these Contract Documents be required for any proposed Work, "Special Conditions" for such Work will be provided to the CONTRACTOR and shall be considered a part of these Contract Documents the same as though printed fully herein. Should any such special provisions or requirements conflict with these Contract Documents, the "Special Conditions" shall take precedence.

**2.02**      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 Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
- 2. No provisions of any such standard, specification, manual, code, or instruction shall be effective to change the duties and responsibilities of OWNER, CONTRACTOR, PROJECT ENGINEER or DESIGN ENGINEER, or any of their Subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall it be effective to assign to OWNER, PROJECT ENGINEER or DESIGN ENGINEER, or any other of PROJECT ENGINEER or DESIGN ENGINEER's consultants, agents, or employees any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

**2.03**      Reporting and Resolving Discrepancies

A. Reporting Discrepancies

- 1. 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 any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, CONTRACTOR shall report it to PROJECT ENGINEER in writing at once. CONTRACTOR shall not proceed with the Work affected thereby (except in an emergency as required by Part 4) until an amendment or supplement to the Contract Documents has been issued; provided, however, that CONTRACTOR shall not be liable to OWNER for failure to report any such conflict, error, ambiguity, or discrepancy unless CONTRACTOR knew or reasonably should have known thereof.

B. Resolving Discrepancies

- 1. Except as may be otherwise specifically stated in the Contract Documents, the Special Provisions of these 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, code, or instruction (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).
- 2. Order of Precedence: If conflicts occur between the Technical Specifications, Details, and Drawings, the Technical Specification shall supersede.

**2.04**      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 in one or more of the following ways:
1. Addendum, or
  2. Change Order.
- 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. PROJECT ENGINEER's approval of a Shop Drawing or Sample; or
  2. PROJECT ENGINEER's written interpretation or clarification.
- C. If CONTRACTOR believes that any variation or deviation authorized under this Paragraph entitles CONTRACTOR to an adjustment in Contract Price or Contract Time, it is CONTRACTOR's obligation to provide written notice to PROJECT ENGINEER in accordance with Parts 9 and 10 prior to proceeding with the work covered by the variation or deviation.

**2.05**      Reuse of Documents

- A. CONTRACTOR and any Subcontractor or Supplier or other individual or entity performing or furnishing any of the Work under a direct or indirect Contract with OWNER:
1. shall not 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 DESIGN ENGINEER, DESIGN ENGINEER's Consultant, or PROJECT ENGINEER, including electronic media editions; and
  2. shall not reuse any Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of OWNER and specific written verification or adaptation by DESIGN ENGINEER. This prohibition shall survive final payment, completion, and acceptance of the Work, or termination or completion of the Contract. Nothing herein shall preclude CONTRACTOR from retaining copies of the Contract Documents for record purposes.
- B.      *PART 3. AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS*

**3.01**      Availability of Lands

- A. The Contract Documents contains a list of easement special conditions that the Contractor shall comply with. OWNER shall be responsible for obtaining all required easements and encroachments necessary to complete the Work, except as provided herein. If there is any delay in OWNER's furnishing the Site, CONTRACTOR may make a Claim as provided in Part 8.
- B. Upon 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. Any and all agreements between the Contractor and individual property owners shall not obligate the City of Fayetteville, Fayetteville Public Works Commission, or the DESIGN ENGINEER. Prior to performing any work on private property, acting on behalf of the Owner, the Contractor shall furnish to the Project Engineer a signed and notarized statement executed by the Property Owner acknowledging the Owner, and Design Engineer are not liable for any agreements between the Property Owner and the Contractor. The document shall hold harmless and defend the Owner and Design Engineer from all claims, damages, etc. The Agreement shall be in a format and content approved by the Project Engineer. All actions by Sub-Contractors shall be the Contractor's responsibility to secure a Property Owner's Agreement as described herein. At the completion of the project, the Contractor shall obtain a signed release from the Property Owner for satisfactory completion and restoration prior to issuance of final payment.



- D. The Contractor(s) and all his subcontractors shall exercise extreme care to avoid damage to residents' private property. Should any such damage to residents' private property occur, it is the Contractor(s)' responsibility to notify the Project Engineer, in writing and on the actual date that the damage occurs, as to the extent of the damage and the Contractor(s) written plan to correct same. Contractor(s) written plan to correct damage shall include a timely settlement date. If Contractor(s) fails to timely correct damage to residents' private property, the Owner reserves the right to withhold progress payments until damage is corrected and/or to correct damage and back-charge Contractor(s) for costs incurred.

### **3.02** Subsurface and Physical Conditions

- A. These Contract Documents include:

1. Reports of explorations and tests of subsurface conditions at or contiguous to the Site that the DESIGN ENGINEER has used in preparing the Contract Documents.
2. Drawings of physical conditions relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that DESIGN ENGINEER has used in preparing the Contract Documents.

- B. CONTRACTOR may rely upon the general accuracy of these reports and drawings containing subsurface conditions. However, these documents do not take precedence over the Contract Documents. CONTRACTOR may not rely upon or make any Claim against OWNER, DESIGN ENGINEER, or any of DESIGN ENGINEER's Consultants 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.

### **3.03** Differing Subsurface or Physical Conditions

- A. If CONTRACTOR believes that any subsurface or physical condition at or contiguous to the Site that is discovered either:

1. Is of such a nature as to establish that any "technical data" on which CONTRACTOR is entitled to rely as provided in these Contract Documents 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, immediately 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 Part 4), notify PROJECT ENGINEER in writing about such condition. CONTRACTOR shall not further disturb such condition or perform any Work in connection therewith until receipt of written order to do so.

- B. Upon receipt of CONTRACTOR's written notice, PROJECT ENGINEER will review the pertinent condition, determine the necessity of obtaining additional information and advise CONTRACTOR in writing.

- C. Possible Price and Time Adjustments

1. The Price and/or Contract Time may be adjusted if the PROJECT ENGINEER determines 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, to the following:
  - a. Such condition must meet any one or more of the categories described in this Part 3; and
  - b. Any adjustment in Price and/or Contract Time shall be subject to the provisions of these Contract Documents.
2. CONTRACTOR shall not be entitled to any adjustment in the Price or Contract Time as a result of differing subsurface or physical conditions if:
  - a. CONTRACTOR knew of the existence of such conditions at the time of 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 submission of a bid; or
  - c. CONTRACTOR failed to give the written notice within the time and as required by these Contract Documents.
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 Price or Contract Time, as a result of differing subsurface or physical conditions or both, a Claim may be made therefore as provided in Part 8. No claim of CONTRACTOR under this paragraph shall be allowed unless;
  - a. CONTRACTOR has given the written notice required in this Part 3; and
  - b. CONTRACTOR submits to PROJECT ENGINEER a detailed claim setting forth CONTRACTOR's right to recover any additional costs and lost time, including the information required by Part 10.

However, OWNER, PROJECT ENGINEER, DESIGN ENGINEER, DESIGN ENGINEER's Consultants, and OWNER'S Consultants, 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, or other dispute resolution costs) sustained by CONTRACTOR on or in connection with any other project or anticipated project

### **3.04** Underground Facilities

#### **A. EXISTING UTILITIES**

The Contractor shall locate existing underground utilities in the areas of work. If utilities are to remain in place, the Contractor shall provide protection during construction operations. Additionally, the Contractor will coordinate with utility companies when working in close proximity to their line/services.

Should uncharted or incorrectly charted piping or other utilities be encountered during excavations, the Contractor shall immediately consult the Project Engineer for directions as how to proceed. The Contractor shall fully cooperate with Owner and utility companies in keeping respective services and facilities in operation.

The Owner has, to the best of its ability, made involved utility owners aware of this project. As appropriate, each utility owner will be invited to attend the preconstruction conference to discuss potential conflicts and schedules for relocation where required. All adjustments or relocations will be made at the utility owner's expense unless otherwise indicated in these Contract Documents.

Reasonable care has been used to locate and depict existing underground installation on the construction drawings, but the accuracy cannot be guaranteed and some items may not be shown which exist.

The Contractor shall adhere to the provisions of the 1985 Underground Damage Prevention Act, North Carolina General Statutes, 887 Chapter 785, Senate Bill 168, Article 3. The Contractor shall contact the NC One Call System for locates prior to beginning work in a particular area. Forcalls originating within North Carolina, the number is 811 or 1-800-632-4949. For calls originating outside of North Carolina, the number is (919) 855-5760. To check the status of a locate ticket the number is 1-877-632-5050. The Contractor shall include the cost of anycoordination and cooperation for utilities in his bid.

Actual horizontal and vertical locations have not been verified. As part of the Contract work, the Contractor is required to dig up each utility which may conflict with construction in advance to verify locations. The utilities shall be "dug up" a minimum of fourteen (14) working days in advance of actual installation of new utilities to allow the Project Engineer an opportunity to adjust grades, alignments, etc., to avoid a conflict. Separate payment will not be made to physically verify the utility locations.

If the Contractor fails to schedule locates or perform advance physical locations in advance of theconstruction and a conflict arises, the Contractor will be required to make corrective measures as instructed by the Project Engineer at the Contractor's expense. The Contractor's failure to advance plan (minimum fourteen (14) working days) by physically uncovering existing utilities inadvance of construction shall not be cause for claim of lost time or for additional compensation. No additional payment will be made for re-mobilization required by the utility locator.

When the Contractor's controlling operations are halted due to the failure of a utility owner to relocate or adjust a utility after being properly notified by the Contractor, the contract period may be extended by the amount of time the Contractor's controlling operations have been delayed while awaiting the relocation or adjustment. Contractor shall proceed with work in areas not affected by the relocation or adjustment delay.

The Owner, Project Engineer, Design Engineer, and/or Consultants shall not be liable to the Contractor for any claims, costs, losses, or damages incurred or sustained on or in connection with locating existing underground installations.

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 DESIGN ENGINEER by the owners of such Underground Facilities, unless it is otherwise provided.

OWNER, PROJECT ENGINEER, OWNER's Consultant and DESIGN ENGINEER shall not be responsible for the accuracy or completeness of any such information or data.

The cost of all of the following will be included in the Contract Price, and CONTRACTOR shall have full responsibility for:

1. Reviewing and checking all such information and data,
2. Locating all Underground Facilities shown or indicated in the Contract Documents,
3. Coordination of the Work with the owners of such Underground Facilities, including OWNER, during construction, and
4. The safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

CONTRACTOR shall be responsible for the discovery of existing underground installations, in advance of excavating or trenching as required in these Contract Documents.

If an Underground Facility is discovered at or contiguous to the Site which was not shown or indicated, in the Contract Documents, CONTRACTOR shall, immediately 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 Part 4), identify the owner of such Underground Facility and give written notice to PROJECT ENGINEER. Upon receipt of written notice PROJECT ENGINEER will review the pertinent condition, determine the necessity of obtaining additional information, and notify CONTRACTOR in writing. During such time, CONTRACTOR shall be responsible for the safety and protection of such Underground Facility. If PROJECT ENGINEER concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued.

The Contract Price and/or the Contract Time, may be adjusted if PROJECT ENGINEER determines 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 to the following:

1. Facility was not shown or indicated in the Contract Documents, and
2. The CONTRACTOR did not know of or could not anticipate the facility.

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, as a result of differing subsurface or physical conditions or both, a Claim may be made therefore as provided in Part 3. No claim of CONTRACTOR under this paragraph shall be allowed unless;

1. CONTRACTOR has given the written notice required in Part 3, and;
2. CONTRACTOR submits to PROJECT ENGINEER a detailed claim setting forth CONTRACTOR's right to recover any additional costs and lost time, including the information required by Part 10 of these General Conditions.

However, OWNER, PROJECT ENGINEER, DESIGN ENGINEER, OWNER'S CONSULTANTS, and DESIGN ENGINEER's Consultants, 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, or other dispute resolution costs) sustained by CONTRACTOR on or in connection with any other project or anticipated project."

### **3.05** Reference Points

- A. Construction staking will be performed by the DESIGN ENGINEER who will also prepare and furnish construction cut sheets to the OWNER and CONTRACTOR. The CONTRACTOR shall not install any utilities without a cut sheet. All requests for staking will be made not less than 96 hours in advance.
- B. The Contractor shall be responsible for the preservation of all stakes and marks established by the DESIGN ENGINEER. CONTRACTOR shall report to PROJECT ENGINEER whenever any reference point or property monument is lost or destroyed or, requires relocation or reinstallation. If any of the stakes, marks, or property corners are carelessly or willfully disturbed, the cost of replacing them shall be charged against the CONTRACTOR by the DESIGN ENGINEER.
- C. Utilities shall be installed at the locations and elevations indicated on the Contract drawings unless otherwise approved by the OWNER. The CONTRACTOR shall verify invert elevations by instrument at each manhole.

### **3.06** Hazardous Environmental Condition at Site

- A. CONTRACTOR shall not resume Work in any affected area until OWNER has provided written notice:
  1. Specifying that any affected area is safe for the resumption of Work; or
  2. Specifying that any special conditions under which such Work may be resumed safely.

If after receipt of written notice, CONTRACTOR does not agree to resume Work based on a reasonable belief it is unsafe, or does not agree to resume work under the special conditions, then OWNER may order the portion of the Work that is in the area affected by the 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 any adjustment in the Contract Price and/or Contract Time, or both, as a result of such Work stoppage, or such special conditions under which Work is agreed to be resumed by CONTRACTOR, then either party may make a Claim, or deleting that portion of the Work, therefore as provided in Part 8.

- B. CONTRACTOR may rely upon the general accuracy of these reports and drawings containing subsurface conditions. However, these documents do not take precedence over the Contract Documents. CONTRACTOR may not rely upon or make any Claim against OWNER, DESIGN ENGINEER, or any of

DESIGN ENGINEER's Consultants 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 discovered at the site which was not shown or indicated in Contract Documents. 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:
1. secure such condition;
  2. stop all Work in connection with such condition and in any area affected (except in an emergency as required by Part 4); and
  3. Notify PROJECT ENGINEER (and confirm such notice in writing within 24 hours of initial notification).
- E. CONTRACTOR shall not resume Work in any affected area until OWNER has provided written notice:
1. Specifying that any affected area is safe for the resumption of Work; or
  2. Specifying that any special conditions under which such Work may be resumed safely.

If after receipt of written notice, CONTRACTOR does not agree to resume Work based on a reasonable belief it is unsafe, or does not agree to resume work under the special conditions, then OWNER may order the portion of the Work that is in the area affected by the 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 any adjustment in the Contract Price and/or Contract Time, or both, as a result of such Work stoppage, or such special conditions under which Work is agreed to be resumed by CONTRACTOR, then either party may make a Claim, or deleting that portion of the Work, therefore as provided in Part 8.

- F. 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 therefore as provided in Part 8. OWNER may have such deleted portion of the Work performed by OWNER's own forces or others in accordance with Part 5.
- G. To the fullest extent permitted by Laws and Regulations, OWNER shall, indemnify and hold harmless CONTRACTOR, Subcontractors, DESIGN ENGINEER, OWNER's DESIGN Consultants and the officers, directors, partners, employees, agents, other 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:
1. was not or identified in the Contract Documents to be included within the scope of the Work, and
  2. was not created by CONTRACTOR or by anyone for whom CONTRACTOR is responsible.

Nothing in this paragraph 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, DESIGN ENGINEER, DESIGN ENGINEER's Consultants, and the officers, directors, partners, employees, agents, other 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 shall obligate CONTRACTOR to indemnify any individual or CONTRACTOR entity from and against the consequences of that individual's or entity's own negligence.

C. *PART 4. CONTRACTOR'S RESPONSIBILITIES*

**4.01** Supervision and Superintendence

A. Superintendent:

1. The CONTRACTOR shall designate a full time competent superintendent, satisfactory to the PROJECT ENGINEER, to supervise the Work and to respond to the PROJECT ENGINEER concerning the OWNER's interest in the construction.
2. The Superintendent shall have full authority to act on behalf of the CONTRACTOR and all communications, instructions, directions, and notices given to the Superintendent by the PROJECT ENGINEER shall be binding to the CONTRACTOR.
3. The Superintendent shall give the Work his constant attention to facilitate the progress thereof and shall cooperate with the PROJECT ENGINEER in every way possible. The Superintendent shall at all times have a competent and reliable English-speaking representative on site, authorized to receive orders and act for him.
4. If construction activity stops due to the Superintendent not being available or competent, the CONTRACTOR shall not have recourse against the OWNER.
5. CONTRACTOR's Superintendent shall be responsible for coordination of the Work with other contractors or subcontractors onsite.

B. Any Employee of or person associated with the CONTRACTOR shall not:

1. Use profane or abusive language to any person, to the PROJECT ENGINEER or other employees of the OWNER, or;
2. Interfere with the performance of the Work, or;
3. Disobey instructions, or;
4. Be careless, reckless or incompetent, or;
5. Be objectionable to the OWNER.

Any employee of or person associated with the CONTRACTOR that fails to abide by the above conditions shall be removed from the project site on the request of the PROJECT ENGINEER, and shall not be allowed on the project site except with the PROJECT ENGINEER's written consent.

C. Subcontractors

1. The CONTRACTOR shall submit the names and references of both the Superintendent and all Subcontractors to the PROJECT ENGINEER for approval prior to construction starting on the project. The CONTRACTOR shall not begin work until receiving written approval. If during the duration of the

contract the CONTRACTOR changes Superintendent and Subcontractors, CONTRACTOR shall submit names and references to PROJECT ENGINEER for approval prior to new personnel starting work.

2. If the CONTRACTOR has a Subcontractor working under this Contract, the CONTRACTOR shall have a Superintendent on the site at all times. Construction activity shall be stopped if the CONTRACTOR's Superintendent is not on site.
3. The CONTRACTOR is and remains fully responsible for his own acts or omission as well as those of any subcontractors or any employee of either. The CONTRACTOR agrees that no contractual relationship exists between the Subcontractor and the OWNER in regard to the Contract, and that the subcontractor acts on his work as an agent or employee of the CONTRACTOR. The CONTRACTOR agrees to bind specifically every subcontractor to the applicable terms and conditions of these Contract Documents.

**4.02**      Labor; Working Hours

- A. This agreement is subject to the applicable provisions of the Contract Work Hours and Safety Standards Act. No CONTRACTOR or Subcontractor contracting for any part of the Work shall require or permit any laborer or mechanic to be employed on the Work in excess of forty hours in any work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times that person's basic rate of pay for all hours worked in excess of forty hours in such work week.
- B. CONTRACTOR shall employ only competent persons to do the Work and whenever OWNER shall notify CONTRACTOR, in writing, that any person on the Work appears incompetent, disorderly, or otherwise unsatisfactory, such person shall be removed from the Project and shall not again be employed on it except with written consent of OWNER.
- C. CONTRACTOR and Subcontractors shall agree not to discriminate in the employment of labor because of race, creed, sex, religion or country of origin.

**4.03**      Prosecution of Work

- A. The CONTRACTOR shall undertake the Work with all necessary materials, equipment and labor to ensure its completion within the time set forth in the Contract. Should the CONTRACTOR choose to discontinue the Work he shall notify the OWNER in writing a minimum of three (3) business days in advance. The OWNER shall review and respond to the request in writing. If approved, the CONTRACTOR shall notify the OWNER in writing a minimum of 24 hours prior to the resuming operations.

**4.04**      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 warranties and guarantees specifically called for by the Contract Documents shall expressly run to the benefit of OWNER. If required by OWNER, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment. 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.
- C. Workmanship shall be in accordance with these Contract Documents and shall be subject to the OWNER's approval.

**4.05**      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, or the equipment is Base Bid equipment, other items of material or equipment of other Suppliers may be submitted (in accordance with Section 01300) to PROJECT ENGINEER for review.

1. Or Equal Items – For the purposes of this paragraph, 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 the PROJECT ENGINEER determines that:
    - i. it is equivalent to or better than the product named in form, function, performance, reliability, quality, features, materials of construction, operation and maintenance costs, static and dynamic loads, general dimensional configuration, size, weight, and appearance;
    - ii. it will reliably perform at least equally well in function imposed by the design concept of the completed Project as a functioning whole, and;
  - b. CONTRACTOR certifies that:
    - i. there is no increase in cost to the OWNER; and
    - ii. it will conform substantially to the detailed requirements of the item named in the Contract Documents.

PROJECT ENGINEER may reject the proposed substitution at their sole discretion. No justification shall be necessary for the rejection.

#### **4.06**      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 this Part 4), 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 Contract Documents require the identity of certain subcontractors, suppliers, or other individuals or entities to be submitted to OWNER by OWNER by a specified date prior to the Effective Date of the Contract, and if CONTRACTOR has submitted a list thereof in accordance with the Contract Documents, OWNER’s acceptance of any 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 at no additional cost to the OWNER. No acceptance by OWNER of any Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of OWNER to reject defective Work.
- C. CONTRACTOR shall be fully responsible to OWNER for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work. Nothing in the Contract Documents shall create any contractual relationship between OWNER, and any Subcontractor, Supplier or other individual or entity, nor shall it create any obligation on the part of OWNER to pay or to see to the payment of any moneys due any 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. All Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work shall communicate with OWNER through CONTRACTOR.
- F. The Contract Documents 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 by a Subcontractor or Supplier shall be pursuant to an 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. Whenever any agreement is with a Subcontractor or Supplier who is listed as an additional insured on the insurance provided in the Instructions to Bidders, the agreement between the CONTRACTOR and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against OWNER, CONTRACTOR, DESIGN ENGINEER, and all other individuals or entities identified in the Contract Documents to be listed as insured or additional insurers (and the officers, directors, partners, employees, agents, and other 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 insurance applicable to the Work. If the insurers on any policies require separate waiver forms to be signed by any Subcontractor or Supplier, CONTRACTOR will obtain the same.
- H. The CONTRACTOR shall not subcontract more than 49% of the value of this Contract. Violation of this provision of the contract may be deemed to be a breach of the Contract. CONTRACTOR's failure to remedy after notice shall entitle OWNER to any and all remedies as set forth in the Contract Documents applicable to OWNER'S rights in the event of breach.

#### **4.07**      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 these Contract Documents for use in the performance of the Work and if to the actual knowledge of OWNER 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. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, DESIGN ENGINEER, and the officers, directors, partners, employees or agents, and other consultants 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.

#### **4.08**      Permits

- A. Unless otherwise provided in these Contract Documents, 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 charges and inspection fees necessary to complete the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Contract. OWNER shall pay all charges of utility owners for connections to provide permanent service to the Work.

#### **4.09**      Laws and Regulations

- A. CONTRACTOR shall give all notices and comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, OWNER and DESIGN ENGINEER shall not 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. It shall not be CONTRACTOR's primary responsibility to make certain that the Contract Documents are in accordance with Laws and Regulations, but this shall not relieve CONTRACTOR of their obligations set forth under Part 2.

- C. Changes in Laws or Regulations not known at the time of opening of Bids having an effect on the cost or time of performance of the Work may be the subject of an adjustment in Contract Price or Contract Time. If OWNER and CONTRACTOR are unable to agree on any adjustment a Claim may be made as provided in Part 8.

**4.10**      Taxes

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

**4.11**      Use of Site and Other Areas

- A. Limitation on Use of Site and Other Areas: 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.
- 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 as well as the terms in the Special Provisions.
- C. Cleaning: Prior to Final Completion of the Work CONTRACTOR shall clean the Site 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. Sanitary Provision: The CONTRACTOR shall provide and maintain in a neat and sanitary condition such accommodations for the use of his employees as may be necessary to comply with the requirements and regulations of the Department of Health, or of the other bodies or tribunals, having jurisdiction thereof. He shall commit no public nuisance. The CONTRACTOR shall at all times keep the site of the work free from accumulations of waste material or rubbish caused by his employees or work. Upon the completion of the work and before final acceptance can be made, all evidence of construction shall be removed, all property restored to its original condition, all manholes, and any other items of construction, shall be clean and neat in appearance; any other necessary items of clean-up shall be performed.
- E. 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.
- F. The Contractor shall carefully protect from disturbance or damage all private property and property corners. Property corners shall not be removed until the Project Coordinator has witnessed or otherwise referenced their location. Any damage to property corners shall be repaired/replaced at no additional cost to the OWNER. If any markers, identified or not, are disturbed, removed, or destroyed through the construction process, the CONTRACTOR shall retain the services of a Professional Land Surveyor, licensed in the State of North Carolina, and have those markers replaced. The CONTRACTOR shall further submit a drawing identifying the locations of those markers, signed and sealed by the licensed Professional Land Surveyor. At the CONTRACTOR's discretion, and without additional cost to the Contract, the surveyor may contact the DESIGN ENGINEER and have the markers offset prior to the commencement of construction.
- G. The CONTRACTOR shall not enter upon private property for any purpose without obtaining permission. He shall use suitable precautions to prevent damage to pipes, conduits, and other underground structures, and shall protect carefully from disturbance or damage all land monuments and property marks until an authorized agent has witnessed or otherwise referenced their location and shall not remove them until directed. When or where direct or indirect damage or injury is done to public or private property by or on account of any act, omission, neglect, or misconduct, in the execution of work, or in consequence of the non-execution thereof on the part of the CONTRACTOR, he shall restore at his own expense, such property to a condition similar or equal to that existing before such damage or injury was done, by repairing, rebuilding or otherwise

restoring, as may be directed, or he shall make good such damage or injury in an acceptable manner.

- H. When any direct or indirect damage or injury is done to public or private property, by or on account of any act, omission, neglect or misconduct in the execution of the Work, or in consequence of the non-execution thereof on the part of the Contractor, he shall restore, at his own expenses, such property to a condition equal or better than existing before such damage or injury was done or he shall make good damage or injury in an acceptable manner.

#### **4.12**      Safety and Protection

- A. CONTRACTOR shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. 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 not designated for removal, relocation, or replacement in the course of the Work.
- B. CONTRACTOR shall comply with all applicable State and Federal Laws and Regulations relating to the safety and protection of persons or property, from damage, injury, or loss. The Contractor shall erect and maintain all necessary safeguards for safety and protection. In the event a conflict arises between agencies, the stricter regulation shall apply. CONTRACTOR shall notify owners of adjacent property and other utility owners when the Work may affect them. The Contractor shall cooperate in the protection, removal, relocation, and replacement of their property. All damage, injury, or loss to any property referred to in this paragraph 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 the Contract Documents or to the acts or omissions of OWNER or DESIGN ENGINEER or DESIGN ENGINEER's Consultant, 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). 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 OWNER has issued a notice to CONTRACTOR in accordance with Part 12 that the Work is acceptable.
- C. The CONTRACTOR shall comply with the OWNER's Safety Manual, Latest Edition. Where conflicts arise between OWNER and other regulations, the more stringent shall apply. A copy of the OWNER's Safety Manual will be made available to the CONTRACTOR. Any interpretation and enforcement made by the OWNER shall be binding upon the CONTRACTOR. The OWNER may visit the CONTRACTOR's work areas to verify that safety procedures are in accordance with applicable regulations. If the CONTRACTOR's personnel are observed creating a hazardous environment, corrective action shall be initiated immediately to reduce the possibility of injury. Corrective action by the OWNER will consist of advising the Contractor, of compliance and could result in the OWNER issuing notices of non-compliance for repeat violations for failure to take corrective measures. Inspection by the OWNER shall not constitute an acceptance of the CONTRACTOR's practices, methods, techniques, procedures, nor release the CONTRACTOR of the responsibility for safety and health of the job site.
- D. Neither the professional responsibilities of the OWNER, PROJECT ENGINEER or DESIGN ENGINEER, nor the presence of the OWNER or DESIGN ENGINEER's employees and/or consultants at the construction site, shall relieve the CONTRACTOR or any other entity of their obligations, duties and responsibilities including but not limited to, construction means, methods, sequences, techniques or procedures necessary for performing, superintending or coordinating all portions of the Work in accordance with the Contract Documents and any health or safety precautions required by any regulatory agencies. The OWNER or DESIGN ENGINEER's their employees, representatives, and sub-consultants shall have no responsibility for site safety.

- E. The OWNER's or DESIGN ENGINEER's personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with any health and/or safety precautions. The CONTRACTOR is solely and exclusively responsible for job site safety and shall include the OWNER and DESIGN ENGINEERS as additional insured for primary protection under the CONTRACTOR's general liability policy.

**4.13**      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.
- B. All crews that operate in and around trenches shall have their own Competent Person as defined by OSHA standards.

**4.14**      COVID-19

As North Carolina and the nation continues to deal with the COVID-19 pandemic, we must all take necessary steps to ensure the health and safety of employees, coworkers, family, friends, associates and people that we come in contact with on a daily basis. At PWC we implemented measures including requiring our employees to conduct temperature and wellness checks, wear a face covering or mask, whenever possible, maintain proper social distancing (minimum of 6 feet) and take other actions such as washing their hands, using approved sanitizer and wiping down surfaces, especially commonly shared equipment or tools. This applies to employees working in our facilities, working in public or at field sites. For firms who are under contract with PWC or working under purchase orders, those firms are expected to comply with all OSHA/EPA guidelines, CDC recommendations including any applicable North Carolina Executive Orders regarding the performance of work under COVID-19 conditions. Examples of such guidance can be found at the following:

OSHA COVID-19 Overview

<https://www.osha.gov/SLTC/covid-19/>

OSHA COVID-19 – Control and Prevention / Construction Work

[https://www.osha.gov/SLTC/covid19/construction.html#:~:text=Keep%20in%2Dperson%20meetings%20\(including,Fill%20hand%20sanitizer%20dispensers%20regularly.](https://www.osha.gov/SLTC/covid19/construction.html#:~:text=Keep%20in%2Dperson%20meetings%20(including,Fill%20hand%20sanitizer%20dispensers%20regularly.)

<https://www.osha.gov/Publications/OSHA4000.pdf>

North Carolina COVID-19 Executive Orders

<https://www.nc.gov/covid-19/covid-19-executive-orders>

Centers for Disease Control

<https://www.cdc.gov/coronavirus/2019-ncov/index.html>

Implementing Safety Practices for Critical Infrastructure Workers

<https://www.cdc.gov/coronavirus/2019-ncov/community/critical-workers/implementing-safetypractices.html>

Essential Staff – Do's & Dont's

[https://www.cdc.gov/coronavirus/2019-ncov/downloads/Essential-Critical-Workers\\_Dos-andDonts.pdf](https://www.cdc.gov/coronavirus/2019-ncov/downloads/Essential-Critical-Workers_Dos-andDonts.pdf)

NC Licensing Board for General Contractors

<https://www.nclbgc.org/2020/07/02/board-buzz-summer/>

NC Association of General Contractors

<https://www.cagc.org/CAGC/SafetyHR/CAGC/Safety/SafelyHomeInitiative.aspx?hkey=e3439388-0c36-4755-91bd-4c8fc6d22a41>

NC Department of Health and Human Services  
<https://covid19.ncdhhs.gov/>

Cumberland County Health Department  
<https://www.co.cumberland.nc.us/departments/public-health-group/public-health>

Department of Homeland Security  
<https://www.ready.gov/pandemic>

Cape Fear Valley – What to do if you have COVID symptoms  
[https://www.youtube.com/watch?time\\_continue=1&v=tD0D7Apa\\_vw&feature=emb\\_logo](https://www.youtube.com/watch?time_continue=1&v=tD0D7Apa_vw&feature=emb_logo)

FAYPWC COVID Response  
<https://www.faypwc.com/covid-19-update/>

Small Business Administration  
<https://www.sba.gov/page/coronavirus-covid-19-small-business-guidance-loan-resources>

As an additional step to ensure the health and safety of contractor employees and PWC employees, should a contractor's employee test positive for COVID-19 the contractor must immediately inform the PWC project manager/supervisor or their primary point of contact at PWC and the employee should be performing work at PWC facilities or field sites until medically cleared. This is necessary so PWC can inform our employees, conduct our own method of contact tracing for our employees and take any measures necessary such as quarantining PWC employees who may have been in contact with the individual who tested positive.

These actions are necessary to ensure the health and safety of all and to ensure that contract performance can be achieved under the conditions of this pandemic.

Contractor must provide a plan with their proposal that describes their plan for working under COVID-19 conditions. The plan should address the Contractor's approach to protect their employees, PWC employees, along with any other Contractor's working on PWC's locations. This may include the Contractor's approach towards employee use of PPE, such as face masks, sanitizing commonly shared tools or equipment, practicing social distancing as work conditions permit, and working within close proximity of others. The plan may also address any other actions that the Contractor will be taking, such as conducting daily temperature checks, conducting symptom checks and trackers, and any other actions the Contractor deems appropriate to protect the health and safety of their employees, PWC employees, and any other Contractor's working on PWC's locations.

#### **4.15**      Hazard Communication Programs

- A. CONTRACTOR shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information in accordance with Laws or Regulations. The Contractor shall be responsible to provide and maintain Material Safety Data Sheets (MSDS) sheets at the job site at all times. The sheets shall be located in an easily accessible and prominently located area.
- B. CONTRACTOR shall comply with the applicable North Carolina Occupational Safety and Health Standards and regulations while performing services contracted by OWNER.
- C. The OWNER is subject to Hazard Communication Standard 29 CFR 1910 (Standard). The Contractor shall provide MSDS required under the standard for all hazardous materials. The MSDS shall be provided with all hazardous materials. Container labeling meeting all requirements of the Standard shall be appropriately affixed to the shipping or internal containers. The Owner reserves the right to refuse shipments of hazardous materials not appropriately labeled or when MSDS have not been received prior to or concurrent with receipt of the shipment, or whenever the material is delivered in a manner inconsistent with any applicable Law and/or Regulation. The CONTRACTOR further certifies that all material supplied under this Contract meets all OSHA requirements, both Federal and those of the State of North Carolina, and further certifies that, if the material delivered is found to be in non-compliance with the applicable State or Federal OSHA requirements all costs necessary to bring the material into compliance shall be borne by the Contractor.

D. Additional OWNER's safety programs, if applicable, are covered in the OWNER's Safety Manual.

#### **4.16**      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 the PROJECT ENGINEER prompt written notice if CONTRACTOR believes that any significant changes in the Work or variations from the Contract Documents have been caused or are required as a result of the emergency. If the PROJECT 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.

#### **4.17**      Continuing the Work

- A. CONTRACTOR shall continue the Work and adhere to the progress schedule during all disputes or disagreements with OWNER. The CONTRACTOR's refusal to continue the Work during disputes and disagreements with OWNER, the pending of claims, or the pending of change order requests shall be a violation of the Contract Documents.
- B. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Part 13 or as OWNER and CONTRACTOR may otherwise agree in writing.

#### **4.18**      Contractor's General Warranty and Guarantee

- A. CONTRACTOR warrants and guarantees to OWNER, PROJECT ENGINEER, and DESIGN ENGINEER that all Work shall be in accordance with the Contract Documents and shall not be defective. 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
    - a. Normal wear and tear under normal usage.
- B. CONTRACTOR's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following shall 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 PROJECT ENGINEER;
  2. Recommendation by PROJECT ENGINEER or payment by OWNER of any progress or final payment;
  3. The issuance of a certificate of Final Completion by PROJECT ENGINEER or any payment related thereto by OWNER;
  4. Use or occupancy of the Work or any part thereof by OWNER;
  5. Any acceptance by OWNER or any failure to do so;
  6. Any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by PROJECT ENGINEER;
  7. Any inspection, test, or approval by others; or
  8. Any correction of defective Work by OWNER.

#### **4.19**      Indemnification

- A. In any and all claims against OWNER or DESIGN 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 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 Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

- B. The indemnification obligations of CONTRACTOR shall not extend to the liability of DESIGN ENGINEER and DESIGN 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 Contract Documents; or
  - 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

**4.20**      Access to Records

- A. CONTRACTOR and all Subcontractors shall maintain books, records, documents, and other evidence directly pertinent to performance of the Work under the Contract Documents in accordance with generally accepted and consistently applied accounting principles and practices. OWNER shall have access during normal business hours to books, records, documents, and evidence for the purposes of inspection, audit, and copying. CONTRACTOR shall provide suitable facilities for access and inspection. All books, records, and evidence shall be maintained and made available for a period of three (3) years after the date of final payment or until the final settlement of any disputes, claims, and litigation, whichever shall occur later. CONTRACTOR shall provide to OWNER, when requested, copies of all purchase orders issued or sub-agreements executed, complete with all amendments, for Work under the Contract Documents. CONTRACTOR shall include this provision in all subcontracts.

D.      *PART 5. OTHER WORK*

**5.01**      Related Work at Site

- A. OWNER may perform other work related to the Project at the Site by OWNER's employees, other contractors, or have other work performed by utility owners. If other work is not noted in the Contract Documents, then:
  - 1. OWNER shall provide written notice to CONTRACTOR prior to starting any 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 Time that should be allowed as a result of other work, a Claim may be made as provided in Part 8.
- B. CONTRACTOR shall provide proper and safe access to the Site for all contractors, utility owners, and OWNER's employees performing other work. Contractor shall provide a reasonable opportunity for the mobilization and storage of materials and equipment and the performance of such other work. The Contractor shall properly coordinate the other work with theirs. Unless otherwise provided in the Contract Documents, CONTRACTOR shall perform all work that may be required to properly integrate with other work. CONTRACTOR shall not endanger or alter any work of others without the expressed written consent of PROJECT ENGINEER. The duties and responsibilities of CONTRACTOR under this paragraph are for the benefit of utility owners and other contractors to the extent that there are comparable provisions for the benefit of CONTRACTOR in direct Contracts between OWNER, and utility owners, and other contractors.
- C. If any part of CONTRACTOR's Work depends upon work performed by others under this Part 5, CONTRACTOR shall notify PROJECT ENGINEER in writing of any delays, defects, or deficiencies in the other work that may prevent the CONTRACTOR from performing the Work. CONTRACTOR's failure to report will constitute an acceptance of the other work as fit and proper for integration with CONTRACTOR's Work except for latent defects and deficiencies in the other work.

**5.02**      Coordination

- A. If OWNER intends to contract with others for the performance of other work on the Project at the Site, the PROJECT ENGINEER shall provide the following:

- 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 specified by the PROJECT ENGINEER, OWNER shall have sole authority and responsibility for such coordination.
- E. *PART 6. OWNER'S RESPONSIBILITIES*

**6.01** Project Engineer

- A. PROJECT ENGINEER shall be the OWNER's representative during the construction period. The duties and responsibilities and the limitations of authority of PROJECT ENGINEER as OWNER's representative during construction are set forth in the Contract Documents and shall not be extended without written consent of OWNER and PROJECT ENGINEER. The assignment of any authority, duties, or responsibilities to PROJECT ENGINEER under the Contract Documents, or any undertaking, exercise, or performance thereof by PROJECT ENGINEER, is intended to be for the sole and exclusive benefit of OWNER and not for the benefit of CONTRACTOR, Subcontractor, Supplier, or any other person or organization, or for any surety or employee or agent of any of them.

**6.02** Roles and Responsibilities

A. Authorities and Duties of PROJECT ENGINEER

1. The PROJECT ENGINEER shall in no case act as foreman, direct the CONTRACTOR's personnel, subcontractor personnel or direct or perform duties for the CONTRACTOR, nor interfere with the management of the Work by the CONTRACTOR.
2. The PROJECT ENGINEER may make changes in grades and quantities when necessary to keep Work in progress.
3. To prevent disputes and litigation, the PROJECT ENGINEER shall in all cases determine the amount, quality, and acceptability of the Work and materials which are to be paid for under the Contract. The PROJECT ENGINEER shall in all cases decide every question which may arise relative to the fulfillment of the Contract. The PROJECT ENGINEER's opinion of the costs and decisions shall be final and conclusive.
4. The PROJECT ENGINEER will not decide disputes between the CONTRACTOR and person or entities other than the OWNER.
5. Clarifications and interpretations of the Contract Documents shall be issued by PROJECT ENGINEER.

B. Authorities and Duties of the PROJECT COORDINATOR

1. The PROJECT COORDINATOR employed by the OWNER shall be authorized to inspect all Work performed and all materials furnished. Their inspection shall extend to all parts of the Work, and to preparation or manufacture of the materials to be used.
2. The PROJECT COORDINATOR shall report to the PROJECT ENGINEER as to the progress and performance of the Work. The PROJECT COORDINATOR shall report whenever the materials furnished and/or the work performed by the CONTRACTOR fails to fulfill the requirements of the Contract Documents. The PROJECT COORDINATOR shall notify the CONTRACTOR of any failure to meet requirements. However, such observation shall not relieve the CONTRACTOR of any obligation to perform all the Work strictly in accordance with the Contract Documents.



3. In case of any dispute arising between the CONTRACTOR and the PROJECT COORDINATOR as to the materials furnished or the performance of the Work, the PROJECT COORDINATOR shall have the authority to reject materials or refer the issue to the PROJECT ENGINEER. Any suspension or work stoppage for rejected materials or performance of the Work shall not be the basis of a claim by the CONTRACTOR for additional Contract time or costs. Such rejection shall also not be the basis of a future claim by the CONTRACTOR for adjustment in Contract unit price or lump sum price or any work item contained in the Contract.
4. Where special inspection or testing is required by the State laws or local ordinances, instruction of the PROJECT ENGINEER, specification or codes, the CONTRACTOR shall give adequate notice to the PROJECT COORDINATOR of the time set for such inspection or test, if the inspection or test will be conducted by a party other than the PROJECT ENGINEER. Such section tests or inspections shall be made in the presence of the PROJECT ENGINEER or his authorized representative, and it shall be the CONTRACTOR's responsibility to serve ample notice of such test.
5. The PROJECT COORDINATOR shall inspect the Work for the purposes of payment approval and monitoring progress of the Work. However, the PROJECT COORDINATOR shall not have any responsibility for the Work performed by the CONTRACTOR or its subcontractors, for the Safety of the work site, nor for any deficiency in the Work, whether discovered during the construction or after acceptance.
6. Regardless of the of the inspections by the PROJECT COORDINATOR or the PROJECT ENGINEER, the CONTRACTOR is responsible for performing and completing the Work in accordance with the Contract Documents. The OWNER has no liability or responsibility to the CONTRACTOR or Surety for work performed by the CONTRACTOR which is not in accordance with the Contract Documents, regardless of whether discovered during construction or after acceptance.

**6.03** Communications to Contractor

- A. Except as otherwise provided in these Contract Documents, OWNER shall issue all communications to CONTRACTOR through PROJECT ENGINEER.

**6.04** Clarifications and Interpretations

- A. Requests for clarification from the CONTRACTOR shall be directed to the PROJECT ENGINEER. The PROJECT ENGINEER, in coordination with the DESIGN ENGINEER (as the PROJECT ENGINEER deems necessary) will review the request for clarification and issue written clarifications or interpretations as necessary, which shall be consistent with the intent of and reasonably inferable from the Contract Documents. Any written clarifications and interpretations shall be binding on OWNER and CONTRACTOR. 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 Time, or both, that should be allowed as a result of a written clarification or interpretation; a Claim may be made as provided in Part 8.

**6.05** Replacement of DESIGN ENGINEER

- A. In case of termination of the employment of DESIGN ENGINEER, OWNER shall appoint an engineer whose status under the Contract Documents shall be that of the former DESIGN ENGINEER.

**6.06** Furnish Data

- A. OWNER shall furnish the data required of OWNER in accordance with the Contract Documents.

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

- A. If PROJECT COORDINATOR and CONTRACTOR cannot agree to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the Work, the matter will be referred to PROJECT ENGINEER for final decision. Written notice (to include supporting documentation) of each such claim, dispute, or other matter shall be delivered by the CONTRACTOR to the PROJECT ENGINEER no later than thirty (30) days calendar days after the start of

the occurrence. Failure to file a claim within the allowed time frame shall waive the CONTRACTOR's ability to make future claims for that particular instance. PROJECT ENGINEER will render a formal decision in writing within thirty (30) calendar days after receipt of the CONTRACTOR's submittal, in accordance with Contract Documents.

- B. The rendering of a decision by PROJECT ENGINEER with respect to any claim, dispute, or other matter (except any which have been waived by the making or acceptance of final payments as provided in Part 12) shall be a condition precedent to any exercise by OWNER or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws and Regulations in respect to any such claim, dispute, or other matter.

**6.08**     Rejecting Defective Work

- A. PROJECT ENGINEER shall have authority to reject Work that is not in accordance with the Contract Documents. PROJECT ENGINEER shall also have authority to require special inspection or testing as provided in Part 11, whether or not the Work is fabricated, installed, or completed.

**6.09**     Determinations for Unit Price Work

- A. PROJECT COORDINATOR shall determine the actual quantities and classifications of Work performed. PROJECT COORDINATOR shall review with CONTRACTOR the actual quantities and classifications for payment prior to CONTRACTOR submitting an Application for Payment.

**6.10**     Pay When Due

- A. OWNER shall make payments to CONTRACTOR in accordance with these Contract Documents.

**6.11**     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.

**6.12**     Limitations on PROJECT ENGINEER and PROJECT COORDINATOR Responsibilities

- A. PROJECT ENGINEER and PROJECT COORDINATOR shall not be responsible for the acts or omissions of CONTRACTOR or of any Sub-contractor, any Supplier, or of any other individual or entity performing any of the Work.
- B. PROJECT ENGINEER and PROJECT COORDINATOR shall 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. PROJECT ENGINEER and PROJECT COORDINATOR shall not be responsible for CONTRACTOR's failure to perform the Work in accordance with the Contract Documents.
- C. The limitations upon authority and responsibility set forth in this paragraph shall also apply to OWNER's Consultants, Agents, Officers, and Employees.

**6.13**     Non Compliance Notices

- A. Failure to comply with any terms of this Contract shall result in the issuance of a Non- Compliance Notice (NCN). This notice shall be issued by the PROJECT ENGINEER and will outline the violation of the Contract. In the notice, a timeframe for resolution will be established. If the issue is not resolved and a written response is not received within the given timeframe, pay applications shall, at the PROJECT ENGINEER's discretion, not be processed.
- B. After two (2) NCN's have been issued for the same violation, the project may be shut down until the issue is

resolved to the OWNER's satisfaction. If Work is stopped due to a Contract violation, no consideration will be given for an extension of Contract Time. The issuance of any NCN may influence the OWNER's decision to award the CONTRACTOR future work.

*F. PART 7. DESIGN ENGINEER'S STATUS DURING CONSTRUCTION*

**7.01** Limitations on DESIGN ENGINEER's Authority and Responsibilities

- A. Except for the negligence of Engineer, its agents, officers, and employees neither DESIGN ENGINEER's authority or responsibility under the provisions of the Contract Documents nor any decision made by DESIGN ENGINEER in good faith either to exercise or not exercise such authority or responsibility or the undertaking, or performance of any authority or responsibility by DESIGN ENGINEER shall create, impose, or give rise to any duty in Contract, tort, or otherwise owed by DESIGN 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.

**7.02** Visits to Site

- A. DESIGN ENGINEER will make visits to the Site at intervals appropriate to the various stages of construction, as DESIGN 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. DESIGN ENGINEER will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. DESIGN ENGINEER efforts will be directed toward providing for OWNER a greater degree of confidence that the completed Work will conform generally to the Contract Documents.
- B. DESIGN ENGINEER shall 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 incidental thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work.

*G. PART 8. CHANGES IN THE WORK; CLAIMS*

**8.01** Authorized Changes in the Work

- A. Without invalidating the Contract and without notice to any surety, OWNER may, at any time order additions, deletions, or revisions in the Work by a Change Order or a Work Change Directive. Upon receipt of the notification from PROJECT ENGINEER, CONTRACTOR shall proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).
- B. At any time PROJECT ENGINEER may request CONTRACTOR to submit a proposal for a proposed change in the Work. Within ten (10) business days after receipt of a Request for Proposal, CONTRACTOR shall submit, to PROJECT ENGINEER, a written detailed proposal for the change. The detailed proposal shall include an itemized estimate of all costs that will result directly or indirectly from the proposed change and include an assessment of the impact on the overall project schedule. Unless otherwise directed, itemized estimates shall be in accordance with Part 9. Proposals shall be of sufficient detail to permit an analysis by PROJECT ENGINEER of all material, labor, equipment, subcontracts, overhead costs, and fees. The proposal shall cover all Work involved in the change, whether such Work was deleted, added, changed, or impacted. Each cost category shall be supported with substantiating documentation which may include, but is not limited to, quantity takeoffs, quotations, invoices, cost records, certified payrolls and identification of estimating guidelines and resources. The subcontract portions of each proposal shall be similarly supported. Itemized schedule adjustments shall be in sufficient detail to permit an analysis of impact. If OWNER elects to proceed with the change covered by the Request for Proposal, such change will be authorized by execution of proper documentation in accordance with this Part 8. Notwithstanding the Request for Proposal, CONTRACTOR shall continue to perform the Work and maintain the progress schedule. PROJECT ENGINEER and OWNER shall have twenty (20) business days after receipt of the detailed proposal to respond in writing. Delays in the submittal of the written and detailed proposal will be considered non-judicial.

- C. The adjustment in Contract Price and/or Contract Time stated in a Change Order shall comprise the total price and/or time adjustment due or owed CONTRACTOR for the Work or changes defined in the Change Order. Signing of the Change Order constitutes full and mutual accord by OWNER and CONTRACTOR for the adjustment in the Contract Price and/or Time as a result of increases or decreases in costs and time of performance caused directly and indirectly by the change. By approving the Change Order the CONTRACTOR waives all rights to claim further adjustments related to the Change Order.
- D. CONTRACTOR is obligated, in the performance of changes in the Work, to mitigate all cost and time related to any changes and shall identify in writing, when requested by OWNER, the actions taken in that regard.
- E. In the event that OWNER and CONTRACTOR are unable to agree as to the cost and time to perform the change (deletions or additions) in the Work, OWNER and PROJECT ENGINEER may make a unilateral determination of the reasonable cost and time to perform the change in the Work, based upon their own estimates, CONTRACTOR's submission, or a combination thereof, and issue a unilateral Change Order for the amounts of cost and time so determined, which shall become binding upon CONTRACTOR. The unilateral Change Order shall enable OWNER to make payments for Work performed thereunder, and CONTRACTOR shall be paid for work completed, based on costs determined by OWNER. CONTRACTOR may appeal the unilateral Change Order within fifteen (15) business days of receipt, as provided in Part 14. Failure of the parties to reach an agreement regarding the cost and time of performing the change in the Work shall not relieve CONTRACTOR from performing the change in the Work.
- F. Should unforeseen circumstances arise which, in the opinion of the PROJECT ENGINEER, require work to be done upon which no price can be agreed, the PROJECT ENGINEER may require that the work be accomplished under negotiated contract with another contractor or with the OWNER's own forces, or on a force account basis as follows:
  - 1. All Costs shall be in accordance with Part 9.
  - 2. All activities shall be documented daily (time, material tickets, invoices, etc.) by the PROJECT COORDINATOR, agreed upon with the CONTRACTOR, and submitted to the PROJECT ENGINEER.
  - 3. No claims for force account work will be accepted where the PROJECT ENGINEER had not specifically directed the CONTRACTOR.
  - 4. Skilled and common labor shall be paid for in accordance with the approved "Labor & Equipment Rates" submittal. Labor classifications shall be approved by the PROJECTENGINEER prior to beginning force account work.
  - 5. Materials and supplies used are to be listed on invoices. Copies of invoices which show all the materials, quantities, costs, etc. utilized in the force account work shall be submitted to the PROJECT COORDINATOR within two (2) business days of the date of the activity.
  - 6. Equipment shall be paid for in accordance with the approved "Labor & Equipment Rates" submittal. Equipment shall be approved by the PROJECT ENGINEER prior to beginning force account work.
  - 7. The PROJECT ENGINEER shall determine the total cost of the force account work, including 15% overhead and profit.
  - 8. Force account work shall be authorized by the PROJECT ENGINEER in writing.

**8.02**      Unauthorized Changes in the Work

- A. CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Time with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in Part 2, except in the case of an emergency as provided in Part 4 or in the case of uncovering Work as provided in Part 11.
- B. Work performed without staking and/or approved cut sheets, and/or work performed beyond the Project limits shall be considered as unauthorized and at the expense of the CONTRACTOR. Any unauthorized work may be ordered removed and/or replaced by the PROJECT ENGINEER at the CONTRACTOR's sole expense.

**8.03**            Execution of Change Orders

- A. OWNER and CONTRACTOR shall execute Change Orders as recommended by PROJECT ENGINEER authorizing:
1. Changes in the Work, including but not limited to: changes requested by OWNER, changes required due to acceptance of defective work as outlined in Part 11, OWNER's correction of defective work as outlined in Part 11, and changes requested by CONTRACTOR and approved by PROJECT ENGINEER;
  2. Changes in the Contract Price and/or Contract Time which are agreed to by the Parties, including any undisputed costs and/or time for Work actually performed in accordance with a Work Change Directive; and;
  3. Changes in the Contract Price and/or Contract Time incorporating the written decision of the PROJECT ENGINEER resolving any claims or disputes. CONTRACTOR reserves the right to delay signing the Change Order while appealing the PROJECT ENGINEER's written decision regarding the claim or dispute. However, CONTRACTOR shall continue to perform the Work and adhere to the project schedule, as provided in Part 4.

**8.04**            Notification to Surety

- A. If notice 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 Time) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be OWNER's responsibility. The amount of each applicable Bond will be adjusted to reflect the effect of any such change. OWNER shall simultaneously provide CONTRACTOR with a copy of such notice. Surety shall furnish OWNER proof of such adjustment.

**8.05**            Claims and Disputes

- A. Written notice stating the general nature of each Claim, dispute, or other matter shall be delivered by the CONTRACTOR to PROJECT ENGINEER no later than thirty (30) calendar days after the start of the event. CONTRACTOR shall provide PROJECT ENGINEER with supporting data within sixty (60) calendar days after the start of the event (unless the PROJECT ENGINEER allows additional time for submittal of additional or more accurate data). A Claim for an adjustment in Contract Price and/or Contract Time shall be prepared in accordance with the provisions of Part 10. Each Claim shall be accompanied by a written statement that the adjustment claimed is the entire adjustment to which the CONTRACTOR believes it is entitled.
- B. PROJECT ENGINEER will render a formal decision in writing within thirty (30) calendar days after receipt of the last submittal of the CONTRACTOR unless additional time is required. PROJECT ENGINEER's written decision on such Claim, dispute, or other matter will be final and binding upon OWNER and CONTRACTOR unless:
1. The CONTRACTOR submits a written appeal within 15 calendar days of receipt of PROJECT ENGINEER's written decision. Upon receipt of the written appeal, PROJECT ENGINEER shall coordinate discussions between OWNER, CONTRACTOR, and PROJECT ENGINEER in an attempt to reach resolution. Failure to reach resolution will result in the claim being settled in accordance with the dispute resolution procedures set forth in Part 14; or
  2. If PROJECT ENGINEER does not issue a formal decision in writing within 30 calendar days a decision denying the Claim in its entirety shall be deemed to have been issued.
- C. No Claim for an adjustment in the Contract Price or Contract Time shall be valid if not submitted in accordance with this section.

H.            *PART 9. COST OF THE WORK; CASH ALLOWANCES; UNIT PRICE WORK*

**9.01**      Cost of the Work

- A. The term “Cost of the Work” means the sum of all costs 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 shall 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 PROJECT ENGINEER, such costs shall be in amounts no higher than those prevailing in the locality of the Project, 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 PROJECT ENGINEER and CONTRACTOR. Such employees include without limitation superintendents, foremen, and other personnel employed full time at the Site. Payroll costs for employees not employed fulltime 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 PROJECT ENGINEER.
  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. Should the OWNER deposit funds with the CONTRACTOR, the CONTRACTOR shall provide copies of invoices for rental equipment and agreements. Further, all trade discounts, rebates, 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. 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, 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.
  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. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remains the property of CONTRACTOR.
    - b. Rentals of all construction equipment and machinery, and the parts thereof whether rented from CONTRACTOR or others in accordance with the rental agreements 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.
    - c. Sales, consumer, use, and other similar taxes related to the Work, and for which CONTRACTOR is liable, imposed by Laws and Regulations.
    - d. 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.
    - e. 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 the Contract Documents), 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.

- f. The cost of utilities, fuel, and sanitary facilities at the Site.
  - g. The cost of premiums for all Bonds and insurance CONTRACTOR is required by the Contract Documents to purchase and maintain.
- B. 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, 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, all of which are to be considered administrative costs.
  2. The proportion of necessary transportation, travel, and subsistence expenses of CONTRACTOR's employees incurred in discharge of duties connected with the Work.
  3. Expenses of CONTRACTOR's principal and branch offices other than CONTRACTOR's office at the Site.
  4. Any part of CONTRACTOR's capital expenses, including interest on CONTRACTOR's capital employed for the Work and charges against CONTRACTOR for delinquent payments.
  5. 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.
  6. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly in this Part.
  7. Extended office overhead (except office and temporary facilities at the site) or lost profit associated with delays of any type. Minor expenses such as long distance telephone calls, telephone service at the Site, expressage, and similar petty cash items in connection with the Work. Such costs are considered to be administrative costs covered by CONTRACTOR's fee.
  8. Any and all costs, which arise from any suspension, delay, or interruption to a Work activity or the Work as a whole, to the extent that performance would have been so suspended, delayed, or interrupted for reasons beyond the control and without the fault or negligence of OWNER. Examples of such situations include, but are not limited to, instances where compensable delays occur concurrently with either excusable or inexcusable delays and instances where such combinations of delays, even when not concurrent, individually give rise to similar impacts on the completion of the Work.
- C. When all the Work is performed on the basis of cost-plus, CONTRACTOR's fee shall be determined as set forth in the Contract Documents. 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 Part 10.

**9.02**      Cash Allowances

- A. It is understood that CONTRACTOR has included in the Price all allowances described in the Contract Documents and shall cause the Work covered to be performed for such sums as may be acceptable to

OWNER. CONTRACTOR agrees that:

1. The 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
  2. CONTRACTOR's costs for unloading and handling on the Site, labor, installation costs, overhead, profit, and other expenses contemplated for the 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.
- B. Prior to final payment, an appropriate Change Order will be issued as recommended by PROJECT ENGINEER to reflect actual amounts due CONTRACTOR on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

### **9.03**      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 Bid Form. 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 shall be made by PROJECT ENGINEER subject to the provisions of Part 6.
- B. Each unit price shall include an amount to cover the CONTRACTOR's overhead and profit for each separately identified item.
- C. All unit prices submitted with the CONTRACTOR's bid proposal shall be held firm against any increase for the duration of Contract.
- D. OWNER or CONTRACTOR may make a Claim for an adjustment in the Contract Price in accordance with Part 8:
1. The quantity of any item of Unit Price Work performed by CONTRACTOR differs materially and significantly plus or minus fifty (50) percent from the estimated quantity of such item indicated in the Bid Form; and
  2. There is no corresponding adjustment with respect any other item of Work; and
  3. 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.

## *I. PART 10. CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES*

### **10.01**      Change of Contract Price

- A. The Price may only be changed by a Change Order. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Price shall 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 Part 9); or
  2. Where the Work involved is not covered by unit prices contained in the Contract Documents, by mutually agreed unit prices or lump sum (which may include an allowance for overhead and profit); or
  3. Where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a unit price or lump sum is not reached, on the basis of the Cost of the Work (subject to provisions of Part 9) plus a CONTRACTOR's fee for overhead and profit.



- A. CONTRACTOR shall establish and maintain records in accordance with generally accepted accounting practices and submit in a form acceptable to OWNER an itemized cost breakdown together with supporting data. OWNER may audit CONTRACTOR's records related to such costs during normal business hours.
- B. The CONTRACTOR's total fee for overhead and profit shall not exceed 15% of the value of the additional work.
- C. No increase in Price shall be granted for Inexcusable Delays, unless otherwise agreed to by OWNER.

**10.02**      Change of Contract Time

- A. The Contract Time may only be changed by a Change Order. Any adjustment in the Contract Time shall be based on the following:
  - 1. Additional Work requested by OWNER,
  - 2. Work deleted from Contract by OWNER,
  - 3. Excusable delay, as approved by the Project Engineer, or
  - 4. Approved written request submitted by CONTRACTOR.
- B. Excusable Delays in the completion of the entire Work or specified part thereof shall not give rise to default under the Contract by either party. Any such delays shall not entitle CONTRACTOR to any additional compensation. The sole remedy of CONTRACTOR shall be an extension of Contract Time pursuant to this Part 10.
- C. No extensions of Contract Time shall be granted for Inexcusable Delays, unless otherwise agreed to by OWNER.
- D. Except as otherwise provided herein CONTRACTOR shall not be entitled to recover damages due to delays of any type.
- E. In presenting justification for any adjustment of Contract Time, CONTRACTOR shall not rely on their initial sequencing of the Work but shall rely on the updated schedule resulting from the delay or change in Work. The PROJECT ENGINEER may request the CONTRACTOR submit an updated schedule prior to approval of the request. The schedule shall be submitted in accordance with Section 01310 of these Contract Documents. CONTRACTOR shall demonstrate a reasonable effort to reschedule any Work which is delayed by changes or unforeseeable conditions so as to minimize any additional time and cost to OWNER.

**10.03**      Delays Beyond Contractor's Control

- A. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Time due to delay beyond the control of CONTRACTOR, the Contract Time will be extended in an amount equal to the time lost due to such delay if a Claim is made in accordance with Part 8. Delays beyond the control of CONTRACTOR shall include, but not be limited to, acts of neglect by OWNER, acts of neglect of utility owners or other contractors performing other work, fires, floods, epidemics, weather delays, or acts of God.

**10.04**      Delays Within Contractor's Control

- A. The Contract Time will not be extended due to 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. Should the CONTRACTOR choose to relocate to an alternate area within the project to continue the Work, it shall be deemed as a delay within the CONTRACTOR's control and shall be at no cost to the OWNER.

**10.05**      Delays Beyond Owner's and Contractor's Control

- A. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Time due to delay beyond the control of both OWNER and CONTRACTOR, an extension of the Contract Time in an amount equal to the time lost due to such delay shall be CONTRACTOR's sole remedy for such delay.

**10.06**     Delay Damages

- A. In no event shall OWNER be liable to CONTRACTOR, any Subcontractor, any Supplier, or any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from:
  - 1. Delays caused by or within the control of CONTRACTOR; or
  - 2. Delays beyond the control of both OWNER and CONTRACTOR.
- B. Nothing in this section bars a change in Contract Price pursuant to this Part 10 to compensate CONTRACTOR due to delay, interference, or disruption directly attributable to actions or inactions of OWNER or anyone for whom OWNER is responsible.

**10.07**     Computation of Time

- A. Extensions to the Contract Time shall be granted in calendar days. If at the end of the project the final completion date falls on a non work day, the PROJECT ENGINEER may, at their sole discretion, grant additional time so that the final completion date is a work day.

*J.     PART 11. TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK*

**11.01**     Notice of Defects

- A. Notice of all defects shall be given to CONTRACTOR upon discovery. All defective Work maybe rejected, corrected, or accepted as provided in this Part 11.

**11.02**     Access to Work

- A. OWNER, DESIGN ENGINEER, DESIGN ENGINEER's Consultants, other representatives and personnel of OWNER, independent testing laboratories, and governmental agencies with jurisdictional interests shall have access to the Site and the Work for their observation, inspecting, and testing. CONTRACTOR shall provide proper and safe conditions for access and advise them of CONTRACTOR's Site safety procedures and programs so that they may comply.

**11.03**     Uncovering Work

- A. If any Work requiring inspection is covered prior to OWNER's approval, it shall be uncovered for OWNER's inspection at CONTRACTOR's expense, unless otherwise authorized by OWNER.
- B. If PROJECT ENGINEER considers it necessary that covered Work be inspected or tested, CONTRACTOR, at PROJECT ENGINEER's request, shall uncover or otherwise make available for inspection or testing that portion of the Work in question. The CONTRACTOR shall furnish all necessary labor, material, and equipment. If it is found that such 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, 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 may 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 as provided in Part 8. If such Work is not found to be defective, CONTRACTOR may be allowed an increase in the Contract Price or an extension of the Contract Time or both, directly attributable to such uncovering, exposure, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a Claim therefore as provided in Part 8.

**11.04**     Owner May Stop the Work

- A. If the Work is defective, or if CONTRACTOR's operations endanger or cause unapproved disruptions to the general public or facility, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or 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 is eliminated, and CONTRACTOR shall have no basis for making a claim thereof; 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 or any other party.

**11.05**      Temporary Suspension of Work

- A. The PROJECT ENGINEER shall have the authority to suspend the work, wholly or in part, for such period or periods as deemed necessary, due to conditions as are considered unfavorable for the proper continuation of the Work. If it should become necessary to stop all work for an indefinite period, the CONTRACTOR shall store all materials in such manner that they will not deteriorate or become damaged in any way, and he shall take every precaution to prevent damage or deterioration of the Work performed, provide suitable drainage by opening ditches, shoulder drains, etc., and erect structures where necessary. The CONTRACTOR shall not suspend work without authority. Neither the failure of the PROJECT ENGINEER to notify the CONTRACTOR to suspend work on account of unfavorable conditions nor permission by the PROJECT ENGINEER to continue work during unfavorable conditions shall be a cause for the acceptance of any work which does not comply in every respect with these Contract Documents.

**11.06**      Correction or Removal of Defective Work

- A. CONTRACTOR shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by PROJECT 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).

**11.07**      Correction Period

- A. All work completed under these Contract Documents shall be guaranteed by the CONTRACTOR for a period of one (1) year from the date of final completion. During that period, all defects discovered in the work (to include land or other areas made available to the CONTRACTOR), as determined by the OWNER, shall be removed and replaced by the CONTRACTOR at no cost to the OWNER. All work shall be done in accordance with OWNER's standards. The OWNER may conduct an independent inspection, at their sole expense, of the completed work prior to the completion of the one (1) year warranty period. Should the OWNER's inspection determine that the work is not in accordance with these Contract Documents; the CONTRACTOR shall mobilize and make all necessary repairs at no expense to the OWNER. The CONTRACTOR will receive written notification from the OWNER, and be allowed the chance to review any available inspection pictures or other documentation. The CONTRACTOR shall respond to the OWNER with a plan of action within 30 calendar days of receiving notification. The CONTRACTOR shall mobilize and begin to complete the work within 60 calendar days of receiving notification. The CONTRACTOR shall:
  1. Repair such defective land or areas.
  2. Correct such defective Work or, if the defective Work has been rejected by the PROJECT ENGINEER, remove it from the project and replace it with Work that is not defective.
  3. Satisfactorily correct, repair, remove, or replace any damage to other Work, damage to the work of others, and damage to other land or areas.

If the CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, the OWNER reserves the right to contract with another party to complete the warranty work, at the sole expense of the CONTRACTOR. All claims, costs, losses, and damages (including but not limited to all fees and charges or design professionals, attorneys, and other professionals and all court, arbitration or other dispute resolution costs arising out of or relating to such correction or repair or such removal and replacement of work of others) shall be paid by the CONTRACTOR.

The warranty period stated is specifically for the work installed by the CONTRACTOR. Any collateral damage discovered during the warranty period will be investigated and the CONTRACTOR will be required to respond if the damage is determined to have occurred during the construction process.

- B. In special circumstances where a portion of the Work is placed in service before Final Completion of all the Work, the correction period for that portion may start from an earlier date if so provided in the Contract Documents or by written authorization from the Project Engineer.
- C. Where defective Work including restoration (and damage to other Work resulting therefrom) has been corrected, the correction period with respect to such Work shall be extended for an additional period of one year after such correction has been satisfactorily completed.
- D. CONTRACTOR's obligations under this Part 11 are in addition to any other obligation or warranty. The provisions of this Part 11 shall not be construed as a substitute for, a waiver of, the provisions of any applicable statute of limitation or repose.

#### **11.08**      Acceptance of Defective Work

- A. If, instead of requiring correction of defective Work to include restoration, OWNER may elect to accept the work. 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 PROJECT ENGINEER) and 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 final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and OWNER may 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 therefore as provided in Part 8. If the acceptance occurs after final payment, an appropriate amount will be paid by CONTRACTOR to OWNER.

#### **11.09**      Owner May Correct Defective Work

- A. If CONTRACTOR fails to correct defective Work or to remove and replace rejected Work as required by PROJECT ENGINEER in accordance with Part 11. A within the time frame provided in the written notification, 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 (7) calendar days written notice to CONTRACTOR, correct and remedy any such deficiency.
- B. In connection with such corrective and remedial action, the 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, and incorporate in the Work all materials and equipment for which OWNER has paid CONTRACTOR. CONTRACTOR shall allow OWNER's agents and employees, OWNER's other contractors, and DESIGN ENGINEER access to the Site to enable OWNER to exercise the rights and remedies under this Part 11.
- 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 Part 11 shall be charged against CONTRACTOR, and a Change Order shall be issued incorporating the necessary revisions in the Contract Documents with respect to the Work. The 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 therefore as provided in Part 8. Such claims, costs, losses and damages shall 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 Time because of any delay in the performance of the Work attributable to the exercise by OWNER of OWNER's rights and remedies under this Part 11.

## K. PART 12. PAYMENTS TO CONTRACTOR AND COMPLETION

**12.01** Progress Payments

## A. Applications for Payments

1. The CONTRACTOR shall verify and coordinate monthly quantities with the PROJECT COORDINATOR. Quantities shall be based on the work completed as of the last Friday of the month (or the previous business day, should that Friday be a legal Holiday).
2. The CONTRACTOR shall prepare and submit a completed pay application to the PROJECT ENGINEER, including the following documentation:
  - a) Completed sales tax certificate, documenting the sales tax paid and the County paid, for all materials consumed or to be consumed as part of the Work,
  - b) Affidavit E as required by the Disadvantaged Business Enterprise program, and
  - c) Copies of all invoices of materials claimed on the sales tax certificate.

The CONTRACTOR shall furnish three (3) copies of the pay application and all supporting documentation.

3. There shall be no payment for stored materials.

## B. Sales Tax - The following procedure shall be followed relative to the North Carolina Sales Tax applicable to this Project. CONTRACTOR shall comply fully with the requirements outlined hereinafter, in order that the OWNER may recover the amount of the tax permitted under the law.

1. It shall be the CONTRACTOR's responsibility to furnish the OWNER documentary evidence showing the material used, sales tax paid, and County paid (County of sale) by the CONTRACTOR and each of his Subcontractors. Such evidence shall be transmitted with each pay estimate.
2. The documentary evidence shall consist of a certified statement by the CONTRACTOR and each of his Subcontractors individually showing total purchases of materials from each separate vendor and total sales taxes paid each vendor. The CONTRACTOR shall submit a certified statement with each pay request, for sales taxes paid during that pay request period. A certified form is required even if no sales tax was paid for pay request period.
3. Materials used from CONTRACTOR or Subcontractor's warehouse stock shall be shown in a certified statement at warehouse stock prices and amount of County of Use Tax paid.
4. The CONTRACTOR shall not be required to certify the Subcontractor's statements but must obtain the Subcontractor's certification.
5. CONTRACTOR shall furnish to OWNER invoices or copies of invoices for all materials purchased for said work within pay request period, and such invoices shall state the amount of North Carolina Sales Tax paid for materials, etc.
6. CONTRACTOR shall not include any tax paid on supplies, tools, and equipment, which they use to perform their contracts and should include only those building materials, supplies, fixtures, and equipment which actually become a part of the Work.

## C. Retainage

1. Any retainage shall be consistent with Section 6 of the Agreement.
2. The project shall be deemed 50% complete when the CONTRACTOR's gross project invoices, excluding the value of materials stored off-site, equals or exceeds 50% of the Price. Once the project is 50% complete and the above referenced conditions are met, the Project Engineer will not retain any further retainage from periodic payments due to the CONTRACTOR. At that point, retainage will be held at 2.5% of the Contract Price, until either the Contract is completed or the PROJECT ENGINEER

deems it necessary to reinstate retainage.

3. If retainage is discontinued or reduced, the OWNER reserves the right to reinstate retainage up to the 5% level if the CONTRACTOR performs unsatisfactorily. Furthermore, the OWNER reserves the right to continue to retain payment, even in the event the CONTRACTOR's work is satisfactory, in order to ensure a total of 2.5% retainage over the life of the project (Note – 2.5% retainage over the life of the project is equal to 2.5% of the Contract Price). The OWNER reserves the right to withhold additional payments 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. Per the NCGS the PROJECT ENGINEER can, however, reinstate retainage if it has been determined the CONTRACTOR's performance is unsatisfactory. The PROJECT ENGINEER can reinstate retainage for each subsequent pay estimate the maximum amount of 5%.

#### D. Review of Applications

1. PROJECT ENGINEER will, within ten (10) business 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 PROJECT ENGINEER's reasons for refusing to recommend payment. In the latter case, CONTRACTOR shall make the necessary corrections and resubmit the Application.
2. PROJECT ENGINEER's recommendation of any payment requested in an Application for Payment will constitute a representation by PROJECT ENGINEER to OWNER, that to the best of PROJECT 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 Final Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under Part 7, and to any other qualifications stated in the recommendation); and
  - c. The conditions precedent to CONTRACTOR being entitled to such payment appears to have been fulfilled.
3. By recommending any such payment PROJECT ENGINEER shall not be deemed to have represented that:
  - a. Inspections made to check the quality and/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 PROJECT 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 PROJECT ENGINEER's review of CONTRACTOR's Work for the purposes of recommending payments, nor PROJECT ENGINEER's recommendation of any payment, including final payment, will impose responsibility on PROJECT ENGINEER to supervise, direct, or control the Work or for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for CONTRACTOR's failure to comply with Laws and Regulations applicable to CONTRACTOR's performance of the Work. Additionally, said review or recommendation will not impose responsibility on PROJECT ENGINEER to make any examination to ascertain how or for what purposes CONTRACTOR has used the moneys paid on account of the Contract Price, or to determine that title to any of the Work, materials, or equipment has passed to OWNER free and clear of any liens.
5. PROJECT ENGINEER may refuse to recommend the whole or any part of any payment if, in PROJECT ENGINEER's opinion, it would be incorrect to make the representations to OWNER referred to in Part

12. PROJECT 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 PROJECT 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 Part 11; or
- d. PROJECT ENGINEER has actual knowledge of the occurrence of any of the events enumerated in Part 13.

E. Payment Becomes Due

1. Ten (10) business days after presentation of the Application for Payment to OWNER with PROJECT ENGINEER's recommendation, the amount recommended will (subject to the provisions of this paragraph) become due, and when due will be paid by OWNER to CONTRACTOR.

F. Reduction in Payment

1. OWNER may refuse to make payment of the full amount recommended by the PROJECT ENGINEER because:
  - a. 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;
  - b. There are other items entitling OWNER to a reduction of the amount recommended; or
  - c. OWNER has actual knowledge of the occurrence of any of the events outlined in Part 13.
2. If OWNER refuses to make payment of the full amount recommended by PROJECT ENGINEER, OWNER must give CONTRACTOR written notice stating the reasons for such action and 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, upon satisfactory resolution of the issue.

**12.02**      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.

**12.03**      Partial Utilization

- A. Use by OWNER of any completed part of the Work which has specifically been identified in the Contract Documents or as authorized in writing by Project Engineer, and is 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, may be accomplished prior to Final Completion of all the Work subject to the following conditions;
  1. OWNER and CONTRACTOR shall make an inspection of that part of the Work to determine its status of completion. If PROJECT ENGINEER does not consider that part of the Work to be complete, PROJECT ENGINEER will notify CONTRACTOR in writing. If PROJECT ENGINEER considers that part of the Work to be complete, the PROJECT ENGINEER will notify the CONTRACTOR in writing that the OWNER will begin partial utilization of that Work.
  2. The CONTRACTOR remains responsible for completing or fulfilling all contractual obligations

remaining to the Work being utilized.

3. No occupancy or separate operation of part of the Work will be accomplished prior to CONTRACTOR's compliance with the requirements of these Contract Documents pertaining to insurance.

**12.04**      Final Completion

- A. Completed work is pipe that has been installed, tested, inspected, disinfected, backfilled, paved, all above ground restoration has been performed, and CONTRACTOR has completed all the Work in an acceptable manner in accordance with the terms of the Contract. **\*All work outlined in these Contract Documents shall be completed, prior to the Contractor requesting an inspection by the Project Coordinator.\***
- B. When the PROJECT COORDINATOR deems the project complete and ready for final inspection, the PROJECT COORDINATOR shall notify the PROJECT ENGINEER. The PROJECT ENGINEER shall schedule a final inspection between the OWNER and CONTRACTOR. During the final inspection any items documented shall be compiled in a final punch list and provided to the CONTRACTOR within five (5) business days. The Contractor shall be required to complete each item in the final inspection punch list within 30 calendar days of receipt. Failure to complete the punch list in that time may result in liquidated damages being assessed. The project will not be considered complete until all punch list items are completed and accepted, unless otherwise determined by the PROJECT ENGINEER. All punch list items shall be completed prior to release of final payment. Once PROJECT ENGINEER considers the Work to be complete a written notice of acceptance will be issued.

**12.05**      Warranty Period

- A. The warranty period will cover a corrections period of one full year after the Final Completion date. The CONTRACTOR shall submit a warranty agreement form which guarantees to the PROJECT ENGINEER/OWNER that all work has been completed in accordance with the Contract Documents and will not be defective. The CONTRACTOR shall address all defective work in accordance with Part 11.
- B. Neither the final certificate of completion, final payment, acceptance of the premises by the OWNER, nor any provisions of the Contract, nor any other act or instrument of the OWNER or PROJECT ENGINEER shall relieve the CONTRACTOR from responsibility for negligence, or faulty materials, or workmanship, or failure to comply with these Contract Documents.

**12.06**      Final Payment

A. Application for Final Payment

1. After CONTRACTOR has, in the opinion of PROJECT ENGINEER, satisfactorily completed all items identified during the final inspection and has provided all completion documents required in accordance with the Contract Documents the CONTRACTOR may make application for final payment.
2.                    The final Application for Payment shall be accompanied by:
  - a.                    All documentation called for in the Contract Documents;
  - b.                    AIA document G707, "Consent of Surety Company to Final Payment;"



- c. Complete and legally effective releases or waivers of all Lien rights arising out of or Liens filed in connection with the Work, (AIA document G706A, "Contractor's Affidavit Release of Liens" and AIA document G706, "Contractor's Affidavit of Payments of Debts & Claims", or similar form) in accordance with Chapter 44A of the North Carolina General Statutes.
3. Notwithstanding any other provision of these Contract Documents to the contrary, the OWNER is under no duty or obligation whatsoever to any Subcontractor, laborer, or other party to ensure that payments due and owed by CONTRACTOR to any of them are or will be made. Such parties shall rely only on CONTRACTOR's surety bonds for remedy of nonpayment by CONTRACTOR.

**B. Review of Application**

1. Once the PROJECT ENGINEER is satisfied that the Work has been completed and CONTRACTOR's obligations under the Contract Documents have been fulfilled, PROJECT ENGINEER will, within ten (10) business days indicate in writing PROJECT ENGINEER's recommendation of payment and present the Application for Payment to OWNER for payment. Otherwise, PROJECT 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 (30) calendar days after the presentation to OWNER of the Final Application for Payment the amount recommended by PROJECT ENGINEER will become due and, when due, will be paid by OWNER to CONTRACTOR.

**12.07**      Final Completion Delayed

- A. If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed, and if PROJECT ENGINEER so confirms, OWNER shall, upon receipt of CONTRACTOR's final Application for Payment and recommendation of PROJECT ENGINEER, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted.

**12.08**      Liquidated Damages

- A. For each consecutive calendar day of delay beyond the time specified for the Contract Completion date, the CONTRACTOR shall be assessed liquidated damages as indicated in the Bid Form. Liquidated damages will be withheld from amounts which may be or may become payable to the CONTRACTOR by the OWNER. Should the cost of these sustained damages exceed the amounts owed by the OWNER, the CONTRACTOR shall pay the difference to the OWNER.
- B. If the progress of completion of the Work is delayed by any fault, neglect, act or failure to act, on the part of the CONTRACTOR or anyone acting for or on the behalf of the CONTRACTOR so as to cause any additional costs, expense, liability or damage to the OWNER or any damage or additional cost or expense for which the OWNER may or shall become liable, the CONTRACTOR shall and does hereby agree to compensate the OWNER for, and to indemnify the OWNER against all such costs, expenses, liabilities and damages.

**12.09**      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 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.

- B. A waiver of all Claims by CONTRACTOR against OWNER, other than those previously made in writing

which are still unsettled.

L. *PART 13. SUSPENSION OF WORK AND TERMINATION*

**13.01** Owner May Suspend Work

- A. At any time and without cause, OWNER may suspend the Work or any portion thereof by providing written notice to CONTRACTOR. CONTRACTOR shall resume the Work as directed by OWNER. CONTRACTOR may be allowed an adjustment in the Contract Price or an extension of the Contract Time, or both, directly attributable to any such suspension if CONTRACTOR makes a Claim therefore as provided in Part 8. An adjustment to the Contract shall only be considered if the CONTRACTOR was delayed for a time period greater than twenty-four (24) hours.
- B. If OWNER stops work under Part 11, or excludes CONTRACTOR from the Site, suspends CONTRACTOR's services, or suspends the Work or any portion thereof because of CONTRACTOR's failure to perform the Work in accordance with the Contract Documents, CONTRACTOR shall not be entitled to an extension of Contract Time.

**13.02** 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;
  - 2. CONTRACTOR's disregard of Laws or Regulations of any public body having jurisdiction;
  - 3. CONTRACTOR's disregard of the authority of OWNER; 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 above occur, OWNER may, after giving CONTRACTOR and the surety seven (7) calendar days written notice, terminate the services of CONTRACTOR, exclude CONTRACTOR from the Site, take possession of the Work, 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 finish the Work. In such case, CONTRACTOR shall not be entitled to receive any further payment.
- C. If all claims, costs, losses, and damages (including but not limited to all the fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other disputed resolution costs) exceeds the unpaid balance of the Contract, CONTRACTOR shall pay the difference to OWNER. Such claims, costs, losses, and damages incurred by OWNER will be reviewed by PROJECT ENGINEER and, when so approved, by PROJECT 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. Where OWNER has terminated CONTRACTOR's services, 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.
- E. CONTRACTOR shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or from such termination.

**13.03** Owner May Terminate For Convenience

- A. Upon seven (7) calendar days written notice to CONTRACTOR the OWNER may, without cause and without prejudice to any other right or remedy of OWNER, elect to terminate the Contract. In such case, CONTRACTOR shall be paid (without duplication of any items):

1. For 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. For 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. For 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. For reasonable expenses directly attributable to termination as approved by OWNER.

**13.04**      Contractor May Stop Work or Terminate

- A. If, through no act or fault of CONTRACTOR, the Work is suspended for more than ninety (90) consecutive calendar days by OWNER or under an order of court or other public authority, or PROJECT ENGINEER fails to act on any Application for Payment within thirty (30) calendar days after it is submitted, or OWNER fails for thirty (30) calendar days to pay CONTRACTOR any sum finally determined to be due, then CONTRACTOR may, upon seven (7) calendar days written notice to OWNER, and provided OWNER does not remedy such suspension or failure within that time, terminate the Contract and recover from OWNER payment on the same terms as provided in Part 13. In lieu of terminating the Contract and without prejudice to any other right or remedy, if PROJECT ENGINEER has failed to act on an Application for Payment within thirty (30) calendar days after it is submitted, or OWNER has failed for thirty (30) calendar days to pay CONTRACTOR any sum finally determined to be due, CONTRACTOR may, seven (7) calendar days after written notice to OWNER, stop the Work until payment is made of all such amounts due CONTRACTOR, including interest thereon. The provisions of this paragraph are not intended to preclude CONTRACTOR from making a Claim under Part 8 for an adjustment in Contract Price or Contract Time or otherwise for expenses or damage directly attributable to CONTRACTOR's stopping the Work as permitted by this paragraph.
- B. The words "suspended" and "suspension" in Part shall not refer to the legal doctrine known as "constructive suspension" but shall only refer to a stoppage of the Work by express order of OWNER without cause.

M.      *PART 14. DISPUTE RESOLUTION*

14.01 Methods and Procedures

- A. The Contract Documents shall be construed, governed, and interpreted under the law of the State of North Carolina. Should any dispute arise out of or pertaining to the performance of the Contract Documents, such disputes shall be litigated and decided either solely in the District Court Division or in the Superior Court Division of the General Court of Justice of the County of Cumberland, North Carolina. This forum selection clause is mandatory and binding on all parties.

N.      *PART 15. MISCELLANEOUS*

**15.01**      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 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 if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

**15.02**      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, and 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.

**15.03**      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.

**15.04**      Controlling Law

- A. This Contract is to be governed by the law of the State of North Carolina. All claims, disputes, and other matters in question arising out of, or relating to, this Contract not resolved by negotiation shall be resolved by legal action instituted and tried in the General Courts of North Carolina under North Carolina law with venue for trial being Cumberland County.

**15.05**      Historical or Archaeological Deposits

- A. If, during the course of construction, evidence of deposits of historical or archaeological interest are found, CONTRACTOR shall immediately cease operations affecting the find and shall notify OWNER, who shall notify the State Historic Preservation Officer. No further disturbance of the deposits shall ensue until CONTRACTOR has been notified by OWNER that he may proceed. OWNER will issue a Notice to Proceed only after the state official has surveyed the find and made a determination to OWNER. Compensation to CONTRACTOR, if any, for lost time or changes in construction to avoid the find, shall be determined in accordance with changed conditions or Change Order provisions of the Contract Documents. (Reference: 80 Stat 915, 16 USC 470, and Executive Order No. 11593 of May 31, 1971.)

**15.06**      Antitrust

- A. By entering into a Contract, CONTRACTOR conveys, sells, assigns, and transfers to OWNER all rights, title, and interest in and to all causes of action CONTRACTOR may now have or hereafter acquire under the antitrust laws of the United States and the State of North Carolina relating to the particular goods or services purchased or acquired by OWNER under the said Contract.

**15.07**      Lien

- A. It is expressly agreed that after any payment has been made by OWNER to CONTRACTOR for work done, or labor or material supplied as required and described in the Contract, OWNER will have a lien upon all material delivered to the site by or for CONTRACTOR or any Subcontractor.

**15.08**      Employment Discrimination

- A. During the performance of this Contract, CONTRACTOR agrees as follows:
1. CONTRACTOR will not discriminate against any employee or applicant for employment because of race, religion, color, sex, disability, or national origin, except where religion, sex, disability, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of CONTRACTOR. CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
  2. CONTRACTOR, in all solicitations or advertisements for employees placed by or on behalf of CONTRACTOR, will state that such CONTRACTOR is an equal opportunity employer.
  3. Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for meeting the requirements of this section.
- B. CONTRACTOR will include the provisions of the foregoing Paragraphs 1, 2, and 3 in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each

Subcontractor or vendor.

\*\*\*\*\* END OF SECTION \*\*\*\*\*

### **Special Provisions to Section 00700 “General Conditions”**

These Special Provisions are intended to supplement and amplify Section 00700 – General Conditions of these Contract Documents. Where any article or item of the General Conditions is modified or deleted by these Special Provisions, the remaining unaltered provisions of that article, paragraph, subparagraph, or clause shall remain in effect. Where a specific section is not mentioned below, it shall remain in full effect as written. In the event of a conflict, these Special Provisions shall take precedence.

1. Article 3.01 – Availability of Lands: Delete Item B.
2. Article 3.03 – Differing Subsurface or Physical Conditions: Delete Item A.1.
3. Add Article 15.09-Buy America Requirements as follows:
  - A. Buy America - The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in Federally funded projects are produced in the United States, unless a waiver has been granted by the Federal grantor agency or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.
  - B. A bidder or offeror must submit to the Federal recipient the appropriate Buy America certification (Appendix A) with all bids or offers on federally funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.
  - C. Certification requirement for procurement of steel, iron, or manufactured products.

## **DIVISION I GENERAL REQUIREMENTS**

### **01000 – SPECIAL CONDITIONS**

#### **PART 1.**

##### **1.01 PURPOSE**

These Special Conditions are intended to supplement and amplify the requirements of these Contract Documents. Where any article or item of these Contract Documents are modified or deleted by this section, the remaining unaltered provisions of that article, paragraph, subparagraph, or clause shall remain in effect. In the event of a conflict, these Special Conditions shall take precedence.

Unless otherwise noted, all items in these Special Conditions shall be considered incidental to the Work and no additional payment will be made for costs associated with these items.

##### **1.02 ORDER OF PRECEDENCE**

Except as may be otherwise specifically stated in these Contract Documents, the following order of precedence shall be adhered to for resolving any conflict, error, ambiguity, or discrepancy between the provisions of these Contract Documents:

1. Any addendum issued prior to the opening of Bids
2. Section 01000 – Special Conditions
3. Section 01025 – Measurement and Payment
4. Approved Contract Drawings
5. Fayetteville Public Works Commission Standard Details
6. Fayetteville Public Works Commission Technical Specifications
7. General Conditions of the Contract Documents

##### **1.03 CUSTOMER SERVICE**

The Contractor is expected to make every effort to reduce the impact of their operation to the Fayetteville Public Works Commission's operation and maintenance of the water and sewer system, and the affected customers within the project area. Full cooperation and coordination with the Fayetteville Public Works Commission personnel and customers is expected. It is expected that the Contractor will promptly respond to any concerns voiced by residents and/or Fayetteville Public Works Commission personnel and make every effort to resolve them immediately. Should the Contractor be unable to resolve the issue, the Contractor shall promptly notify the Fayetteville Public Works Commission. Such notification shall include the person's name, address, nature of complaint, and the Contractor's proposed remedy. Providing exemplary customer service shall be incidental to this Contract, and no additional payment will be made for this service.

The Contractor at all times shall conduct the work in such a manner as to ensure the least obstruction to traffic practicable. The convenience of the general public and of the residents and businesses along and adjacent to the Work shall be provided for in a satisfactory manner, consistent with the operation and local conditions. The Contractor shall construct and maintain any necessary ramps, boardwalks, or other means to maintain pedestrian traffic. Costs for such work shall be incidental to the unit prices bid. The Contractor shall at all times cooperate with the public and merchants as affected by the construction operations and shall endeavor to maintain good public relations at all times.

The Contractor shall make every effort to minimize the impacts of their operation on the businesses and/or residents. The Contractor shall contact the business owners to determine the optimum time for conducting their operations. The Contractor shall schedule their operations to minimize the likelihood of equipment operating throughout the night and/or on weekends in residential areas. The Contractor shall remove their equipment from the yards of residents at the end of each work day. Equipment shall not be left in yards, overnight, or during weekends, unless the Contractor has specific written permission from the property owner.

The Contractor shall fully coordinate their operations and schedule with the Fayetteville Public Works Commission.

**1.04 BEAVER COURIE ATTORNEYS AT LAW**

The Contractor shall coordinate with the PWC Project Coordinator and Beaver Courie Attorneys at Law to schedule the best time to disconnect and reconnect beaver courie sanitary sewer service.

**1.05 ORNATE IRON FENCING**

The Contractor, as needed, shall remove and relocate the existing ornate iron fencing at the back of the fountain property. Any relocation of the fencing shall be coordinated with the City of Fayetteville Linear Park, Inc. prior to removing the fencing. The Contractor shall replace any fencing disturbed as part of their operation for the work described within these Contract Documents. All fencing shall be removed and replaced, using new materials as required, to restore the item to the original condition or better.

The Contractor shall remove the existing ornate iron fencing as needed to facilitate the installation of the new main. The Contractor shall remove and properly dispose of the existing fencing and install new ornate iron fencing upon completion of the work. The new ornate iron fence shall match the existing fence in all respects – color, size, spacing, etc.

**1.06 PRECONSTRUCTION VIDEO**

The Contractor shall complete a pre-construction video inspection of the project area, to document pre-existing conditions, including vegetation, roadside conditions, easement areas, driveways, the condition of the curb and gutter, the condition of the mailboxes, fences, gates, retaining walls, sod, and any other installed improvements.

The video shall be supplied in a standard digital video file format (i.e., mp4, mpg, or avi) and supplied on a standard portable USB hard disk drive as approved by the Project Engineer.



It is advised that the video start on one side of the street, proceed to an intersection and then return down the other side. An additional pass showing the road centerline from a high viewing angle is preferred but not necessary. The Contractor shall also include any easement areas, especially those passing through yards, driveways, etc. The video must identify the house number and the street name in the audio track and visually. The video must be accompanied by an index sheet identifying the streets of the project by time position on the video. The Contractor may also include any pre-existing conditions they want brought to the attention of the Project Engineer by including notes and time position on the index sheet. The Contractor can also include still pictures of the areas, for additional documentation. Two (2) copies of the video and any other accompanying data shall be submitted to the Project Engineer before the first payment application can be released and the cost for the video shall be incidental.

**1.07 WORKING DAYS, EMERGENCIES, PUBLIC ACCESS, AND MEETINGS**

**A. WORKING DAYS & HOURS**

The Contractor shall limit their operations to Monday through Friday, between the times of 8:00 am and 6:00 pm, unless otherwise approved by the Fayetteville Public Works Commission. No work is permitted on legal Holidays (to include holiday weekends). No work, unless otherwise required due to an emergency and authorized by the Fayetteville Public Works Commission, shall be performed on weekends or after hours without prior written approval from the Fayetteville Public Works Commission. Requests to work other than regular working hours must be submitted in writing to the Fayetteville Public Works Commission a minimum of two (2) full business days in advance in order to arrange for appropriate personnel to be at the site of the Work. Requests shall only be approved if the Fayetteville Public Works Commission determines that the work is necessary in order to meet the contract completion date. The written request shall include a proposed schedule for the work to be completed.

During the course of construction, it may be necessary to complete portions of the Work outside of the normal working hours, to accommodate the utility owner’s operations, traffic, and/or public convenience. The Contractor, Fayetteville Public Works Commission, and the utility owner will determine an acceptable schedule required for Work during such hours. The costs for such Work shall be considered incidental to the Project and no additional payment will be made.

Legal holidays observed by the Fayetteville Public Works Commission include New Year’s Day, Martin Luther King’s Birthday, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving (2 days), and Christmas (2 days).

**B. EMERGENCY RESPONSE**

The Contractor shall maintain a construction crew capable of performing emergency maintenance work 24 hours a day, 7 days a week to include all holidays. As a minimum, phone numbers shall be furnished for at least three (3) individuals in responsible charge (capable of making company binding decisions) to be available at all times (24 hours a day, 7 days a week to include all holidays). The emergency phone numbers and responsible individual’s names will be provided to the Project Engineer. In the event of an emergency, PWC Dispatch will contact the Contractor and the Project Coordinator. The Contractor’s designated emergency personnel shall be expected to respond and perform emergency

maintenance work immediately, in less than two (2) hours, or the work will be performed by the appropriate utility owner and all associated costs billed to the Contractor.

Once onsite the Contractor shall notify the PWC’s Emergency Dispatcher (910-678-7400) of the problem, the anticipated response time and the estimated time required to complete the repair work. It is the Contractor’s responsibility to immediately respond to any emergency in their project area. It is expected that the Contractor will have the appropriate repair materials on-site in order to provide an immediate response to any water, sewer, street, and/or storm emergency. Should it be determined that the cause of the water, sewer, street and/or storm emergency is not the fault of the Contractor, reimbursement of their expenses related to the repairs will be made. No reimbursement to the Contractor shall be made for repairs resulting from the Contractor’s actions and/or negligence.

**C. OFFICE FACILITIES**

The Contractor shall provide at his expense telecommunications via cellular phone at all times on the job site. The Project Superintendent must be onsite and accessible by telephone at all times while work is progressing. The Project Superintendent shall have access to plans, contract documents, permits, and encroachment agreements at all times whether an office facility is provided by the Contractor or not.

**D. CONSTRUCTION MEETINGS**

The Contractor and Fayetteville Public Works Commission shall mutually establish a regular time to meet on a monthly basis, for the duration of the project. The meetings shall be held at the Fayetteville Public Works Commission’s complex at 955 Old Wilmington Road, and will generally last about an hour. The Contractor’s superintendent or designated representative shall attend these meetings. The Contractor’s representative shall be knowledgeable of the project, issues that need to be addressed, and be able to make binding decisions for the Contractor.

The purpose of the meeting is to discuss various project related items, including, but not limited to: safety concerns, overall project status and schedule, the Contractor’s schedule for the upcoming month, issues that the Contractor and/or Fayetteville Public Works Commission need to address, and any proposed or potential change orders.

The cost for the Contractor’s representative to attend the monthly meetings shall be included in the unit prices bid.

**E. PROJECT SCHEDULE**

Each week, the Contractor shall provide the Fayetteville Public Works Commission with their schedule for the upcoming week. The Contractor shall contact the Project Coordinator on a daily basis, to confirm their schedule for that day. The Contractor shall immediately notify the Fayetteville Public Works Commission of any deviations to their schedule. Failure to notify the Fayetteville Public Works Commission of any deviations may result in payment being withheld.

**1.08 PUBLIC CONVENIENCE**

**A. CONTRACTOR’S DUTY AND OBLIGATION TO THE PUBLIC**

The Contractor at all times shall conduct the work in such a manner as to ensure the least obstruction to traffic practicable. The convenience of the general public and of the residents and businesses along

and adjacent to the street(s) shall be provided for in a satisfactory manner, consistent with the operation and local conditions. The Contractor shall construct and maintain any necessary ramps, boardwalks, or other means to maintain pedestrian traffic. Costs for such work shall be incidental to the unit prices bid. The Contractor shall at all times cooperate with the public and merchants affected by the construction operations and shall maintain good public relations at all times.

The Contractor shall schedule and stage construction in a sequence to minimize disruption to the largest number of residents/businesses for the shortest period of time. Special considerations shall be given to the neighborhood solid waste and trash collection schedule, mail delivery, and bus routes, if applicable.

#### B. RESIDENT NOTIFICATION

Whenever the property owner's use of the sanitary sewer must be interrupted by the Work, the Contractor shall notify the residents well in advance of the interruption. This notification shall be accomplished with door hanger notification cards placed at the addresses of the affected residents. Property owners shall be informed when service interruption takes place and the expected duration. This notice shall be a minimum 48 hours prior to service interruption. The Contractor shall make every effort to minimize inconvenience to the public and property owners.

Service interruptions to residents shall be limited to no more than eight (8) hours at any given time.

The notifications shall describe the work to be undertaken and approximate dates of the work. The notifications **shall clearly indicate** the dates and times of the work. The text of the notifications shall be approved by the Fayetteville Public Works Commission in advance. The Contractor shall notify the Fayetteville Public Works Commission Project Coordinator each time such notification is issued to the residents.

#### C. PUBLIC SAFETY

The Contractor shall barricade all work, roads, etc. to keep the public away from the construction. The Contractor shall provide protection to all portions of the Work when the work is not in progress. The Contractor shall provide and install all measures necessary to protect the public. Damage due to the lack of proper protection shall be the Contractor's sole responsibility.

The Contractor and subcontractors shall be responsible for any damage to any Owner's property, private property, or property owned by other utilities. The Contractor shall repair all damage to as good as or better than existing conditions. The Contractor and subcontractors shall be responsible for and pay any claims.

There are existing recreational areas and expected foot traffic in the vicinity of the sewer main that is being replaced. The fountain property on Green Street is connected to another public type park area by a pedestrian bridge. The project site is also in very close proximity to Beaver Courier law firm. The Contractor shall provide measures to barricade or otherwise protect hazardous areas when the Work is not in progress.

The Contractor shall provide temporary fencing between the recreational areas and the sewer main being replaced. The temporary fencing shall be located along the permanent and temporary easement boundaries. The Contractor shall coordinate the installation of the temporary fencing and removal of

the existing fence as shown on the plan drawings with the property owner. The Contractor shall maintain the temporary fencing so that the work area remains secure throughout the duration of the project.

**1.09 SUBCONTRACTORS**

Second tier subcontractors shall not be allowed. Violation of this provision of the Contract may be deemed a breach of the Contract.

**1.10 DISCOVERY OF DEFECTS**

The Contractor warrants and guarantees to the Fayetteville Public Works Commission, that all work will be in accordance with these Contract Documents, will not be defective, and that all materials and equipment used for the work are appropriate for the Project. The Fayetteville Public Works Commission shall provide prompt notice of all defects to Contractor upon discovery. All defective work, whether or not in place, may be rejected, corrected, or accepted, at the Fayetteville Public Works Commission’s sole discretion.

The Fayetteville Public Works Commission reserves the right, should an error be discovered in the estimate or conclusive proof of defective work or materials used by or on the part of the Contractor be discovered either before or after the final payment has been made, to claim and remove by process of law such sum or sums as may be sufficient to correct the error or make good the defects in the work and materials.

**PART 2.**

**CONSTRUCTION REQUIREMENTS**

**2.01 BYPASS PUMPING**

The Contractor shall furnish, install, and maintain a temporary sewer bypass pumping system in accordance with Specification Section 02750 – Wastewater Flow Control and these Special Conditions.

The Contractor shall be prepared to bypass full pipe flows during wet weather in the 15-inch Ann St. to Green St. Aerial Crossing and cross-lines that are intercepted by this 15-inch main. The temporary sewer bypass system shall be capable of pumping 170 gpm with a suction lift of 15 feet.

Typical dry weather daily flows are anticipated to be lower and may vary considerably throughout the day.

The Contractor shall schedule a coordination meeting with the Fayetteville Public Works Commission and other personnel (Contractor, bypass sub-contractor, etc.) a minimum of three (3) business days prior to starting the temporary bypass pumping system. The purpose of this coordination meeting is to ensure that the Contractor and their sub-contractors have a good understanding of the requirements and expectations of operating the temporary bypass pumping system, discuss contingency plans (to include protocols for emergency contacts), identify location(s) of pumps, verify necessary materials (repair sleeves, containment devices, etc.) are on-site and available, and any other items necessary to

ensure that the Fayetteville Public Works Commission has confidence that the appropriate personnel can operate and maintain the temporary bypass pumping system. Should, for any reason, the Fayetteville Public Works Commission deem that the Contractor and/or their sub-contractor is not prepared to operate and maintain the temporary bypass pumping system, the temporary bypass pumping system shall not be started. The Contractor shall take all necessary steps to address any concerns to the satisfaction of the Fayetteville Public Works Commission. Upon completion of those actions, another coordination meeting shall be held, in order for the Fayetteville Public Works Commission to confirm that the Contractor and their sub-contractor is prepared to operate and maintain the temporary bypass pumping system. This process will be repeated until the Fayetteville Public Works Commission is satisfied that the Contractor and their sub-contractor are prepared to operate and maintain the temporary bypass pumping system. No additional contract time will be granted for this delay.

**2.02 EROSION AND SEDIMENT CONTROL**

**A. EROSION AND SEDIMENT CONTROL PLAN**

The provisions of Chapter 139, North Carolina General Statutes, as amended, shall be applicable to this project. The minimum requirements for erosion and sedimentation control are shown on the approved Contract Drawings, based on the anticipated construction methods and location of bypass. The Contractor shall adjust and/or add erosion control measures to complement their type of construction to prevent erosion and the transmittal of silt. All necessary erosion control measures shall be installed prior to any work. The installed erosion control measures shall remain serviceable until the site is restored and stabilized. Upon such time (which may be after completion of the project), the Contractor shall remove all temporary measures.

All fees, penalties, fines for non-compliance and all civil actions resulting there from shall be the Contractor’s responsibility and shall in no way involve the Fayetteville Public Works Commission. The Contractor shall immediately notify the Fayetteville Public Works Commission of any fine, penalty, or notice of non-compliance by the North Carolina Department of Environmental Quality (NCDEQ). The Contractor may be required to modify or supplement the measures at no additional cost to the Fayetteville Public Works Commission.

In addition to installing and maintaining the appropriate erosion control devices, the Contractor shall maintain a neat and clean jobsite. The Contractor shall take the necessary measures to minimize dust, ensure the streets are clean and free of debris, and other measures as required. The Contractor shall maintain the proper erosion control devices to ensure against erosion. The Contractor shall ensure that the catch basin and inlet protection devices are free of dirt and debris.

Permanent and temporary erosion control measures proposed by the Contractor for staging areas, haul roads, bypass lines, etc. shall be at the Contractor’s expense and shall not constitute additional compensation.

The existing sewer main crosses Cross Creek; therefore the Contractor shall take all necessary precautions to prevent any sedimentation from entering Cross Creek as a result of their operations.

It is noted that the drainage area for Cross Creek is extensive. During rain events, the flows and levels within Cross Creek can rise, depending on the duration and volume of the rain events. It is likely that debris can travel in the creek during rain events. The Contractor shall be cognizant of the weather and forecast and take all necessary precautions to prevent higher stream flows and/or debris from damaging the temporary bracing/shoring, and/or the steel pipe. The Contractor shall continuously monitor the temporary bracing/shoring and steel pipe during rain events, until the stream flows return to normal. It is noted that it may take several days for the flows to return to normal, depending on the duration and intensity of the rain event. Any damage shall be immediately repaired.

All applicable requirements of Section 404 (Clean Water Act, 33 USC 1344) USACE Nationwide Permits 14 and 12 and 401 Water Quality General Certification (WQGC) No. 4088 and No. 4086 shall be adhered. The Section 404 and 401 WQGC are included in the appendices of these contract documents. It is anticipated that the sewer bypass lines will need to cross Cross Creek to reconnect the existing outfall to the relocated portion of the outfall.

## **2.03 SITE WORK**

### **A. SITE LAYOUT AND STAKING**

PWC shall provide all construction staking. The Contractor shall contact the Technical Resources Supervisor, Mr. Rodney Maness, PLS, at (910) 223-4739 to schedule the construction staking. A minimum of 48 hours notice is required. Cut sheets will be provided to the Contractor. The Contractor shall have a copy of the cut sheets on the job site, and available for inspection by PWC staff.

Utilities shall be installed at the locations and elevations indicated on the cut sheets unless otherwise approved by the Owner. Should a conflict arise between the Contract Drawings and the cut sheets, the cut sheets shall take precedence. Contractor shall make the Project Coordinator aware of any conflict between the Contract Drawings and the cut sheets as soon as it is discovered. The Contractor shall verify invert elevations of all water mains, sewer mains, water laterals, sewer laterals, and manholes by instrument.

## **2.04 UTILITIES**

### **A. OWNERSHIP OF EXISTING UTILITIES**

Existing utilities indicated on the Plans to be abandoned shall remain the property of the utility owner. The Contractor shall be responsible for removing the existing utilities as noted on the plans and removing the material from the site unless otherwise directed by the utility owner. The utility owner shall have the right of first refusal regarding the salvage of the material.

### **B. CONSTRUCTION AROUND UTILITY POLES AND GUY WIRES**

The Contractor will be required to perform construction work around utility poles and guy wires which may be left in place within the construction limits of the project. The Contractor shall contact the owner of the utility to coordinate securing the poles during construction. It may be necessary for the Contractor to hire an electrical utility contractor to secure poles. All work outlined in this paragraph shall be at no additional cost to the Owner.

### **C. UTILITY COORDINATION**

Coordination with the Project Engineer, Project Coordinator, and utility owner shall be a requirement of this Contract.

Coordination of temporary interruptions to gas, electric, cable and telephone services shall be the responsibility of the Contractor. The Contractor shall schedule a coordination meeting with the Project Coordinator, Project Engineer and the utility owner a minimum of three (3) business days prior to any planned service interruption.

Coordination of temporary interruptions to water and/or sewer services shall be the responsibility of the Contractor. The Contractor shall schedule a coordination meeting with the Project Coordinator, Project Engineer, and utility owner a minimum of three (3) business days prior to any planned service interruption. The duration of the service interruption shall be coordinated with the utility owner and the Project Coordinator. Service interruptions to residents shall be limited to no more than eight (8) hours at any given time. If the service interruption is anticipated to exceed eight (8) hours, temporary service shall be provided. The Contractor shall provide all the necessary equipment and materials for temporary service. The notifications shall describe the work to be undertaken and approximate dates of the work. The text of the notifications shall be approved by the PWC in advance. The Contractor shall furnish a copy of the notification to the Project Coordinator each time such notification is issued to the residents.

Whenever the property owner’s use of the water and/or sanitary sewer must be interrupted by the Work, the Contractor shall notify the residents a minimum of 48 hours prior to service interruption. This notification shall be accomplished with door hanger notification cards placed at the addresses of the affected residents. Property owners shall be informed when service interruption takes place and the expected duration. The Contractor shall make every effort to minimize inconvenience to the public and property owners.

For service interruptions on PWC’s water system, refer to the ‘Water Outage’ requirement in Section 2.06 of these Special Provisions.

**The utility owner shall supervise the Contractor’s operation of their facilities within the work area.**

**D. PROTECTION OF EXISTING UTILITIES**

The Contractor shall adhere to the provisions of the 1985 Underground Damage Prevention Act, North Carolina General Statutes. The Contractor shall contact the NC One Call System (dial 811) for utility locates prior to beginning work in a particular area.

The Contractor shall take every precaution to prevent damage to existing utilities. Any damage to existing utilities shall be replaced or repaired by the Contractor.

Should uncharted or incorrectly charted piping or other utilities be encountered during excavations, the Contractor shall immediately consult the PWC Project Coordinator or the PWC Project Engineer for directions as how to proceed. The Contractor shall fully cooperate with PWC and other utility companies in keeping respective services and facilities in operation.

If existing water and/or sewer utilities are damaged, the Contractor shall immediately notify the utility owner and the Project Coordinator. The Contractor shall immediately commence repairs to the damaged water and/or sewer utility in accordance with the utility owner's requirements. The Contractor shall ensure that no debris of any kind from construction operations is allowed to enter the existing sewers. Any damage to existing structures or pipe lines shall be the direct responsibility of the Contractor and such damage shall be restored, replaced, or repaired by him or the value of such deducted from any monies due him under his contract.

If the Contractor damages other utilities (CATV, telephone, etc.) the Contractor shall immediately notify the utility owner and Project Coordinator.

Any damage to the City of Fayetteville's and/or NCDOT's storm drainage infrastructure shall be repaired in accordance with City of Fayetteville and/or NCDOT's requirements within seven (7) business days after damage occurs. All costs associated with the required repairs shall be the responsibility of the Contractor, at no cost to the Owner.

Actual horizontal and vertical locations of existing utilities have not been verified by PWC. The Contractor is required to excavate each utility which may conflict with construction in advance to verify locations. The utilities shall be excavated a minimum of fourteen (14) business days in advance of actual installation of new utilities to allow the PWC Project Engineer an opportunity to adjust grades, alignments, etc., to avoid a conflict. Separate payment will not be made to physically verify the utility locations.

If the Contractor fails to schedule locates or perform advance physical locations in advance of the construction and a conflict arises, the Contractor will be required to make corrective measures as instructed by the PWC Project Engineer at the Contractor's expense. The Contractor's failure to advance plan (minimum fourteen (14) business days) by physically uncovering existing utilities in advance of construction shall not be cause for claim of lost time or for additional compensation. No additional payment will be made for re-mobilization required by the utility locator.

When the Contractor's controlling operations are halted due to the failure of a utility owner to relocate or adjust a utility after being properly notified by the Contractor, the Contract Time may be extended by the amount of time the Contractor's controlling operations have been delayed while awaiting the relocation or adjustment. The Contractor shall proceed with work in areas not affected by the relocation or adjustment delay.

PWC shall not be liable to the Contractor for any claims, costs, losses, or damages incurred or sustained on or in connection with locating existing underground installations.

**E. SPILL RESPONSE**

The Contractor shall not discharge or pump any sewage, solids, or debris on the ground, streets, storm water system, ditches, or streams. Any sewage spills shall be immediately reported to the PWC Water Resources Construction Department, (910) 223-4716. After normal business hours, the Contractor shall contact the PWC dispatch center, (910) 678-7400.

In the event that raw sewage is spilled, discharged, leaked or otherwise deposited in the open environment, due to the Contractor's work, the Contractor is responsible for any clean-up of solids and



disinfection of the area affected. This work will be performed at the Contractor's expense with no additional cost to the Owner. The Contractor is also responsible for complying with all regulatory requirements in regards to the size spill with no additional cost to the Owner. The Contractor shall cooperate fully with the Owner and the applicable state agencies in responding to and cleaning up the spill. Any work completed by the Owner in responding to a spill caused by the Contractor's operations shall be billed to the Contractor.

Where sewage has backed up into a property due to the Contractor's operation, the Contractor shall immediately notify the Owner, inspect the property with the Owner's representative and agree on remedial measures. The Contractor shall be responsible for all cleaning, repair and/or replacement of damaged property, temporary relocation of all occupants of the affected properties, if required, all to the satisfaction of the property owner. These actions shall be undertaken immediately upon learning of the backup. Cleaning shall be performed by firms specializing in this type of work. All costs associated with the cleaning, repair, replacement of damages, occupant accommodations, insurance and spill remediation shall be the responsibility of the Contractor. All remediation measures required as part of a spill response are part of acceptance of the project, and final payment shall not be made until such time all required measures are addressed and approved by the appropriate regulatory agency.

**F. DAMAGE TO EXISTING UTILITIES**

If the Work is delayed as a result of damage to an improperly marked utility, the Contractor may request an extension of the Contract Time in accordance with these Contract Documents. Should the Contractor determine compensation for the delay is also warranted, the Contractor shall submit a claim to the utility owner. Adjustments to the Contract Price will not be made due to delays or additional work resulting from damage to existing utilities that are not properly located.

If the Work is delayed as a result of damage to a properly marked utility, no additional Contract Time or compensation shall be granted.

**G. DAMAGE TO EXISTING SANITARY SEWER FACILITIES**

If a sanitary sewer lateral is damaged as a result of the Contractor's operations, the Contractor shall replace the entire lateral, from the main to the clean-out utilizing ductile iron. Replacement of the lateral includes replacement of the clean-out and re-connecting the service to the customer's existing service, utilizing all necessary fittings. The Contractor may use the existing main to lateral connection, with approval from the PWC Project Coordinator. The PWC Project Coordinator and/or the PWC Project Engineer may waive the requirement to replace the sewer lateral in its entirety at their sole discretion.

If a sanitary sewer main is damaged as a result of the Contractor's operations, the Contractor shall repair the damage in accordance with PWC requirements. The repair shall be in accordance with PWC standard detail S.15, and as directed by the PWC Project Coordinator.

The Contractor shall immediately notify the PWC Project Coordinator when damage occurs. All repairs and replacements shall be in accordance with PWC requirements, and as directed by PWC.

The Contractor shall prevent debris and other items from their construction efforts from entering the sewer system. Damage to Fayetteville Public Works Commission facilities resulting from the

Contractor’s failure to control debris and/or other items related to their operation shall be the sole responsibility of the Contractor.

In the event any debris or other item from their operation enters the sewer system, the Contractor shall immediately contact the Fayetteville Public Works Commission. The Contractor shall then commence efforts to capture that debris at the downstream manholes. The Contractor shall continue to search for and recover any debris until either all debris is captured or instructed otherwise by the Fayetteville Public Works Commission. Any costs incurred by the Fayetteville Public Works Commission to help search for and/or retrieve the debris shall be the responsibility of the Contractor.

**H. CROSSING EXISTING OR PROPOSED UTILITIES**

The Contractor shall conduct their operations so that the following requirements are adhered to:

1. Underground telephone, cable TV, and gas utilities or conduit banks shall be crossed maintaining a minimum of 12-inch separation or clearance.
2. Electrical crossings shall be performed while the conductor is de-energized and at all times in the presence of the utility owner. Electrical crossings shall be in accordance with NESC requirements. Electrical primary conductor crossings shall be as follows:
  - a. Crossing over a conductor, maintain a minimum of 12-inches of undisturbed soil encasing the conductor.
  - b. Crossing under a conductor shall be accomplished by boring, maintaining 12-inches of undisturbed soil encasing the conductor.

No separate payment shall be made for this work.

**I. FIRE HYDRANTS**

Existing fire hydrants shall be accessible to the Fire Department at all times. Fire hydrants shall not be taken out of service without the utility owner’s written approval. The Fire Department shall be notified of any fire hydrant taken out of service.

**2.05 TESTING**

**A. PRE-TESTING**

The Contractor shall perform all water system and/or sewer system pre-testing satisfactorily prior to scheduling the test to be observed by the Project Coordinator. Pre-testing shall include mandrel pulling; pressure tests for water mains and laterals; vacuum testing manholes; air/pressure tests for sewer mains and laterals; and pressure testing force mains.

**B. TESTING**

The Contractor shall coordinate and fully cooperate with the Project Coordinator when scheduling testing. The Contractor shall provide a minimum of two (2) business days’ notice when scheduling testing with the Project Coordinator. All testing, to include a final visual inspection (mirror), shall be in accordance with these Contract Documents.

If the same line segment (water or sewer) and/or manhole fails the required testing more than two (2) times, the Contractor shall be charged a fee of \$100.00 per test, beginning with the third attempt, until a passing test achieved.

**C. COMPACTION REQUIREMENTS**

Volume II of these Contract Documents contains compaction requirements in Specification Section 02222.

**2.06 SUBMITTALS**

The Contractor shall provide submittal information as outlined in Section 01300 – Submittals, and as outlined below.

The Contractor shall not perform any portion of the Work requiring submittal and review until the respective submittal has been approved by the Fayetteville Public Works Commission. Work performed prior to review and acceptance shall be at the Contractor’s risk.

The Contractor shall submit to the Fayetteville Public Works Commission five (5) copies of all required submittal data for review and approval. The Contractor shall furnish, prior to use of the materials, satisfactory written certification of his compliance with the manufacturer’s standards for all materials, conformance with the methods of the manufacturer, and accordance with all standards specified and referenced within these specifications. If requested by the Fayetteville Public Works Commission, the manufacturer of materials, equipment, or product shall submit evidence of having consistently produced materials of satisfactory quality and performance for a period of at least four (4) years.

The Contractor shall provide submittals on the following:

- Specifications (shop drawings, SDS, etc.) on the proposed materials to be used
  - Steel Pipe and Pile Information (including manufacturer and grade of steel)
  - Pile Driving Hammer Data
  - Steel Shop Drawing for Saddle Beam, Straps, and Bolts
  - Concrete Mix Data
  - Ductile Iron Pipe (including all fittings/couplings)
  - Exterior Paint/Coating System (Manufacturer Specification Data, SDS, etc) to be used
  - Interior Protective Coating System (Manufacturer Specification Data, SDS, etc.) to be used
  - Precast Manholes Information and Sizes
  - Anti-Microbial Admixture for Manholes and Concrete
  - Geotextile Fabric
- Contractor’s safety plan, including confined space program
- Identification of the proposed project superintendent and representative authorized to act on behalf of the Contractor.
- Proposed project schedule. The schedule shall include the sequencing and coordination of connections to existing sewers, pipeline inspections, trenchless rehabilitation and testing of the sewers, bypass pumping set up and tear down, and final restoration.
- All piping, fittings and structures
- Bypass plan – as outlined in Section 02750 of these Contract Documents

- Erosion Control measures for bypass pumping, access, etc.
- Contractor personnel emergency contact information
- Labor and equipment rates
- Property Owner Agreement if applicable (sample agreements and executed agreements)
- Pre-construction Video/Pictures

All information contained within the submittals shall be in accordance with these Contract Documents. Facsimile (fax) copies of the submittals or re-submittals will not be acceptable.

The Fayetteville Public Works Commission shall review and approve, disapprove, or approve with comment the submittal within 10 business days of receipt. All notifications on the submittals will be provided to the Contractor in writing. The Fayetteville Public Works Commission shall return three (3) marked copies of the submittals to the Contractor.

The Fayetteville Public Works Commission’s review of the submittals will cover only general conformity to these Contract Documents, external connections, and dimensions which affect the layout. The Fayetteville Public Works Commission’s review does not indicate a thorough review of all dimensions, quantities, and details of the material, equipment, device, or item shown. The Fayetteville Public Works Commission’s review shall not relieve the Contractor of the Contractor’s sole responsibility for errors, omissions, or deviations in the drawings and data, nor of the Contractor’s sole responsibility for compliance with these Contract Documents.

Any need for more than one (1) re-submission, or any other delay in obtaining the Fayetteville Public Works Commission’s review of submittals, will not entitle the Contractor to an extension of the contract duration, unless the delay of the Work is directly caused by a change in the Work authorized by a Change Order or by failure of the Fayetteville Public Works Commission to review any submittal within the submittal review period specified herein and to return the submittal to the Contractor.

**2.07 CONSTRUCTION REQUIREMENTS**

**A. LIMITS OF CONSTRUCTION**

The Contractor shall confine operations (excavation, bypass, access, etc.) to the permanent easement and/ or the existing street rights-of-way. The Contractor may use additional area for staging, storage or other operations, provided that written permission is obtained from the property owner and all disturbed areas are restored to conditions equal or better than existing.

**B. COORDINATION OF WORK**

The Contractor shall maintain unobstructed access to all areas for other Contractors. The Contractor is required to conduct his operations in a manner that will not interfere with or damage work that is being performed by others. The Contractor shall coordinate his operations in a manner which will facilitate the progress of work in adjacent areas.

Any conflicts or interference that cannot be resolved through direct communication with other Contractors working on the site shall immediately be brought to the Project Engineer’s attention for resolution. The Project Engineer’s decisions regarding resolution of conflicts between Contractors shall be final and binding. The Contractor shall not claim extra compensation for delays caused by

other Contractors unless such delays are clear violations of a prior coordination agreement facilitated by the Owner.

**C. CONSTRUCTION FACILITIES**

The Contractor shall be responsible for obtaining all temporary utilities required for construction at no additional cost to the Owner. The Contractor shall make all necessary arrangements for securing water for construction purposes. The Contractor shall contact the utility owner to obtain the necessary permit for the temporary water usage.

**D. BULK WATER USAGE**

The PWC will allow the Contractor to use water from its water system. The Contractor shall utilize proper backflow prevention devices when obtaining water from the PWC’s system. The Contractor shall contact PWC’s Environmental System Protection Department at 910-223-4704 to determine the required backflow prevention devices, and to obtain a bulk water use permit. The Contractor shall be responsible for the cost of the bulk water permit fee. The bulk water permit fee is an annual fee, and shall be paid by the Contractor each year that this Contract is in effect. The Contractor shall provide documentation on the amount of water used for their operations, and provide a monthly statement to the Project Coordinator.

Water usage from other utilities shall be done in accordance with the utility’s requirements. Any and all fees shall be the Contractor’s responsibility.

**E. CLEANLINESS DURING CONSTRUCTION**

The Contractor shall perform a daily clean-up of all dirt, debris, scrap materials and other items resulting from their operations. No open accumulation of refuse, surplus or scrap materials will be permitted. The Contractor shall legally dispose off-site all waste materials and other excess materials resulting from construction.

Failure of the Contractor to maintain a clean site, including streets, will be basis for the Owner to issue a written notice of non-compliance with the Contract. The Contractor shall comply with the notice within 24 hours or as directed. If the Contractor fails to comply, the Owner may authorize the cleanup to be performed by others and the costs shall be deducted from the Contractor’s pay application.

**F. DUST CONTROL**

The Contractor shall control the dust in all areas of the project, including staging yard and haul routes for the entire duration of the Contract. The Contractor shall have a water truck, sweeper and a roller on-site at all times with trained personnel to operate the equipment. Watering and/or sweeping the streets shall be required as conditions dictate, or as required by the Owner. The sweeping operation shall direct all materials towards the disturbed areas and not into residential yards. Should the Contractor fail to provide adequate dust control, the Owner reserves the right to stop work and/or refuse to process the Contractor’s pay applications until the Contractor installs adequate dust control measures. No separate payment will be made for the control of dust.

**G. STAGING AREAS**

The Contractor shall be required to secure staging areas for storing materials, equipment, etc. All costs including, but not limited to, rent, restoration, site maintenance, erosion control measures and

permit fees (including Temporary Use Permit required by the City of Fayetteville), shall be the responsibility of the Contractor. The Contractor will submit a Staging Area Operation Plan for each site consisting at a minimum of the following:

- The layout of each staging area clearly identifying use areas and sufficient in detail and scale to indicate the proximity of activity to adjacent residences and businesses;
- Transportation plan including routes for both ingress and egress;
- Dust control measures both on site and along transportation routes necessary to minimize the transmission of material onto streets used for ingress and egress; and,
- Hours of operation and noise mitigation measures.
- Application and Fee for the Temporary Use Permit.
- Application and Fee for Truck Route Permit.

The Contractor shall submit to PWC the application for the Temporary Use Permit, Truck Route Permit, and Staging Area Operation Plan. Upon acceptance by PWC, the applications shall be submitted to the City of Fayetteville by PWC for review and approval.

A staging area has not been indicated on the Contract Drawings and it shall be the responsibility of the Contractor to determine a location for storing materials and negotiate with the property owner for use of that area. If needed, the Contractor may utilize the existing 30-foot sewer easement for additional work area. This area will need to be secured, to separate the Contractor’s activities from the Cross Creek Fountain Property, Ann St Property, and Beaver Courier Attorneys at Law’s day-to-day functions.

Proper measures, to include total secondary containment, shall be used for fuel storage and to prevent spillage. The Contractor shall not stockpile materials or place fill dirt on any lot without approval from the property owner. Should the Contractor’s stockpiles create drainage problems, the Contractor shall construct drainage improvements or relocate the stockpile as directed by the Owner, at the Contractor’s expense.

All staging areas will be subject to inspection by the Fayetteville Public Works Commission, or agent thereof, for compliance with this section without prior notice. Any deficiencies will be documented by Fayetteville Public Works Commission and written notice will be given to the Contractor in accordance with the contract conditions. The Contractor must rectify deficiencies in a reasonable time frame. Failure to do so will result in breach of contract.

The Contractor shall obtain a signed agreement for the staging area in accordance with the General Conditions of these Contract Documents. Upon the completion of the project the Contractor shall obtain a signed release from the property owner for the satisfactory completion and restoration prior to issuance of final payment. The Contractor shall obtain a signed agreement for the staging area in accordance with the General Conditions of these Contract Documents. Upon the completion of the project the Contractor shall obtain a signed release from the property owner for the satisfactory completion and restoration prior to issuance of final payment. The Contractor shall take all necessary measures to establish permanent groundcover on the staging area, prior to obtaining a signed release from the property owner. Restoration of the staging area and establishment of permanent ground cover shall be in accordance with the approved erosion control plan. All erosion control measures shall

remain in place until the permanent ground cover is established. Restoration of the staging area shall be at the Contractor's sole expense, and shall not constitute additional compensation.

**H. CONSTRUCTION ACCESS**

The Contractor may utilize the Cross Creek Linear Park Fountain property (REID 0437647527000) to access the project site from Green Street. The property is owned by City of Fayetteville Linear Park Inc. The Contractor may also utilize the property with REID 0437740653000 to access the project site from Ann Street. This property is also owned by City of Fayetteville Linear Park Inc.

Beaver Courier Attorney's at Law is located adjacent to the Cross Creek Linear Park Fountain property. The Contractor should not utilize or access the driveway, parking lot, or property of the law offices.

The Contractor and the Fayetteville Public Works Commission will document the existing condition of the fountain property, the adjacent law offices property, and the property off Ann Street prior to any construction activities commencing. Upon completion of construction, the Fayetteville Public Works Commission and Contractor will document the condition of the properties to determine if any damage occurred. If damage occurred, the Contractor will be responsible for repairing any damages to any property prior to release of final payment. The Contractor shall complete a thorough pre-construction video inspection of the fountain property and the property on Ann St, as outlined in section 1.06 Pre-construction Video in these Special Conditions.

The Contractor shall be responsible for constructing the necessary access needed to complete the project as outlined in these Contract Documents. The Contractor shall confine their access requirements to public rights-of-way or permanent easement, wherever possible. See Item L for any additional access right-of-way.

All access that is constructed on private property shall be removed and the property restored to existing or better condition than before construction commenced. The Contractor shall be responsible for obtaining a signed release from the affected property owner(s), stating that the property has been satisfactorily restored. Final payment shall not be released until all signed releases are obtained and submitted to the Fayetteville Public Works Commission.

Access constructed in permanent easements shall remain, unless otherwise instructed by the Fayetteville Public Works Commission.

The Fayetteville Public Works Commission shall be responsible for clearing the existing easement right-of-way, should it be necessary. The Contractor shall provide the Fayetteville Public Works Commission with a minimum of two (2) weeks notice for any easement clearing.

**I. TRUCK ROUTE PERMIT**

In the event the Contractor utilizes City streets for any aspects of the construction (mobilization to and from, hauling, delivery of materials and equipment, etc.), the Contractor will be required to obtain a Truck Route Permit from the City of Fayetteville and will be required to bond those City streets outside the project limits utilized for construction activities and/or deliveries. It is anticipated that the City will require a \$25,000 bond for the truck route permit. The cost of the bond shall be included in the

Contractor's bid prices and shall not be paid for separately. The Truck Route Permit Application and fee shall be submitted to the Owner for forwarding to the City.

**J. COLLATERAL DAMAGE**

Collateral damage areas are locations where the Contractor's equipment, spoil piles, materials, etc., have disturbed lawns and other areas outside of their work. Damaged trees shall be trimmed and treated with a tree dressing.

Any damage to asphalt during construction that is outside of the trench shall be considered collateral damage and patch paved in accordance with these Contract Documents at no cost to the Owner.

**PROTECTION OF PROPERTY**

The Contractor shall carefully protect from disturbance or damage all private property and property corners. When any damage or injury is done to public or private property, by or on account of any act, omission, neglect, or misconduct in the execution of the Work, or in consequence of the non-execution thereof on the part of the Contractor, the Contractor shall restore, at no cost to the Fayetteville Public Works Commission, such property to a condition equal or better to that existed prior to construction, or the Contractor shall make good damage or injury in an acceptable manner.

The Contractor shall solely be responsible for damage to property outside the limits of the Work. Any and all additional access rights-of-way shall be the responsibility of the Contractor. The Contractor shall be liable for all damages resulting from access usage.

Upon request from the property owner, the Contractor shall remove and set aside those plantings identified by the property owner. All plantings to be salvaged shall be placed at the edge of the existing easement. It will be the property owner's responsibility to re-plant those items saved.

The Contractor shall take all necessary measures to protect property within the existing easement during all phases of his activities. Tree branches and ornamental shrubbery shall be temporarily tied back to avoid damage. Damage to trees shall be trimmed and treated with a tree dressing.

**K. RIGHTS-OF-WAY AND/OR EASEMENTS**

Deeds, grants, encroachment permits, and rights-of-way easements for necessary property will be secured by the Owner unless otherwise noted. Any additional access right-of-way shall be the responsibility of the Contractor. The Contractor shall be liable for all damages resulting from access usage.

If Work is delayed by reason of the inability of the Owner to promptly secure the necessary property or rights-of-way, the Contractor shall have no claim for loss due to such delays. The Contractor will be required to work in areas where easements have been secured and stopping work to move to various locations may be required. No payment shall be made for any mobilizations within the project limits. If the Project Engineer determines work cannot continue, the Contractor shall have no claim for loss due to such delays, but the time of completion may be extended accordingly.



The Contractor shall locate the limits of the rights-of-way, or property lines prior to beginning construction and shall not encroach beyond those limits. The Contractor shall be solely responsible for any damage to property resulting from failing to locate these limits prior to beginning construction.

#### L. WASTE DISPOSAL

The Contractor shall be required to properly dispose of all unsuitable and excess material at no additional cost to the Owner.

#### M. EXCESS SUITABLE MATERIAL

The Contractor will be required to stockpile excess suitable material on an approved storage yard location. This stockpiled material shall be utilized as select backfill where needed within the project limits. The Contractor shall condition suitable material so that it may be utilized as select backfill within the project limits. Borrow material will only be utilized where suitable materials are not available from excavation within the project area and shall be authorized by the Project Coordinator. Excess material from the project, or staging yard, shall be hauled off and disposed of by the Contractor at his own expense. However, removal of suitable material which could have been utilized within the project limits shall be done at the Contractor's own risk. Payment for Borrow, or Select Material, will not be made for replacement of suitable material removed from the project limits or staging yard.

If suitable material is available in another project, the Owner will direct the Contractor to retrieve the material from the other project. Should the distance be within the free haul limit, no separate payment shall be made. Should the material be outside the free haul limit, payment shall be made at a per mile rate agreed upon between the Owner and the Contractor.

#### N. RESPONSIBILITY FOR MATERIAL

All materials to be utilized are to be in new condition. Materials are to be stored in strict accordance with the manufacturer's directions. Materials are to be of the type and brand specified within these Contract Documents. **No alternative or substitute materials shall be considered prior to award of the Contract.**

The Contractor shall submit all requests to utilize materials other than specified to the Fayetteville Public Works Commission for review. The Contractor shall be responsible for providing all required documentation necessary for the Fayetteville Public Works Commission to review and make a determination if the substitute material meets the required specification. All information shall be submitted in accordance with Section 01300 – Submittals.

The Contractor will be responsible for providing documented proof that the proposed substitution has a proven record of performance when used in the intended application as confirmed by actual field test(s) or by successful installations. The Fayetteville Public Works Commission reserves the right to reject any such proposed changes or substitutions at their sole discretion, and is under no obligation to justify their decision.

All pipe, fittings, manholes, and other materials shall be inspected upon arrival at the job site by a competent superintendent before unloading to ensure that the quality of the materials conform to the specifications. All materials shall be subject to inspection by the Owner. Materials found to be defective shall be clearly marked and removed from the project.

**O. EQUIPMENT**

The Contractor shall be equipped with equipment perfectly adaptable for the type of construction required; excavation machines shall be of sufficient capacity to handle the work in an expeditious and safe manner. The Fayetteville Public Works Commission reserves the right to deny the use of inadequate equipment or of equipment not capable of performing the work in an acceptable manner.

With respect to the foregoing, it is the intent of the Commission to require that the Contractor be equipped to perform the work shown and specified, expeditiously and in accordance with the best modern practice.

**P. DISPOSITION OF SURPLUS PROPERTY**

All property which is surplus to the needs of the project will remain or become the property of the Contractor, unless otherwise stated in these Contract Documents. All property belonging to the Contractor shall be removed from the project by the Contractor prior to final acceptance.

**Q. CHEMICAL USES**

All chemicals used during project construction or furnished for project operation, whether herbicides, pesticides, disinfectant, polymer, reactant or of other classification, must show approval of either the Environmental Protection Agency or the USDA. Use of all such chemical and disposal of residues shall be in strict conformance with manufacturer's instructions.

**R. CONTRACTOR'S RESPONSIBILITY FOR WORK**

Until final acceptance by the Owner, the project site and all the Work shall be the responsibility of the Contractor. The Contractor shall take every precaution to prevent damage to the project site, Work, and the surrounding areas. It shall be the responsibility of the Contractor to address any damage or injury arising from their direct or indirect performance on this project. The Contractor shall be responsible for maintaining the project site at all times and ensuring that the Work is installed and maintained in accordance with these Contract Documents until accepted by the Owner. This paragraph does not supersede the requirements of the general warranty.

**S. WARRANTY AGAINST LICENSE AGREEMENTS**

The Contractor shall warrant to the Fayetteville Public Works Commission that the equipment used on this Contract, where covered by patents or license agreements, is furnished in accordance with such agreements and that the prices included herein cover all applicable royalties and fees in accordance with such license agreements. The Contractor shall defend, indemnify, and hold the Fayetteville Public Works Commission harmless from and against any and all costs, loss, damage, or expense arising out of or in any way connected with any claim of infringement of patent, trademark, or violation of license agreement.

**T. TRAFFIC CONTROL**

Traffic control measures shall be in accordance with Specification Section 02500 – Traffic Control, and the following requirements. The Contractor shall provide any and all traffic safety measures as required to satisfy local, state, and federal highway requirements. The Contractor working in public rights-of-way on streets open to vehicular traffic shall be required to temporarily maintain traffic control devices to reduce unnecessary congestion and unsafe traffic conditions.

The Contractor shall be liable for any damages resulting from his negligence in using adequate work zone traffic control. Furthermore, the Fayetteville Public Works Commission or his representative(s) reserves the right to stop any work for non-compliance.

The Contractor shall coordinate his activities so as to minimize disruption of traffic and inconvenience to residents and the general public. All such traffic control devices, traffic patterns and road closures shall be approved by the City of Fayetteville and/or NCDOT.

The point of contact for the City of Fayetteville and NCDOT are:

Ramon Melendez (City): (910) 433-1090

Troy Baker (NCDOT): (910) 486-1496

Failure to provide and maintain adequate traffic control devices may result in the Fayetteville Public Works Commission’s refusal to make payment until corrective measures are in place.

Improper signage and traffic control devices will not be allowed. The City of Fayetteville, and/or the Fayetteville Public Works Commission reserves the right relocate and/or remove such non-conforming signs and devices, setup proper signage to ensure public safety and deduct all costs for these items which may be incurred by the Fayetteville Public Works Commission. The Contractor shall make no claim for such work performed.

U. CONFINED SPACE

Prior to entering manholes or other areas that are defined as confined spaces, the Contractor shall follow all requirements and procedures as outlined by OSHA’s Confined Space Entry requirements. A confined space entry program shall be included as part of the Contractor’s Safety Plan.

V. EXCAVATION

The Contractor shall be responsible for utilizing all measures necessary to comply with the applicable OSHA regulations.

Before excavating, the Contractor shall contact the NC One-Call Center for the location of existing utilities within the project area. Costs of utility repairs, temporary service and other costs arising out of damage to or interruption of utilities, resulting from operations under this Contract, shall be done by Contractor at no additional cost to the Fayetteville Public Works Commission.

Prior to excavation, the Contractor shall sawcut and remove asphalt or concrete pavement within the limits of allowable trench width. Where the excavation is within grassed easement areas, the Contractor shall take care to minimize disturbance and/or removal of trees, shrubs, bushes, etc.

Upon request from the property owner, the Contractor shall remove and set aside those plantings identified by the property owner. All plantings to be salvaged shall be placed at the edge of the existing easement. It will be the property owner’s responsibility to re-plant those items saved.

The Contractor shall protect property within the existing easement to the maximum extent practicable during all phases of his activities. Ornamental shrubbery and tree branches shall be temporarily tied

back to avoid damage. Trees that receive damage to branches shall be trimmed to improve the appearance and trunks treated with a tree dressing.

The excavation for all work included in this project is unclassified unless specifically stated in the Measurement and Payment section of these Contract Documents. The unit prices include all excavation and grading in whatever nature of material may be encountered. No additional payment will be made for excavation of material different from what was anticipated. The Contractor shall investigate and examine the site of the project before preparing and submitting a bid.

All excavations shall be carried to a neat line (except for the minimum space required for work, pipe jointing, caulking, etc.), and to exact finished grade except where otherwise specified )for instance, where rock is encountered in the bottom of the excavation).

The Contractor will be held responsible for proper and adequate shoring and sheeting of all excavations. It shall also be the responsibility of the Contractor to protect all excavations from sloughing off and thus destroying firm soil for footings of any foundations planned or existing, adjacent to excavations carried to lower grade than the bottom of such foundations. Failure to observe this precaution will necessitate such foundations being carried to greater depth for firm footing at the expense of the Contractor for the extra work, time, and materials involved; and the PWC Project Engineer shall have the right to determine the manner and extent to which security to the adjacent foundations shall be made.

Where excavation to grade for structure or pipeline discloses a distinct difference in the character of foundations, such as rock and earth, the rock shall be excavated to a depth of six (6) inches below grade, and the additional space thus excavated shall be backfilled with suitable material, which shall be thoroughly tamped and compacted to grade of the adjoining foundation material, in order that the soil conditions may be uniform in supporting the foundation-bearing parts of the structure or pipe line.

All excavations shall be covered when not in use. All excavations in the street shall be covered with steel traffic plates and fastened to the pavement, as approved by the controlling agency and the PWC Project Engineer. When required by the controlling agency or the PWC Project Engineer, the plates shall be recessed into the pavement where the top of the pavement is flush with the top of the plates. It may be necessary to surround the pits with concrete barriers if required by the controlling agency.

Excavations outside the streets may be covered with ¾-inch plywood, if approved by the PWC Project Engineer. All excavations shall be protected from pedestrians with heavy-duty orange protective fencing surrounding the pit and reflective drums at each corner.

The Contractor shall be responsible for utilizing all measures necessary to comply with all applicable OSHA regulations. Additionally, the Contractor shall ensure that all excavations comply with PWC Specification Section 02222 – Excavation and Backfilling. The Contractor shall have a trenching and shoring “competent” person on the job at all times when there is an open excavation. Under no circumstance will an employee of the PWC be considered the “competent” person for the operation.

## W. DEMOLITION OF EXISTING AERIAL CROSSING AND SUPPORTS

The existing sanitary sewer aerial crossing consists of a steel I-beam supporting a 15-inch cast iron sewer main. It is assumed that the steel beam is supported by a concrete foundation that is buried in either embankment. The contractor shall remove and dispose of the existing crossing and a portion of the existing 4-inch PVC sanitary sewer lateral as shown on the Contract Drawings. The existing aerial supports shall be removed below grade and properly disposed of as indicated on the Contract Drawings.

#### X. STEEL PIPE AND AERIAL SUPPORTS

This project consists of the installation of 16-inch steel pipe from manhole to manhole with a 37-foot long center section with no splices. All end connections for the steel pipe shall be flanged connections as specified and shown on the Contract Drawings. All flanges shall be welded to the steel pipe prior applying the interior coating. All flanges shall have a full face SBR rubber gasket as recommended by the flange manufacturer. The steel pipe for this project has a substantial lead time and it shall be the responsibility of the Contractor to ensure that the pipe is order in a timely manner, such that the proposed construction schedule in Item 4 Construction Schedule can be met.

The steel pipe interior shall be lined with one of the following: Protecto 401, Perma-Shield PL Series 431 as manufactured by Tnemec Company, Inc., Permox-CTF as manufactured by Permite Corporation, or an approved equal.

The coating system to be used for the exterior of the steel pipe shall meet the specification included in these Contract Documents. It will be the responsibility of the Contractor and coating manufacturer to have a National Association of Corrosion Engineers (NACE) Level 3 Inspector inspect each coat of the specified coating. The NACE Level 3 Inspector shall be a representative of the coating manufacturer. Inspection reports are to be provided to the Fayetteville Public Works Commission within 48 hours of the inspection. Surface preparation and the first coat are to be applied prior to the delivery of the pipe. All other coats are to be field applied. The Contractor shall also touch up all areas of the pipe that are damaged during Construction.

The aerial supports shall consist of two 24-inch double hot dipped galvanized steel piles as specified. The interior of the 24-inch steel piles shall be filled 3,000 psi concrete.

All bolts, plates, saddles, straps, and hardware are to be hot dipped galvanized.

#### Y. ANTI-MICROBIAL ADDITIVE

All new manholes shall conform to PWC Standard Detail S.2 as included in the Details section of the Contract Drawings. In addition to the specifications laid out in the Detail, all manholes shall include an antimicrobial admixture to render the concrete uninhabitable for bacteria growth. The admixture shall be included in the fabrication of the manhole by an approved manhole fabricator. Coatings applied to the interior walls after fabrication are not acceptable.

Grout and mortar used in the field to build the invert and to seal annulus around the pipes shall also include the antimicrobial admixture. The Contractor (or his subcontractor) shall be properly trained and certified by the admixture manufacturer or distributor to apply the admixture to grout and mortar mixes.

The Contractor shall supply documentation that each manhole has been properly fortified with the antimicrobial admixture. The Contractor shall supply documentation that he (or his subcontractor) has received proper training to apply the admixture to grout and mortar mixes used in the field.

All manholes and concrete (to include grout, mortar, etc.) shall have an antimicrobial admixture added to the mix. The antimicrobial additive shall be ConShield, ConBlock, or approved equal.

Documentation showing that the manholes, grout mixtures, and cement/mortar utilized on this project contain the antimicrobial additive shall be submitted to PWC.

**Z. RIP RAP**

Rip rap used along the creek banks shall be Class 2.

Use field stone or rough unhewn quarry stone for plain rip rap. Use stone that is sound, tough, dense, resistant to the action of air and water and suitable in all other respects for the purpose intended. Where broken concrete from demolished structures is available, it may be used in place of stone provided that such use meets with the approval of the PWC Project Engineer and may be installed only on the creek bank. The use of broken concrete that contains reinforcing steel will not be permitted.

All stone shall meet the approval of the PWC Project Engineer. While no specific gradation is required, there shall be equal distribution of the various sizes of the stone within the required size range. The size of an individual stone particle will be determined by measuring its long dimension. Stone or broken concrete for rip rap shall meet the following for the class and size distribution:

Class	Required Stone Size		
	Min	Mid	Max
A	2"	4"	6"
B	5"	8"	12"
1	5"	10"	17"
2	9"	14"	23"

**AA. COORDINATION OF OTHER WORK**

The Contractor shall be responsible for coordinating all construction efforts with the Fayetteville Public Works Commission and City of Fayetteville Linear Park, Inc. These efforts include, but are not limited to: access to the site, working times, laydown area, storing equipment on site, etc. The Contractor shall not interfere with the day to day operations of the law office adjacent to the access on the fountain property. The site shall remain safe and secure at all times and ensure that only authorized personnel can access the work area.

The Fayetteville Public Works Commission has contracted with a structural engineer (Fleming and Associates) to complete the structural design portion of the project at to provide construction observation. The Contractor shall coordinate with the Fayetteville Public Works Commission to allow the Structural Engineer to complete inspections. The contractor shall provide a minimum of 48 hours notice to the Fayetteville Public Works Commission for all necessary site inspections. The following is a list of the required inspection hold points:

- Prior to driving piles
- After all welding has been completed
- Final inspection

Fleming and Associates may make additional inspections to observe various construction activities at their discretion. The Contractor shall make every effort to accommodate Fleming and Associates personnel (as well as PWC personnel) in order to complete the inspections.

The Lafayette Society plans to upgrade the Lafayette Plaza East which is on the south side of Cross Creek adjacent to the project area. No disturbance should be made within the circle of the plaza. A dedication is to be held on Sunday, September 12, 2021. There should be no active work on this day since it is a weekend. The job site should be cleaned up and protected from the public. The site should also be in a presentable condition as much as possible so as not to hinder the dedication. Access to Lafayette Plaza should not be obstructed. Coordinate with Fayetteville Public Works Commission and President of Lafayette Society, Hank Parfitt prior to the dedication to be sure the project area does not interfere with the dedication.

Contact: Hank Parfitt, President Lafayette Society, 910-286-3979, [hankparfitt@gmail.com](mailto:hankparfitt@gmail.com)

The City of Fayetteville has a stream stabilization project planned along the Cross Creek Stream Bank behind Beaver Courie Attorney’s at Law. The stream bank stabilization project’s timeline may overlap with the Ann St. to Green St. Sanitary Sewer Relocation project timeline. This project plans to use the Beaver Courie parking lot exclusively for access. However, the Contractor shall be responsible for coordinating construction efforts with The City of Fayetteville and their contractor in the case that both projects are being constructed at the same time.

No additional payment shall be made for this coordination.

**BB. DAMAGE TO PROPERTY**

The Contractor shall carefully protect from disturbance or damage all private property and property corners. When any damage or injury is done to public or private property, by or on account of any act, omission, neglect, or misconduct in the execution of the Work, or in consequence of the non-execution thereof on the part of the Contractor, the Contractor shall restore, at no cost to PWC, such property to a condition equal or better to that existed prior to construction, or the Contractor shall make good damage or injury in an acceptable manner.

The Contractor shall solely be responsible for damage to property outside the limits of the Work. Any and all additional access rights-of-way shall be the responsibility of the Contractor. The Contractor shall be liable for all damages resulting from access usage.

**CC. POST CONSTRUCTION CLOSED CIRCUIT TELEVISION (CCTV) INSPECTION**

Upon completion of the installation of the sanitary sewer aerial crossing, the Contractor shall conduct a closed circuit television (CCTV) inspection of the interior of the new steel pipe to insure that the interior lining was not damaged during construction. This CCTV inspection shall be completed and reviewed by the PWC Project Engineer prior to diverting flow from the existing 15-inch cast iron aerial crossing to the new 16-inch steel aerial crossing. This work shall be considered incidental to the installation of the 16-inch sanitary sewer main and no separate payment for this work shall be rendered.

**DD. RESTORATION**

Once construction is completed, the Contractor shall be responsible for restoring the site to as good as, or better than existing conditions. All areas of disturbed soil on the property of Cross Creek Linear Park, Inc. Fountain property shall be restored with sod. All other disturbed areas shall be seeded, unless otherwise noted on the Contract Drawings and as directed by PWC.

The Contractor shall be responsible for the full replacement of any driveways disturbed as part of his operations. Restoration of driveways and/or parking lots shall be completed in accordance with the applicable PWC standard detail.

Surplus pipe, material, tools, and temporary structures shall be removed by the Contractor. All dirt, rubbish, and other debris from the operation shall be removed and legally disposed of by the Contractor, at no additional cost to PWC.

**EE. PERMITS**

The work in and along Cross Creek is covered under the United States Army Corps of Engineers (USACE) non reporting Nationwide 3 Permit and the North Carolina Department of Environmental Quality non reporting Water Quality Certification No. 3883. These permits are included in the appendix of these Contract Documents and the Contractor shall adhere to all requirements outlined in these documents.

This project is required to have a Sewer Permit issued. The approved permit is included in the Appendix. The Contractor shall have a set of the approved, permitted plans on the jobsite at all times.

**2.08 COMPLAINTS AND CLAIMS****A. RESIDENTIAL/COMMERCIAL COMPLAINTS**

The Fayetteville Public Works Commission' Complaint Resolution Procedure shall be implemented at the start of construction and shall continue to be followed until the project is completed. The Contractor is required to maintain good public relations and to provide timely notifications to residents so as to minimize inconvenience and complaints.

The Fayetteville Public Works Commission has an established protocol for addressing residents' complaints. The Contractor shall be responsible for familiarizing himself and his subcontractors with this protocol. During the course of the Work, the Contractor shall immediately respond to requests from the Fayetteville Public Works Commission to address resident complaints. The Contractor shall inform his personnel and subcontractor personnel that all complaint issues be directed to the Project Coordinator and the Contractor's Superintendent. The Project Coordinator shall be present in all meetings with residents. Should the Fayetteville Public Works Commission determine the Contractor(s) non-responsive in addressing complaints, the Fayetteville Public Works Commission reserves the right to withhold progress payments until the complaint has been satisfied. The Contractor shall immediately notify the Project Coordinator of any complaint received.

**B. CLAIMS PROCEDURE**



The Fayetteville Public Works Commission shall notify the Contractor of all potential claims related to the Work within seven (7) calendar days of receiving notification. Should the Contractor receive a potential claim related to the Work, the Contractor shall notify the Fayetteville Public Works Commission within seven (7) calendar days of receiving notification. The Contractor shall provide Claimant and Fayetteville Public Works Commission written response acknowledging receipt of the claim within seven (7) calendar days.

If the Contractor meets with the claimant about the claim, the Fayetteville Public Works Commission shall be present at all times. The Fayetteville Public Works Commission shall maintain a record of any claim received, and the steps taken to resolve. The Fayetteville Public Works Commission shall also concurrently investigate each case. The Contractor agrees to furnish the Fayetteville Public Works Commission any information regarding the claim, the actions which led to the claim and/or the investigation of the claim and agrees to indemnify and hold the Fayetteville Public Works Commission harmless for any damage arising out of said claims. Contractor shall provide their proposed response to the Fayetteville Public Works Commission within 30 calendar days of receiving the claim. Upon receipt of the response the Fayetteville Public Works Commission and the Contractor will discuss and reach a mutual agreement of the response necessary to send to the Claimant within 15 calendar days. Once the agreement is made the Contractor shall make a formal written resolution to the claimant.

Failure to act in good faith or respond to a claim in the timelines established the Fayetteville Public Works Commission will constitute a lack of response by the Contractor, therefore validating the claim. The Fayetteville Public Works Commission will deduct the total amount of the claim from the monthly pay application. Failure to comply with the above requirements for resolving claims may, at the sole discretion of the Fayetteville Public Works Commission, result in Breach of Contract.

The Contractor is aware of the Fayetteville Public Works Commission's Contractor Related Claims Procedure and understands that it is the Fayetteville Public Works Commission's practice to pursue reimbursement/subrogation for any and all claims related expenses, which are incurred as a result of the Contractor's performance under this agreement and allowed within the applicable Statute of Limitations.

#### C. CLAIMS FOR EXTRA COST

Should the Contractor consider that as a result of any instructions given in writing by the PWC Project Engineer, he is entitled to extra costs above that stated in the Contract; the Contractor shall give written notice to the PWC Project Engineer. The written notice shall be sent to the PWC Project Engineer within seven (7) calendar days after the occurrence of the event and the Contractor shall not proceed with the work affected until further advised, except in an emergency involving the safety of life or property. No claims for extra compensation will be considered unless the claim is made. Extra Work performed by the Contractor, not approved by the PWC Project Engineer in writing shall not be considered for payment.

The Contractor shall not act on instructions received by him from persons other than the PWC Project Engineer and/or the PWC Project Coordinator. Any claims for extra compensation or extension of time on account of unauthorized instruction will not be honored. The PWC Project Engineer will not be responsible for misunderstandings claimed by the Contractor of verbal instructions which have not been confirmed in writing, and in no such case shall instructions be interpreted as permitting a

departure from the Contract Documents unless such instruction is confirmed in writing by the PWC Project Engineer.

**2.09 PAYMENTS AND FINAL COMPLETION**

**A. STORED MATERIALS**

There will be no payment for stored materials on this project.

**B. REVIEW OF CONTRACTOR PAY REQUESTS**

Prior to the Contractor submitting an application for payment, the Contractor and Fayetteville Public Works Commission shall review and agree on all items and quantities that the Contractor is requesting payment for. The monthly estimates shall be based on the work completed as of the last Friday of the month.

Each pay request shall contain a certificate documenting any sales tax paid by the Contractor for that billing period. *A certified form is required even if no sales tax was paid for that pay request period.*

Final payment and release of retainage will not be made until:

1. all work has been reviewed and accepted by the Fayetteville Public Works Commission,
2. any preconstruction pictures and/or videos have been submitted
3. all necessary site restoration has been completed, and
4. all required documentation (reports, release of liens, Property Owner release, etc.) has been submitted.

The Contractor is strongly urged to submit draft pay applications to the Fayetteville Public Works Commission prior to submittal of the official pay application. The Fayetteville Public Works Commission will review and provide any comments on the draft pay application within five (5) business days. The draft pay applications should be submitted via email, preferably utilizing Excel, for ease of review and comment by the Fayetteville Public Works Commission.

It is expected that the pay application will have a cover sheet similar to AIA Form G702 (or approved equal) that summarizes the contract value, any change orders, and work completed to date. The Contractor shall furnish two (2) copies (one original and one copy) of the pay request. The Contractor shall include copies of all invoices claimed on the sales tax certification

**C. PAYMENTS WITHHELD**

The Project Engineer may refuse to approve the whole or any part of any payment. The Project Engineer may refuse to approve payment if evidence is discovered, or the results of subsequent inspection or tests, nullify any such payment previously approved. The Project Engineer reserves the right to withhold payment or any portion of a payment throughout the course of the project in the event the following, including but not limited to, occurs:

1. Slippage in the schedule in excess of two (2) or more weeks.
2. Liens or claims filed against the Contractor.
3. Persistent failure to carry out the work in accordance with the Contract Documents.

4. Claims from residents or businesses not addressed or resolved within thirty (30) days.
5. Defective work not corrected, tested, or completed following damage, correction or replacement.
6. Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract.
7. Reasonable evidence that the Work will not be completed within the Contract time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay.
8. Damage to the Owner's property, Property Owner, or another Contractor.
9. The Contract price has been reduced because of modifications.
10. Any required documentation has not been submitted as requested.

The amounts withheld will be at the sole discretion of the Project Engineer. When the grounds for withholding payments have been removed, payment will be released. The Project Engineer is not liable and will not accept claims from the Contractor resulting from payments being withheld.

#### D. AUTHORIZED CHANGES IN THE WORK

At any time the Project Engineer may request, in writing, that the Contractor submit a proposal (Change Order Request), for a proposed change in the work. Within ten (10) business days after receipt of a written Change Order Request, the Contractor shall submit to the Project Engineer a written detailed proposal for the change. The detailed proposal shall include an itemized estimate of all costs that will result directly or indirectly from the proposed change and include an assessment of the impact of the proposed change on the overall project schedule. Proposals shall be sufficiently detailed to reasonably permit an analysis of all material, labor, equipment, subcontractor costs, overhead costs, and fees, and shall cover all work involved in the change such as work was deleted, added, changed, or impacted. Each cost category shall be supported with substantiating documentation which may include, but is not limited to, quantity takeoffs, quotations, invoices, cost records, and certified payroll. If the Project Engineer elects to proceed with the change covered by the Change Order Request, such change will be authorized by execution of a Change Order at a later date. Notwithstanding the Change Order Request, the Contractor shall carry on the Work and maintain the progress schedule. The Project Engineer shall have 20 business days after the receipt of the detailed proposal to respond in writing. Delays in submittal of the written detailed proposal are at the expense of the Contractor.

#### E. CHANGE ORDERS

The Fayetteville Public Works Commission may have changes made in the work covered by the Contract. These changes will not invalidate and will not relieve or release the Contractor from any guarantee given by him pertinent to the Contract provisions. These changes will not affect the validity of the Payment Bond and Performance Bond nor will it relieve the Surety or Sureties of said Bond. All extra work shall be executed under the conditions of the original contract, unless otherwise specified in the approved Change Order.

Except in an emergency endangering life or property, no changes shall be made to the Contract except upon written notice from the Project Engineer authorizing such change, and no claim for adjustments of the contract price shall be valid unless this procedure is followed.

Adjustment in Contract Price and/or Contract Time stated in a change order shall comprise the total price and/or time adjustment due to or owed to the Contractor for the Work or changes defined in the

Change Order. By executing the Change Order, the Contractor acknowledges and agrees to the Change Order, incorporating all cost and delays associated with the interruption of schedules, extended overheads, delay, and cumulative impacts or ripple effect, on all work under this Contract. Signing of the Change Order constitutes full and mutual accord and satisfaction for the adjustment in the Contract Price and/or Time as a result of increases or decreases in costs and time of performance caused directly and indirectly by the change. Execution of the Change Order represents an equitable adjustment to the Contract Price and/or Time and that the Contractor waives all rights to claim further adjustments related to the Change Order.

If during the progress of the Work, the Project Engineer requests a change order and the Contractor's terms are unacceptable, the Project Engineer without prejudice may perform or have performed that portion of the work requested by others or with the Fayetteville Public Works Commission's own forces.

#### F. EXTENSION OF CONTRACT TIME

If the Contractor is delayed during the progress of the Work by any causes beyond the Contractor's control; and/or by any other causes which the Project Engineer determines may justify the delay, then the Contract Time may be extended by Change Order for the time which the Project Engineer may determine to be reasonable. All extensions to the Contract Time shall be granted in full calendar days. If, at the end of the Contract, the final completion date falls on a non-work day, the Project Engineer, may, at their sole discretion, grant additional calendar days so that the final completion date is a work day.

Request for time extensions shall be made in writing within 30 calendar days following the cause of delay. In cases of continuing cause of delay, only one (1) claim is necessary. Failure to make written requests within the allowed time frame shall waive the Contractor's ability to make future claims for that specific instance which expired. Requests for time extensions for weather delays do not entitle the Contractor to "extend overhead".

- Change in Work delays – Change in work delays are defined as delays due to changes in the Work that alters the original scope of the Contract and impacts the critical path (i.e., delays the controlling operation). Additional calendar days may be granted by the Project Engineer for work assigned to the Contractor through a change order; provided that the Contractor's critical path is impacted by the change in work. The additional time shall be based on the actual number of calendar days that the critical path (i.e., controlling operation) is delayed, as determined by the Project Engineer. The Project Engineer may extend the contract time based on the estimated number of calendar days to complete additional work that does not adversely impact the critical path.
- Weather delays – Weather delays are defined as any event that affects the standard daily production for 50% or more of the Contractor's scheduled workday. Weather delays shall be based on the actual precipitation received (i.e., inches of rain), the time the precipitation occurred, and the Project Coordinator's observation. Weather days shall not be granted for weather that occurs during non-work hours, including weekends and/or holidays; unless it affects the Contractor's standard daily production for 50% or more of the following scheduled work day. Weather days shall be determined at the Project Engineer's sole discretion. Throughout the Contract, the Contractor shall record the occurrence of weather and the resultant impact to the scheduled work.

**G. WEIGH/QUANTITY TICKETS**

Weigh/quantity tickets shall be required for those Contract quantities that are not measured in place. Work of this nature requires the Project Coordinator’s approval prior to beginning or the Owner reserves the right not to pay for unauthorized work.

All weigh/quantity tickets for items not measurable in place shall be submitted to the Project Coordinator. Each ticket shall indicate the date, Contractor, job location, name of project, quantity of material, truck number and signature of the Contractor. The Contractor shall furnish a “certified scale ticket” with each load of material to the Project Coordinator by 5:00 pm the following business day in order to be considered for payment. Tickets shall not be accepted after that time.

When a material is to be paid for on a per ton basis, the weighing devices shall be certified by the N.C. Department of Agriculture. All scales shall be operated by a public weigh master licensed in accordance with the North Carolina General Statutes. A certified weigh certificate shall be issued for each load and contain the following information:

1. Project
2. Date
3. Time issued
4. Type of material
5. Gross weight (tons)
6. Tare weight
7. Net weight of material
8. Quarry or plant location
9. Truck number
10. Contractor’s name
11. Public Weigh Master’s stamp or number
12. Public Weigh Master’s signature or initials in ink

The Project Engineer and/or the Project Coordinator may direct the Contractor to re-weigh the contents of any truck load that is delivered to the project on approved platform scales at no additional cost to the Owner.

When material is to be paid for on per cubic yard basis, the payment shall be based on 75% of the volume listed on the weigh/quantity ticket.

**H. FINAL INSPECTION/ACCEPTANCE OF SEWER MAIN**

When the Project Coordinator deems the project completed and ready for final inspection, the Project Coordinator shall notify the Project Engineer. During the final inspection any items documented shall be compiled in a final punch list and provided to the Contractor within five (5) business days. The Contractor shall be required to complete each item in the final inspection punch list within 30 calendar days of receipt. Failure to complete the punch list in that time may result in liquidated damages being assessed. The project will not be considered complete until all punch list items are completed and accepted, unless otherwise determined by the Project Engineer. All punch list items shall be completed

prior to release of final payment. Once the deficiencies have been addressed to the Fayetteville Public Works Commission's satisfaction, a final acceptance letter will be issued to the Contractor.

Prior to the final inspection, the Contractor shall complete the following:

- All manholes having camlock ring and covers shall be locked.
- Place a FAYETTEVILLE PUBLIC WORKS COMMISSION issued marker at all valves, manholes, and air release valve manholes outside of pavement as directed by the FAYETTEVILLE PUBLIC WORKS COMMISSION Project Coordinator.
- Verify all plugs have been removed.
- Complete all restoration.
- Complete all required testing.

No separate payment shall be made for this work.

I. FINAL COMPLETION DOCUMENTATION

Prior to receiving final payment, the Contractor shall complete and/or provide the following:

- 1) Complete all punch list items to the satisfaction of the Project Engineer.
- 2) Satisfactorily resolve all customer complaints and obtain the required releases.
- 3) Provide project record drawings, in accordance with Submittals Section 01300; and Provide project close-out submittals in accordance with Submittals Section 01300.

J. RECORD DRAWINGS

Upon completion of the Work, the Contractor shall provide one complete set of drawings recording all changes to the work to indicate actual installation. Changes shall be noted in legible red letters. These changes shall include but are not limited to the following:

- a) Change in pipe material
- b) Size, depth, and installed elevations of mains
- c) Location of valves, laterals, blow-offs, and other appurtenances

Completion of the Contractor's record drawings is a specific Contract requirement, and final payment will not be made until these drawings have been submitted to the PWC Project Engineer in an acceptable form.

**DIVISION I  
GENERAL REQUIREMENTS  
01025 – MEASUREMENT AND PAYMENT**

**GENERAL**

The purpose of this Section is to define the methods of measurement and payment for each of the unit prices and/or lump sum prices listed in the Bid Form, which are required to construct the Work.

The unit price and/or lump sum price bid shall be full compensation for the work required under each bid item, which shall include all incidental costs relative thereto. Certain items of work are specified and/or shown as a detail in these Contract Documents and drawings; bid prices shall include all items of work required to furnish and/or install each in accordance with the Project requirements, whether specifically stated or itemized in the Measure and Payment description.

**No payment will be made for stored materials.**

**LUMP SUM PAYMENT ITEMS**

**L-1 MOBILIZATION AND DEMOBILIZATION**

A Lump Sum Payment less than or equal to 3% of the Total Bid Price of Pay Items 1 through 41 (to include all bonds, insurance (to include any required railroad insurance), move on expenses, etc.) will be allowed for 'mobilization and demobilization' as a payment line item. Fifty percent (50%) of the mobilization line item will be paid under the first payment application submitted and the balance under the second payment application submitted.

**L-2 TRAFFIC CONTROL & TRAFFIC PLAN**

The lump sum price bid shall include all costs for the preparation and implementation of required traffic management plans, furnishing, installing and maintaining traffic control signage and devices, relocating or removing signs or other traffic control devices, replacement of street signs, any necessary traffic control devices related to bypass pumping (i.e., ramps, temporary driveways, etc.), and all other incidental work throughout the project site, throughout the project duration. The Contractor shall coordinate his activities so as to minimize disruption of traffic and inconvenience to residents and the general public. All such traffic control devices, signage, traffic patterns and road closures shall be approved by the City of Fayetteville and/or the North Carolina Department of Transportation (NCDOT).

Payment under the lump sum price bid shall be made on a monthly basis based on actual estimated percentage of work completed and maintained as determined by the Project Coordinator or Project Engineer.

Prospective bidders are advised that failure to provide and maintain adequate traffic control devices and/or signage may result in the Project Engineer's refusal to make payment until corrective measures are in place.

Improper signage and/or traffic control devices will not be allowed. The Town of Hope Mills, NCDOT, and/or the Fayetteville Public Works Commission reserves the right relocate and/or remove

such non-conforming signs and devices, setup proper signage to ensure public safety and deduct all costs for these items which may be incurred by the Fayetteville Public Works Commission. The Contractor shall make no claim for such work performed.

**L-3 EROSION AND SEDIMENTATION CONTROL**

A. The lump sum prices bid under the applicable PARTs in the Bid Form bid for erosion and sedimentation control shall include all costs for furnishing, erecting, maintaining and removing silt fence, temporary sedimentation control devices, rip-rap, rock check dams, temporary seeding, gravel construction entrances, filter fabric, integral straw, culled wood matting, inlet protection and any other erosion control devices shown or as may be required by the appropriate regulatory agencies throughout the project site, throughout the project duration. No additional payment will be made for removal of soil and debris from drainage structures, features, or reconditioning grading that is part of the normal maintenance activities associated with the approved erosion control plan. No additional payment shall be made for any other work due to inadequate or improperly maintained measures.

B. Prospective bidders are advised, that erosion and sedimentation control will be strictly enforced, and any failure to conform to required standards is considered a right precedent to the Owner to deny payment. Additional measures required by the North Carolina Department of Environmental and Natural Resources (NCDENR) shall not be cause for change in the lump sum price bid. Bidders shall make themselves aware of all NCDENR regulations and requirements. The Contractor shall be responsible for all fines levied due to improper erosion and sediment control measures to include all costs incurred by City of Fayetteville and/or Public Works Commission necessary to bring a non-conforming site into compliance.

C. The lump sum price bid shall include all costs necessary for the Contractor to comply with the requirements of the NPDES permit that is associated with the approved erosion control permit. Such activities include, but are not limited to: installation and maintenance of rain gauges, completing the required inspection reports, posting the permit and reports on the project, and furnishing copies of the inspections reports to the Owner.

D. Payment under the lump sum prices bid for each PART shall be made on a monthly basis as indicated in the Contractor’s schedule for the substantial completion of all work under this Contract. In no case, shall the monthly payment exceed ten (10) percent of the lump sum prices bid without the approval of the Owner.

**L-4 INSTALL EXTERIOR PIPE COATING**

The lump sum price for this item shall include all costs to install the specified coating for the sanitary sewer main. This item shall include all costs for surface preparation, access to pipe, proper containment to eliminate any debris from entering the water, priming the substrate, application of the new coatings, inspections by NACE Level 3 Coatings Inspector, and all labor, materials, tools, equipment, and incidentals necessary to complete the work.

**L-5 DEMOLISH AND DISPOSE OF EXISTING 15” CAST IRON SEWER MAIN AND EXISTING AERIAL PIPE SUPPORTS**

The lump sum price for this item shall include all costs to demolish and dispose of the existing fifteen (15) inch cast iron sanitary sewer main. This item shall include all costs for access to pipe, demolishing the existing pipe, disposal of the existing pipe, grout fill abandonment of buried sections of 15-inch cast iron, removal and disposal of two (2) existing aerial pipe supports to be removed to the bottom of the creek bed, demolishing and disposal of the existing four (4) inch PVC sanitary



sewer lateral, proper containment to eliminate any debris from entering the water, and all labor, materials, tools, equipment, and incidentals necessary to complete the work.

**UNIT PRICE ITEMS**

**U-1 INSTALL NEW 16” STEEL (FLANGED JOINTS) SEWER MAIN**

A. This item shall be measured by actual linear feet of new sewer main installed and accepted, including all necessary fittings. Payment shall be made at the applicable unit price as listed in the Bid Form. Payment under this item shall include all costs necessary to install new pipe as specified on the Contract Drawings and in accordance with PWC standards.

B. The unit price shall include all costs for excavation, backfill, compaction, control of the existing sewer flow, installation of interior pipe liner as specified, installation of the pipe at the specified line and grade, installing flexible boot connectors, bedding material, removal and disposal of excess unsuitable material off site, post installation closed circuit television inspection, and all labor, materials, equipment, and incidentals necessary to complete the work.

C. Installation of the steel sewer main shall be accomplished in accordance with PWC Specification Section 02730- Sanitary Sewer System.

**U-2 INSTALL AERIAL PIPE SUPPORTS**

A. This item shall be measured by actual count, complete and in place. Payment will be made at the applicable unit price as listed in the Bid Form. Payment under this item shall include all necessary costs to install two (2) aerial pipe support structures as indicated on the Contract Drawings and in accordance with PWC standards.

B. The unit price shall include all costs for excavation, shoring, removal and disposal of excess unsuitable material off site, installation of steel piles, placing concrete, installation of pipe saddle, installation of pipe strap, fittings, backfill, compaction, and all labor, materials, tools, equipment, and incidentals necessary to complete the work.

C. All work shall be installed in accordance with these Contract Documents.

**U-3 INSTALL 4” SANITARY SEWER LATERAL WITH NEW CLEANOUT**

A. This item shall be measured by actual linear feet of new sewer lateral installed and accepted, including all necessary fittings. Payment shall be made at the applicable unit price as listed in the Bid Form. Payment under this item shall include all costs necessary to install new pipe as specified on the Contract Drawings and in accordance with PWC standards.

B. The unit price shall include all costs for excavation, backfill, compaction, control of the existing sewer flow, installation of the pipe at the specified line and grade, installation of clean out, installation of fittings, coring the proposed manhole, installing flexible boot connectors, connecting to the existing sewer pipe using approved couplings, bedding material, removal and disposal of excess unsuitable material off site, and all labor, materials, tools, equipment, and incidentals necessary to complete the work.

C. Installation of the service lateral and cleanout shall be accomplished in accordance with PWC Specification Section 02730- Sanitary Sewer System.

**U-4 FURNISH AND INSTALL MANHOLE**

A. Payment under this item shall include all costs necessary to furnish and install various diameter manholes as specified on the plans. Payment per each manhole shall be made at the applicable unit prices for each size and pay depth as indicated on the Bid Form. Work shall include all costs for excavation, backfill, removal and disposal of unsuitable material off-site, linings, inverts, pipe slides, dewatering, compaction, cutting and removal of pavement, proper disposal of waste, stone bedding, installation of the manhole in accordance with PWC standards, installation of the specified frame and cover, concrete collar, and all labor, materials, equipment, and incidentals necessary to complete the work.

**U-5 FURNISH AND INSTALL DOGHOUSE MANHOLE**

A. Payment under this item shall include all costs necessary to furnish and install various diameter doghouse manholes as specified on the plans. Payment per each doghouse manhole shall be made at the applicable unit prices for each size and pay depth as indicated on the Bid Form. Work shall include all costs for excavation, backfill, compaction, cutting and removal of pavement, proper disposal of waste, linings, inverts, pipe slides, installation of the doghouse manhole in accordance with PWC standards, installation of the specified frame and cover, stone bedding, removal and disposal of unsuitable material off-site, dewatering, removal of the existing pipe, concrete collar, and all labor, materials, equipment, and incidentals necessary to complete the work. Vacuum testing of the doghouse manhole is not required.

**U-6 INSTALL 5' CHAIN SECURITY LINK FENCE**

A. This item shall be measured by actual linear feet of fencing installed at both ends of the new aerial crossing. Payment shall be made at the applicable unit price as listed in the Bid Form.

B. Currently there is not security fencing installed at the ends of the aerial crossing. The Contractor shall install new fencing at both ends of the aerial upon completion of the work to prevent immediate access to the aerial crossing by the general public. Replacement fencing shall be constructed in accordance with PWC Specification Section 02831 – Fencing.

C. Payment under this item shall include all costs for installation of the new fencing, fittings, posts, truss rod, brace rails, fence fabric, and all equipment, tools, materials, labor, and incidentals necessary to complete the work in accordance with PWC requirements.

**U-7 REMOVE AND REPLACE ORNATE IRON FENCE**

A. This item shall be measured by actual linear feet of ornate iron fencing removed and replaced. New ornate iron fencing should be of equal or better quality to the existing ornate iron fencing and to the satisfaction of City of Fayetteville Linear Park, Inc. Payment shall be made at the applicable unit price as listed in the Bid Form.

B. The Contractor, as needed, shall remove and relocate the existing ornate iron fencing at the back of the fountain property. Any relocation of the fencing shall be coordinated with City of Fayetteville Linear Park, Inc. prior to removing the fencing. The Contractor shall replace any fencing disturbed as part of their operations for the work described within these Contract Documents. All fencing shall be removed and replaced, using new materials as required, to restore the item to the original condition or better.

C. The Contractor shall remove the existing ornate iron fencing as needed to facilitate the

installation of the new main. The Contractor shall remove and properly dispose of the existing fencing and install new ornate iron fencing upon completion of the work. The new ornate iron fence shall match the existing fence in all respects – color, size, spacing, etc.

D. Payment under this item shall include all costs to remove the existing fencing, installation of the new fencing, painting, fittings, concrete for the posts, posts, and all equipment, tools, materials, labor, and incidentals necessary to complete the work in accordance with PWC requirements.

**U-8 BYPASS PUMPING**

A. Bypass pumping shall be accomplished in accordance with FPWC Standard Specification 02750 Wastewater Flow Control and as outlined in these Contract Documents. Measurement shall be based on the actual number of days that bypass pumping is in operation, in order to properly control the flow in the sewer main, so as to be able to clean, CCTV, and/or install the specified lining system. Payment shall be made at the unit price bid per day that the bypass system is installed and operating. Payment shall be for all activities related to bypass pumping, including, but not limited to, pump mobilization and demobilization, attending bypass coordination meetings, manhole plugs, bypass lines, securing the bypass lines from damage (including but not limited to temporary fencing, berms, tie-downs, etc.), coordination with residents, cleaning the bypass lines, removal and installation of the bypass lines, all necessary erosion control measures, continuous monitoring of the bypass system, maintenance of the bypass system, appropriate air release valves, spill prevention measures (fuel and sewer), any necessary restoration, fuel, lubricants, labor, equipment, and all other incidentals necessary to ensure that the pumping operation is accomplished in accordance with these Contract Documents.

**U-9 STRUCTURAL STREAM BANK STABILIZATION**

A. This item shall be measured by cubic yards of Class 2 rip-rap stabilization, complete and accepted. Payment shall be made at the applicable bid price.

B. Payment under this item shall include all costs necessary to furnish and install slope stabilization where indicated on the Contract Drawings. The unit price shall include all costs for proper preparation of the surface – including select backfill and compaction as necessary, installation of geotextile fabric in accordance with manufacturer’s specifications, placement of the stone rip-rap, removal and proper disposal of unusable material, and all labor, materials, equipment, and incidentals necessary to complete the work.

**U-10 ABANDON EXISTING MANHOLE**

A. Abandonment of existing manholes shall be measured by actual count, complete, in place, and payment will be made at the applicable unit price bid as listed in the Bid Form. Payment under this item shall include all necessary costs to abandon existing manholes as indicated on the plans. Work shall include all costs to remove the manhole cone, excavation, backfill of the manhole with select material or flowable fill, dewatering, removal and disposal of unsuitable material off site, proper disposal of the abandoned manhole, compaction, and all labor, materials, equipment, and incidentals necessary to complete the work. Abandonment of the existing manholes shall be completed after the sewer mains have been grout filled.

**U-11 CLEARING AND GRUBBING, PERMANENT EASEMENTS**

A. The unit price bid per acre shall include the costs for felling trees, stump removal and disposal off-site, cutting trees in pulpwood length and stacking on or off easement areas if required, disposing

of all trimmings, removing and disposing off-site all logs, branches, trunks, root mats, brush, vegetation, debris from clearing and grubbing operations and all other incidental materials not to be re-used in the work. Areas containing and requiring cutting and removal of weeds, grass, grain annual or perennial plants, or saplings less than one inch in diameter shall not be measured and paid for as clearing and grubbing. Payment shall be based on the horizontal area cleared and grubbed as designated on the plans or as directed by the Owner. Measurement will be made to the nearest one hundredth of an acre.

**U-12 SOD (NO OVERAGE ALLOWED)**

A. Payment for placing sod as indicated on the drawings or as directed by the Project Coordinator or Project Engineer shall be made at the unit price bid per square yard listed in the Bid Form. Payment shall include grading, fine raking, sod bed preparation, pest and disease control, soil amendments, placing sod, anchoring, fertilizing, maintaining, protection of turf areas, removal and replacement of dying sod and watering to ensure growth. No payment will be made for sodding areas outside of easements or rights-of-way disturbed or otherwise damaged by the Contractor. The Proposal quantity reflects the total quantity of sod the Owner will pay for. In general, the maximum pay widths are shown below.

B. In some cases, specific quantities of sod in individual easement areas are identified on the Drawings and no overage will be allowed or paid for in these specific locations.

C. Stripping of topsoil will not be measured and paid for as a separate bid item. All work shall be included for payment under the applicable items listed in the Bid Form. Work shall include stripping, stockpiling, spreading, leveling, supplemental topsoil, filling, grading and compaction of suitable topsoil along right-of-way and easements.

D. Maximum Pay Widths for Sod

Permanent Easements	20' (or as indicated on the plans)
Temporary Easements	20' (or as indicated on the plans)
Storm Drainage	15'
Water Mains	12'

**U-13 BORROW EXCAVATION (SELECT BACKFILL)**

A. Borrow excavation (select backfill) shall be paid for at the unit price bid per cubic yard, as contained in the Bid Form. Payment shall constitute full compensation for all material, equipment, labor and all else required for acquisition, placement and compaction of select backfill material from borrow. Borrow excavation material shall be supplied by the Contractor from approved borrow areas located off-site. Materials utilized “on-site” within the Project limits or as defined, as the “free haul limit” will not be considered for payment as borrow excavation.

B. The cubic yards of select backfill to be paid for shall be 75% of the volume indicated on the submitted truck tickets. Disposal of unsuitable and/or suitable excavated material will not be paid for as a separate bid item. The Owner reserves the right to verify the actual amount of material in place.

C. Payment under this item shall include all costs necessary to furnish and install select material necessary to provide proper suitable backfill material compacted and in place as measured. Work shall include all costs to acquire, place, and compact select backfill material, removal and proper disposal of unusable material, and all labor, materials, equipment, and incidentals necessary to

complete the work. The PWC Project Coordinator shall approve the use of select material within the limits of this project.

**U-14 UNDERCUT EXCAVATION**

A. Undercut excavation shall be measured and paid for by the volume in cubic yards of unsuitable material excavated below the bedding limit line of four (4) inches below the pipe as authorized by the Project Coordinator. Payment shall be based on the width of two (2) feet plus the internal diameter of the pipe and to the authorized additional depth required for proper support of the pipeline. Payment for structures shall be based on the width of two (2) feet plus the external diameter to the authorized depth required for proper support of the structure.

B. Payment shall include the costs for all labor, tools, materials and equipment including but not limited to the removal and disposal of unsuitable soil, furnishing and placing stone bedding material and all other incidentals necessary to complete the work. No payment for undercut will be made for over excavation by error or where proper dewatering methods are not in place for trench and or excavation stabilization.

**U-15 TESTING**

A. Payment under this item shall include all costs necessary to perform the required testing on the sewer mains, low pressure sewer systems, force mains, laterals, and manholes. Work shall include all costs for furnishing test equipment, blow offs coordination with the PWC Project Coordinator, and all labor, materials, equipment, and incidentals necessary to complete the testing in accordance with PWC standards. Payment under this line item shall not be made until all performed tests are successful. No extra payment will be made for laterals connecting directly to manholes.

B. The Contractor shall be responsible for furnishing all necessary equipment to complete the testing, coordination with the Project Coordinator, and removal of all unnecessary taps and fittings upon completion of the work. Payment under this line item will not be made until all required tests are successful.

\*\*\*END OF SECTION\*\*\*

**DIVISION 1  
GENERAL REQUIREMENTS**

**01300 SUBMITTALS**

**GENERAL**

- A. This section specifies the means of all submittals. All submittals shall be submitted to the OWNER. A general summary of the types of submittals and the number of copies required is as follows:

<u>Copies to PWC</u>		<u>Type of Submittal</u>
Paper	Digital	
3	1	Construction schedule
3	1	Progress Estimates
3	1	Shop drawings
5		Product samples
3	1	Certificates of compliance
3	1	Warranties

- B. All submittals shall be provided in accordance with this Section, and as outlined in Section 01000 – Special Provisions. The CONTRACTOR shall refer to other Specification Sections within these Contract Documents, to ensure that all submittal requirements are adhered to. No construction shall proceed until all required submittals have been reviewed and approved by the OWNER. Any and all work performed prior to review and acceptance of the submittals by the OWNER shall be at the CONTRACTOR’s sole risk. Further, failure to comply with the requirements of this section may be considered Breach of Contract, and grounds for termination.

**SUBMITTAL PROCEDURES**

- A. Transmit each submittal with a form acceptable to the OWNER, clearly identifying the project, the Contractor, the enclosed material and other pertinent information specified in other parts of this section. The CONTRACTOR shall specifically identify variations from the Contract Documents and/or any Product or system limitations which may be detrimental to successful performance of the completed Work.
- B. The CONTRACTOR shall revise and resubmit submittals as required, identify all changes made since previous submittals. Re-submittals shall be noted as such and shall direct attention to the revisions made. Re-submittals shall be handled in the same manner as the first submittal.
- C. The CONTRACTOR shall distribute copies of reviewed submittals to concerned parties, with instructions to the party to promptly report any inability to comply with provisions.

**ADMINISTRATIVE SUBMITTALS**

All administrative submittals shall be prepared and submitted in accordance with the Submittal Checklist provided in these Contract Documents. All Preconstruction Administrative submittals must be submitted and approved prior to the release of CONTRACTOR's first Application for Payment. Construction Administrative Submittals must be submitted and approved prior to the release of monthly pay applications. Post Construction Administrative Submittals must be submitted and approved prior to the release of the CONTRACTOR's Final Application for Payment.

### **CONSTRUCTION SCHEDULE**

- A. The construction schedule shall be prepared and submitted in accordance with Specification Section 01310. Three (3) copies of the schedule showing the first forty-five (45) calendar days of the work shall be submitted within ten (10) calendar days after the date of the Notice to Proceed. Three (3) copies of the proposed construction schedule for the entire Contract duration shall be submitted within thirty (30) calendar days after the date of the Notice to Proceed.
- B. The construction schedule shall be revised to reflect comments by the OWNER and updated monthly, depicting progress to the last day of the month. Two (2) copies shall be submitted to the Project Engineer no later than the Monday prior to each Monthly Progress Meeting.
- C. Changes to the schedule shall be accompanied by a letter of explanation with appropriate reference and revision date on the schedule.

### **SHOP DRAWINGS**

- A. The CONTRACTOR shall submit for review shop drawings for concrete reinforcement, structural details, materials fabricated especially for this Contract, and/or materials for which such Drawings are specified or specifically requested by the OWNER.
- B. Shop drawings shall show the principal dimensions, weight, structural and operating features, type and/or brand of finish or shop coat, grease fittings, etc., depending on the subject of the Drawings.
- C. When so specified, or if considered by the OWNER to be acceptable, the manufacturer's specifications, catalog data, descriptive matter, illustrations, etc. may be submitted for review in place of shop drawings. In such case, the requirements shall be as specified for shop drawings, insofar as applicable.
- D. The CONTRACTOR shall be responsible for the prompt submittal of all shop drawings so that there shall be no delay to the Work due to the absence of such Drawings. The OWNER will review and return the shop drawings within 30 calendar days of receipt of such Drawings. One (1) paper copy and one (1) electronic copy of the reviewed shop drawings will be returned to the CONTRACTOR. The paper copy will be returned by regular mail.
- E. Project delays caused by failure to submit or rejection of submittals shall not be cause for additional compensation or Contract time extensions.
- F. All shop drawings shall be submitted to the OWNER through the CONTRACTOR. The CONTRACTOR is responsible for obtaining shop drawings from his subcontractors and returning reviewed Drawings to them. All shop drawings shall be prepared on standard size, 24-inch by 36-inch sheets, or smaller. All Drawings shall be clearly marked with the name of the project, OWNER, CONTRACTOR, and pay item to which the drawing applies. Drawings shall be suitably numbered and stamped by the CONTRACTOR.

Each shipment of Drawings shall be accompanied by a letter of transmittal giving a list of the drawing numbers and the names mentioned above.

- G. **PRODUCT DATA:** Where manufacturer's publications in the form of catalogs, brochures, illustrations, or other data sheets are submitted in lieu of prepared shop drawings, such submission shall specifically indicate the particular item offered. Identification of such items and relative pertinent information shall be made with indelible ink. Submissions showing only general information will not be accepted.

Product data shall include materials of construction, dimensions, performance characteristics and capacities, etc.

- H. **SAMPLE WARRANTIES:** When warranties are called for, a sample of the warranty shall be submitted with the shop drawings. The sample warranty shall be the same form that will be used for the actual warranty.
- I. **WORK PRIOR TO REVIEW:** No material or equipment shall be purchased, fabricated especially for this Contract, or delivered to the project site until the required shop drawings have been submitted, processed and marked either "APPROVED" or "APPROVED AS NOTED". All materials and Work involved in the construction shall be as represented by said Drawings.

The CONTRACTOR shall not proceed with any portion of the Work for which the design and details are dependent upon the design and details of equipment for which submittal review has not been completed.

Only submittals which have been checked and corrected should be submitted to the CONTRACTOR by his subcontractors and vendors. Prior to submitting shop drawings to the OWNER, the CONTRACTOR shall check thoroughly all such Drawings to verify that the subject matter conforms to the Contract Documents in all respects. Drawings which are correct shall be signed and dated by the CONTRACTOR's representative checking the submittal and shall include the following statement: "This shop drawing has been reviewed and approved with respect to means, methods, techniques, sequences and operations of construction, safety precautions and programs incidental thereto. The CONTRACTOR also warrants that this shop drawing complies with the Contract Documents and comprises no variation thereto." Once correct, they shall be submitted to the Project Engineer for Review. Drawings submitted without this statement shall be returned to the CONTRACTOR un-reviewed.

The review of shop drawings will be general and shall not relieve the CONTRACTOR of the responsibility for details of design, dimensions, etc., necessary for proper fitting and construction of the Work required by the Contract Documents and for achieving the specified performance.

For submissions containing departures from the Contract Documents, the CONTRACTOR shall include proper explanation in his letter of transmittal. Should the CONTRACTOR submit for review equipment that requires modifications to the structures, piping, layout, etc. detailed on the Drawings, he shall also submit for review details of the proposed modifications. If such equipment and modifications are accepted, the CONTRACTOR, at no additional cost to the OWNER, shall do all Work necessary to make such modifications.

- J. **SUBSTITUTIONS:** Whenever a particular brand or make of material, equipment, or other item is specified, or is indicated in these Contract Documents, it is for the purpose of establishing a standard of quality, design, and type desired and to supplement the detailed specifications. Any other brand or make which, in the opinion of the OWNER, is equivalent to that specified or indicated may be offered as a substitute subject to the following provisions:



- a. CONTRACTOR shall submit for each proposed substitution sufficient details, complete descriptive literature, and performance data together with samples of the materials, where feasible, to enable the OWNER to determine if the proposed substitution is equal.
- b. CONTRACTOR shall submit certified tests, where applicable, by an independent laboratory attesting that the proposed substitution is equal.
- c. A list of installations, to include the owner's name and phone number, where the proposed substitution is equal.
- d. Where the acceptance of a substitution requires revision or redesign of any part of the Work, all such revision and redesign, and all new Drawings and details required therefore, shall be provided by the CONTRACTOR at his own cost and expense, and shall be subject to review of the OWNER.
- e. In all cases the OWNER shall be the sole judge as to whether a proposed substitution is to be accepted. The CONTRACTOR shall abide by the OWNER's decision when proposed substitute items are judged to be unacceptable and shall in such instances furnish the item, or substitute, as specified. No substitute items shall be used in the Work without written acceptance of the OWNER. The OWNER reserves the right to reject any proposed changes and/or substitutions at their sole discretion, and is under no obligation to justify the decision.
- f. Acceptance of any proposed substitution shall in no way release the CONTRACTOR from any of the provisions of the Contract Documents.

Each submittal shall be complete in all aspects incorporating all information and data required to evaluate the products' compliance with the Contract Documents. Partial or incomplete submissions shall be returned to the CONTRACTOR without review.

Shop Drawing Distribution: The CONTRACTOR shall submit a minimum of three (3) paper copies and one (1) electronic copy of all shop drawings to the OWNER for review. Shop drawings will be reviewed, stamped and distributed with the appropriate box checked either "APPROVED", "APPROVED AS NOTED", "NOT APPROVED" or "REVISE AND RESUBMIT". The OWNER shall return one (1) paper and one (1) electronic copy to the CONTRACTOR and retain two (2) paper copies.

If the CONTRACTOR requires additional copies of returned shop drawings, he shall include extra Drawings in his original submittal. The OWNER will process the Drawings and return them to the CONTRACTOR.

- K. **PRODUCT SAMPLES:** CONTRACTOR shall furnish for review all product samples as required by the Contract Documents or requested by the OWNER to determine compliance with the specifications.

Samples shall be of sufficient size or quantity to clearly illustrate the quality, type, range of color, finish or texture and shall be properly labeled to show complete project identification, the nature of the material, trade name of manufacturer and location of the Work where the material represented by the sample will be used.

Samples shall be checked by the CONTRACTOR for conformance to the Contract Documents before being submitted to the OWNER and shall bear the CONTRACTOR's stamp certifying that they have been so checked. Transportation charges on samples submitted to the OWNER shall be prepaid by the CONTRACTOR.

OWNER's review will be for compliance with the Contract Documents, and comments will be transmitted to the CONTRACTOR with reasonable promptness.

Acceptable samples will establish the standards by which the completed Work will be judged.

- L. PRECONSTRUCTION VIDEO: The CONTRACTOR shall document pre-existing conditions on the project site in accordance with these Contract Documents. This shall be done prior to Work beginning in the area. **The video shall be submitted to the Project Engineer before the first payment application can be released.**

### **RECORD DRAWINGS**

Upon completion of the Work, the CONTRACTOR shall provide two complete sets of drawings recording all changes to the work to indicate actual installation. Changes shall be noted in legible red letters. These changes shall include but are not limited to the following:

- 1) Change in lateral location
- 2) Change in pipe material
- 3) Change in manhole location
- 4) Location of ductile iron installed on existing VCP sewer mains
- 5) Size, depth, and installed elevations of mains, laterals, force mains, and manholes

Completion of the CONTRACTOR's record drawings is a specific contract requirement, and final payment will not be made until these drawings and project manual (as required) have been submitted to and approved by the Project Engineer.

### **CERTIFICATES OF COMPLIANCE**

Copies of certificates of compliance and test reports shall be submitted for requested items to the OWNER prior to request for payment.

### **WARRANTIES**

Original warranties, called for in the Contract Documents, shall be submitted to the OWNER. When warranties are required for an item, warranty shall be submitted prior to request for payment of that item.

When warranties are requested, a sample of the warranty to be provided shall be submitted with, and considered part of, the shop drawings.

The CONTRACTOR shall warrant to the OWNER that all material and labor used in the construction are covered by his warrantee for a minimum of a two (2) year period (unless otherwise noted in these Contract Documents) upon approval and acceptance by the OWNER. The CONTRACTOR shall replace or repair defects at no cost to the OWNER during the warrantee period. No visible or potential leakage shall be allowed during the warrantee period.

**DIVISION 1  
GENERAL REQUIREMENTS  
01400 QUALITY CONTROL**

**QUALITY ASSURANCE**

Quality: All materials shall be new and correctly designed, and shall conform to the requirements outlined in these Contract Documents. They shall be standard first-grade quality produced by expert workmen and be intended for the use for which they are offered. Materials which, in the opinion of the Fayetteville Public Works Commission, are inferior or of a lower grade than indicated, specified, or required will not be acceptable.

Source Limitations: To the greatest extent possible for each unit of Work, the Contractor shall provide products, materials, or equipment from a single manufacturer.

Compatibility of Options: If the Contractor cannot obtain all necessary products, materials, and/or equipment from a single manufacturer, the Contractor shall submit compatible products, materials, and/or equipment to the Fayetteville Public Works Commission for review and approval. Once the Fayetteville Public Works Commission has issued approval of the proposed products, materials, and/or equipment, the Contractor shall only utilize that manufacturer's products, materials, and/or equipment, unless otherwise approved in writing by the Fayetteville Public Works Commission.

**QUALITY CONTROL**

Quality control is the sole responsibility of the Contractor and shall include the activities of his Subcontractors and all suppliers as required.

**TESTING SERVICES**

The Contractor shall cooperate with the Fayetteville Public Works Commission's Consultant performing required testing and provide equipment, access, or other means required at no additional expense to the Fayetteville Public Works Commission. The Contractor shall be responsible for coordinating testing with the FPWC Project Coordinator. The Contractor shall be responsible for all costs incurred by the Fayetteville Public Works Commission's Consultant when scheduled testing cannot be performed.

The Fayetteville Public Works Commission shall employ and pay for the services of an independent laboratory for specified testing as outlined in these Contract Documents, with the following exceptions:

- If Laws and Regulations of any public body having jurisdiction specifically require any part of the Work to be tested, inspected, or approved by an employee or other representative of that public body, the Contractor shall be responsible for arranging and obtaining such inspections and/or approvals. The Contractor shall bear all costs associated with the required testing, inspections, and/or approvals, and shall furnish the Fayetteville Public Works Commission all required documentation that the required testing, inspection, and/or approvals have been obtained.
- If any part of the Work is found to be defective and not in compliance with the Contract Documents, the Contractor shall be responsible for all subsequent testing necessary to prove that the Work has been brought into compliance. Any necessary testing to ensure compliance shall be directed by the FPWC Project Coordinator and/or FPWC Project Engineer.

- When scheduled testing by the Fayetteville Public Works Commission’s Consultant cannot be performed.
- Arranging and obtaining any required inspections, testing, or approvals required in connection with the Fayetteville Public Works Commission’s acceptance of a material supplier, or equipment proposed to be incorporated into the Work, or materials, mix designs, etc. submitted for approval prior to purchase for incorporation into the Work. All inspections, tests, and approvals shall be performed by organizations acceptable to the Fayetteville Public Works Commission.

**PRODUCT EVALUATION**

Testing shall be accomplished as deemed necessary by the Fayetteville Public Works Commission to ensure that the products conform to the requirements of the Contract Documents.

The work or actions of the testing laboratory shall in no way relieve the Contractor of his obligations under the Contract. The laboratory testing work will include such inspections and testing required by the Contract Documents, existing laws, codes, ordinances, etc. The testing laboratory will have no authority to change the requirements of the Contract Documents, nor perform, accept or approve any of the Contractor's Work.

The Contractor shall allow the Fayetteville Public Works Commission ample time and opportunity for evaluation and testing materials to be used in the Work. The Contractor shall advise the Fayetteville Public Works Commission promptly upon placing orders for materials so that arrangements may be made, if desired, for evaluation before shipment from the place of manufacture. The Contractor shall at all times furnish the Fayetteville Public Works Commission and his representatives, facilities including labor, and allow proper time for evaluation and testing materials, and workmanship. The Contractor must anticipate that possible delays may occur due to the necessity of materials being inspected and accepted for use. The Contractor shall furnish, at his own expense, all samples of materials required by the Fayetteville Public Works Commission for testing, and shall make his own arrangements for providing water, electric power, or fuel for the various evaluation and tests of structures and materials.

The Fayetteville Public Works Commission will bear the cost of all tests, evaluation, or investigations undertaken by the order of the FPWC Project Engineer for the purpose of determining conformance with the Contract Documents if such tests, evaluation, or investigations are not specifically required by the Contract Documents, and if conformance is ascertained thereby. Whenever nonconformance is determined by the Fayetteville Public Works Commission as a result of such tests, evaluation, or investigations, the Contractor shall bear the full cost of any additional tests, evaluations and investigations, which are ordered by the Fayetteville Public Works Commission to ascertain subsequent conformance with the Contract Documents.

**EVALUATION AT PLACE OF MANUFACTURE**

Unless otherwise specified, all products and materials shall be subject to evaluation by the Fayetteville Public Works Commission at the place of manufacture.

The presence of the Fayetteville Public Works Commission at the place of manufacture however, shall not relieve the Contractor of the responsibility for furnishing products, materials, and equipment which comply with all requirements of the Contract Documents. Compliance is a duty of the Contractor, and said duty shall not be avoided by any act or omission on the part of the Fayetteville Public Works Commission.

## **SAMPLING AND TESTING**

Unless otherwise specified, all sampling and testing shall be in accordance with the methods prescribed in the current standards of the ASTM, as applicable to the class and nature of the article or materials considered. However, the Fayetteville Public Works Commission reserves the right to use any generally-accepted system of sampling and testing which will ensure that the quality of the workmanship is in full accord with the Contract Documents.

Any waiver by the Fayetteville Public Works Commission of any specific testing or other quality assurance measures shall not be construed as a waiver of any requirements of the Contract Documents. The Fayetteville Public Works Commission may require a guarantee of substantial performance and/or a performance bond to ensure any necessary corrective or remedial Work, should a waiver be granted.

The Fayetteville Public Works Commission reserves the right to make independent investigations and tests. Failure of any portion of the Work to meet any of the requirements of the Contract Documents shall be reasonable cause for the Fayetteville Public Works Commission to require the removal or correction and reconstruction of any such work in accordance with the Contract Documents. In addition to any other evaluation, observation or quality assurance provisions that may be specified, the Fayetteville Public Works Commission shall have the right to independently select, test, and analyze, at their expense, additional test specimens or any or all of the materials to be used. Results of such tests and analyses shall be considered along with the tests or analyses made by the Contractor to determine compliance with the applicable specifications for the materials so tested or analyzed. The Contractor shall be responsible for all costs of removal, correction, and reconstruction or repair of any such Work that fails to meet the requirements of the Contract Documents.

## **SITE INVESTIGATION AND CONTROL**

The Contractor shall verify all dimensions in the field and shall check field conditions continuously during construction. The Contractor shall be solely responsible for any inaccuracies built into the Work due to their failure to comply with this requirement.

The Contractor shall inspect related and appurtenant Work and shall report in writing to the Fayetteville Public Works Commission any conditions which will prevent proper completion of the Work. Failure to report any such conditions shall constitute acceptance of all site conditions, and any required removal, repair, or replacement caused by unsuitable conditions shall be performed by the Contractor at their sole cost and expense.

## **RIGHT OF REJECTION**

The Fayetteville Public Works Commission shall have the right, at all times, to reject any articles or materials to be furnished hereunder which, in any respect, fail to meet the requirements of the Contract Documents, regardless of whether the defects in such articles or materials are detected at the point of manufacture or after completion of the Work. If the Fayetteville Public Works Commission, through an oversight or otherwise, has accepted materials or Work which is defective or which is contrary to the Contract Documents, such materials, no matter in what stage or condition of manufacture, delivery, or erection, may be subsequently rejected by the Fayetteville Public Works Commission.

The Contractor shall promptly remove rejected articles or materials from the Work after notification of rejection. All costs of removal and replacement of rejected articles or materials as specified herein shall be borne by the Contractor.

**WATERTIGHTNESS OF STRUCTURES**

It is the intent of these Contract Documents that all Work shall be performed as required by quality construction to ensure proper sealing so that groundwater and/or rainwater will not leak into any collection line, service lateral, or manhole.

The Contractor shall provide at its own expense all labor, material, temporary bulkheads, pumps, water, measuring devices, etc., necessary to perform the required tests.

**HYDRAULIC UPLIFT ON STRUCTURES**

The Contractor shall be completely responsible for any pipelines or manholes that may become buoyant before the Work is completed and accepted. The Contractor shall take all necessary steps to prevent any structures from becoming buoyant. Damage to any structures due to floating or flooding shall be repaired or replaced at the Contractor's expense.

**TIME OF OBSERVATION AND TESTS**

Samples and test specimens required under these Contract Documents shall be furnished and prepared for testing in ample time for the completion of the necessary tests and analyses before said articles or materials are to be used. The Contractor shall furnish and prepare all required test specimens within the scope of the Contract. Except as otherwise provided in the Contract Documents, the performance and cost of the required tests will be the responsibility of the Fayetteville Public Works Commission. However, the costs of any test which shows unsatisfactory results shall be borne by the Contractor. Whenever the Contractor is ready to backfill, bury, cast in concrete, or otherwise cover any Work under the Contract, the Fayetteville Public Works Commission shall be notified not less than twenty-four hours in advance to request inspection before beginning any such Work of covering. Failure of the Contractor to notify the Fayetteville Public Works Commission a minimum of twenty-four hours in advance of any such inspections shall be cause for the Fayetteville Public Works Commission to order a delay in the Contractor's schedule to allow time for inspections. Any remedial or corrective Work required, and all costs of such delays, including its effect upon other portions of the Work, shall be borne by the Contractor.

- END OF SECTION -

**DIVISION 1  
GENERAL REQUIREMENTS**

**01700 – PROJECT CLOSEOUT**

**GENERAL**

The Contractor shall promptly remove from the vicinity of the completed Work, all rubbish, unused materials, concrete forms, construction equipment, temporary structures and facilities, construction signs, tools, scaffolding, materials, supplies and equipment which may have been used in the performance of the work. The Contractor shall broom clean paved surfaces and rake clean other surfaces of grounds. Final acceptance of the Work by the Fayetteville Public Works Commission will be withheld until the Contractor has satisfactorily complied with the foregoing requirements for final cleanup of the project site.

The Contractor shall thoroughly clean all materials, equipment and structures; all marred surfaces shall be touched up to match adjacent surfaces.

The Contractor shall remove spatter, grease, stains, fingerprints, dirt, dust, labels, tags, packing materials and other foreign items or substances from interior and exterior surfaces, equipment, signs and lettering.

The Contractor shall remove paint, clean and restore all equipment and material nameplates, labels and other identification markings.

The Contractor shall maintain cleaning until project, or portion thereof, is accepted by the Fayetteville Public Works Commission.

The Contractor shall:

- A. Use only cleaning materials recommended by manufacturer of surface to be cleaned.
- B. Use each type of cleaning material on only those surfaces recommended by the cleaning material manufacturer.
- C. Use only materials which will not create hazards to health or property.

**CLOSEOUT TIMETABLE**

The Contractor shall establish dates for testing, acceptance periods, and on-site instructional periods (as required under the Contract). Such dates shall be established not less than one week prior to beginning any of the foregoing items, to allow the Fayetteville Public Works Commission and their authorized representative's sufficient time to schedule attendance at such activities.

**FINAL SUBMITTALS**

Before the final acceptance of the project, the Contractor shall submit to the Fayetteville Public Works Commission certain records, certifications, etc., which are specified elsewhere in the Contract Documents. Missing, incomplete or unacceptable items, as determined by the Fayetteville Public Works Commission, shall constitute grounds for withholding final payment to the Contractor. A partial list of such items appears below, but it shall be the Contractor's responsibility to submit any other items which are required in the Contract Documents:

- A. Written Test results of project components.
- B. Written guarantees, where required.
- C. Certificates of inspection and acceptance by local governing agencies having jurisdiction.
- D. Pre-construction photos (5" x 7").
- E. Releases from all parties who are entitled to claims against the subject project, property, or improvement pursuant to the provisions of law.

**PUNCH LISTS**

Final cleaning shall be scheduled upon completion of the project.

The Fayetteville Public Works Commission will make their final inspection whenever the Project Coordinator has determined that the work is ready for the inspection. Any work not found acceptable and requiring cleaning, repair and/or replacement will be noted on the "Punch" list. Work that has been inspected and accepted by the Fayetteville Public Works Commission shall be maintained by the Contractor, until final acceptance of the entire project.

Whenever the Contractor has completed the items on the punch list, he shall coordinate an inspection with the FPWC Project Coordinator to verify that the punch list items have been satisfactorily completed. This procedure will continue until the entire project is accepted by the Fayetteville Public Works Commission. The "Final Payment" will not be processed until the entire project has been accepted by the Fayetteville Public Works Commission and all of the requirements in this Specification Section have been satisfied and any additional requirements as outlined in Section 01000 – Special Conditions of these Contract Documents.

**TOUCH-UP AND REPAIR**

The Contractor shall touch-up and repair damage to all existing facilities and surfaces. If in the opinion of the Fayetteville Public Works Commission the touch-up work is not satisfactory, the Contractor shall repeat the item.

**MAINTENANCE AND GUARANTEE**

The Contractor shall comply with all maintenance and guarantee requirements of the Contract Documents.

Replacement of earth fill or backfill, where it has settled below the required finish elevations, shall be considered as a part of such required repair work, and any repair or resurfacing constructed by the Contractor which becomes necessary by reason of such settlement shall likewise be considered as a part of such required repair work unless the Contractor shall have obtained a statement in writing from the affected private Owner or public agency releasing the Fayetteville Public Works Commission from further responsibility in connection with such repair or resurfacing.

— END OF SECTION —



## **APPENDIX A – FEMA FUNDED PROJECT REQUIREMENTS**

Fayetteville Public works Commission (“Owner”) will be seeking FEMA reimbursement for this project. All Bidders are notified that the requirements and provisions for FEMA reimbursement for Construction, Procurement, and Professional Services shall be adhered to in the submission of all bids and shall be made a part of this contract.

The Bidder to whom the contract is awarded shall comply with the statutory requirements of these provisions as specified within the contract documents.

## UTILIZATION OF SMALL BUSINESSES CONCERNS (48 CFR 52.219-8)

- 1) Definitions. As used in this contract –
  - a) HUBZone small business concern means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.
  - b) Service-disabled veteran-owned small business concern –
    - i) Means a small business concern –
      - (1) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and
      - (2) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.
    - ii) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16). Small business concern means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. Small disadvantaged business concern, consistent with 13 CFR 124.1002, means a small business concern under the size standard applicable to the acquisition, that –
    - iii) Is at least 51 percent unconditionally and directly owned (as defined at 13 CFR 124.105) by –
      - (1) One or more socially disadvantaged (as defined at 13 CFR 124.103) and economically disadvantaged (as defined at 13 CFR 124.104) individuals who are citizens of the United States; and
      - (2) Each individual claiming economic disadvantage has a net worth not exceeding \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and
    - iv) The management and daily business operations of which are controlled (as defined at 13.CFR 124.106) by individuals, who meet the criteria in paragraphs (1)(i) and (ii) of this definition.
  - c) Veteran-owned small business concern means a small business concern –
    - i) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and
    - ii) The management and daily business operations of which are controlled by one or more veterans.
  - d) Women-owned small business concern means a small business concern –
    - i) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and
    - ii) Whose management and daily business operations are controlled by one or more women.
- 2) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.
- 3) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.
- 4) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a small disadvantaged business concern, or a women-owned small business concern.
- 5) The Contractor shall confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing the System for Award Management database or by contacting the SBA. Options for contacting the SBA include –
  - a) HUBZone small business database search application Web page at [http://dsbs.sba.gov/dsbs/search/dsp\\_searchhubzone.cfm](http://dsbs.sba.gov/dsbs/search/dsp_searchhubzone.cfm); or <http://www.sba.gov/hubzone>;
  - b) In writing to the Director/HUB, U.S. Small Business Administration, 409 3rd Street, SW., Washington DC 20416; or
  - c) The SBA HUBZone Help Desk at [hubzone@sba.gov](mailto:hubzone@sba.gov).

## **EQUAL EMPLOYMENT OPPORTUNITY**

During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, 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, sexual orientation, gender identity, 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.

(2) 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 for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(4) 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 advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, 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 administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination 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 or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 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 subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result

of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States. The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract. The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance. The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a Contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon Contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

# **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

Compliance with the Contract Work Hours and Safety Standards Act.

(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 paragraph (b)(1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. 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 watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 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 paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or 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, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

# **CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT**

## **Clean Air Act**

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The Contractor agrees to report each violation to the Fayetteville Public Works Commission and understands and agrees that the Fayetteville Public Works Commission will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

## **Federal Water Pollution Control Act**

1. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. The Contractor agrees to report each violation to the Fayetteville Public Works Commission and understands and agrees that the Fayetteville Public Works Commission will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

## **DEBARMENT AND SUSPENSION**

- (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Contractor is required to verify that none of the Contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification is a material representation of fact relied upon by Fayetteville Public Works Commission. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to Fayetteville Public Works Commission, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

## **BYRD ANTI-LOBBYING AMENDMENT**

**Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)**

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.



## **PROCUREMENT AND RECOVERED MATERIALS**

1. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

- A. Competitively within a timeframe providing for compliance with the contract performance schedule;
- B. Meeting contract performance requirements; or
- C. At a reasonable price.

2. Information about this requirement, along with the list of EPA designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensiveprocurement-guideline-cpg-program>.

3. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.”

# **CERTIFICATION REGARDING LOBBYING (44 CFR PART 18)**

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an 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 Federal 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 undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. The Contractor, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

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Signature of Contractor's Authorized Official

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Name and Title of Contractor's Authorized Official

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Date

**APPENDIX B - UNITED STATES ARMY CORPS OF ENGINEERS  
PERMIT**

**NATIONWIDE PERMIT 3**  
**DEPARTMENT OF THE ARMY**  
**CORPS OF ENGINEERS**  
**FINAL NOTICE OF ISSUANCE AND MODIFICATION OF NATIONWIDE PERMITS**  
**FEDERAL REGISTER**  
**AUTHORIZED MARCH 19, 2017**

**Maintenance.** (a) The repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, requirements of other regulatory agencies, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement are authorized. This NWP also authorizes the removal of previously authorized structures or fills. Any stream channel modification is limited to the minimum necessary for the repair, rehabilitation, or replacement of the structure or fill; such modifications, including the removal of material from the stream channel, must be immediately adjacent to the project. This NWP also authorizes the removal of accumulated sediment and debris within, and in the immediate vicinity of, the structure or fill. This NWP also authorizes the repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the district engineer, provided the permittee can demonstrate funding, contract, or other similar delays.

(b) This NWP also authorizes the removal of accumulated sediments and debris outside the immediate vicinity of existing structures (e.g., bridges, culverted road crossings, water intake structures, etc.). The removal of sediment is limited to the minimum necessary to restore the waterway in the vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend farther than 200 feet in any direction from the structure. This 200 foot limit does not apply to maintenance dredging to remove accumulated sediments blocking or restricting outfall and intake structures or to maintenance dredging to remove accumulated sediments from canals associated with outfall and intake structures. All dredged or excavated materials must be deposited and retained in an area that has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization.

(c) This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to conduct the maintenance activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. After conducting the maintenance activity, temporary fills must be

removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

(d) This NWP does not authorize maintenance dredging for the primary purpose of navigation. This NWP does not authorize beach restoration. This NWP does not authorize new stream channelization or stream relocation projects.

**Notification:** For activities authorized by paragraph (b) of this NWP, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 32). The pre-construction notification must include information regarding the original design capacities and configurations of the outfalls, intakes, small impoundments, and canals. (Authorities: Section 10 of the Rivers and Harbors Act of 1899 and section 404 of the Clean Water Act (Sections 10 and 404))

**Note:** This NWP authorizes the repair, rehabilitation, or replacement of any previously authorized structure or fill that does not qualify for the Clean Water Act section 404(f) exemption for maintenance.

**APPENDIX C – NORTH CAROLINA DEPARTMENT OF  
ENVIRONMENTAL QUALITY PERMIT**

## NATIONWIDE PERMIT GENERAL CONDITIONS

The following General Conditions must be followed in order for any authorization by a NWP to be valid:

1. Navigation. (a) No activity may cause more than a minimal adverse effect on navigation.  
(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.  
(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.
  
2. Aquatic Life Movements. No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.
  
3. Spawning Areas. Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.
  
4. Migratory Bird Breeding Areas. Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.
  
5. Shellfish Beds. No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.
  
6. Suitable Material. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see section 307 of the Clean Water Act).

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

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

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

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

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

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

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

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

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

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



unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status.

(b) If a proposed NWP activity will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, the permittee must submit a pre-construction notification (see general condition 32). The district engineer will coordinate the PCN with the Federal agency with direct management responsibility for that river. The permittee shall not begin the NWP activity until notified by the district engineer that the Federal agency with direct management responsibility for that river has determined in writing that the proposed NWP activity will not adversely affect the Wild and Scenic River designation or study status.

(c) Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Information on these rivers is also available at: <http://www.rivers.gov/>.

17. Tribal Rights. No NWP activity may cause more than minimal adverse effects on tribal rights (including treaty rights), protected tribal resources, or tribal lands.

18. Endangered Species. (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which “may affect” a listed species or critical habitat, unless ESA section 7 consultation addressing the effects of the proposed activity has been completed. Direct effects are the immediate effects on listed species and critical habitat caused by the NWP activity. Indirect effects are those effects on listed species and critical habitat that are caused by the NWP activity and are later in time, but still are reasonably certain to occur.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. If pre-construction notification is required for the proposed activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that

might be affected by the proposed activity or that utilize the designated critical habitat that might be affected by the proposed activity. The district engineer will determine whether the proposed activity “may affect” or will have “no effect” to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps’ determination within 45 days of receipt of a complete pre-construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the activity, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification that the proposed activity will have “no effect” on listed species or critical habitat, or until ESA section 7 consultation has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

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

(e) Authorization of an activity by an NWP does not authorize the “take” of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with “incidental take” provisions, etc.) from the FWS or the NMFS, the Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word “harm” in the definition of “take” means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed NWP activity, the non-federal applicant should provide a copy of that ESA section 10(a)(1)(B) permit with the PCN required by paragraph (c) of this general condition. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation for the ESA section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA section 7 consultation for the proposed NWP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a)(1)(B) permit covers the proposed NWP activity or whether additional ESA section 7 consultation is required.

(g) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS and NMFS or their world wide web pages at <http://www.fws.gov/> or <http://www.fws.gov/ipac> and <http://www.nmfs.noaa.gov/pr/species/esa/> respectively.

19. Migratory Birds and Bald and Golden Eagles. The permittee is responsible for ensuring their action complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting appropriate local office of the U.S. Fish and Wildlife Service to determine applicable measures to reduce impacts to migratory

birds or eagles, including whether “incidental take” permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

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

(b) Federal permittees should follow their own procedures for complying with the requirements of section 106 of the National Historic Preservation Act. If pre-construction notification is required for the proposed NWP activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties might have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted in the PCN and these identification efforts, the district engineer shall determine whether the proposed NWP activity has the potential to cause effects on the historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: no historic properties affected, no adverse effect, or adverse effect. Where the non-Federal applicant has identified historic properties on which the activity might have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects to historic properties or that NHPA section 106 consultation has been completed.

(d) For non-federal permittees, the district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA section 106 consultation is required. If NHPA section 106 consultation is required, the district engineer will notify the non-Federal applicant that he or she cannot begin the activity until section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (54 U.S.C. 306113) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

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

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

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

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, notification is required in accordance with general condition 32, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

23. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal:

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

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation to ensure that the activity results in no more than minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, since streams are difficult-to-replace resources (see 33 CFR 332.3(e)(3)).

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

(f) Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal adverse environmental effects. For the NWPs, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-

lieu fee program credits (see 33 CFR 332.3(b)(2) and (3)). However, if an appropriate number and type of mitigation bank or in-lieu credits are not available at the time the PCN is submitted to the district engineer, the district engineer may approve the use of permittee-responsible mitigation.

(2) The amount of compensatory mitigation required by the district engineer must be sufficient to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see 33 CFR 330.1(e)(3)). (See also 33 CFR 332.3(f)).

(3) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, aquatic resource restoration should be the first compensatory mitigation option considered for permittee-responsible mitigation.

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

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

(6) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan (see 33 CFR 332.4(c)(1)(ii)).

(g) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any NWP activity resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that an NWP activity already meeting the established acreage limits also satisfies the no more than minimal impact requirement for the NWPs.

(h) Permittees may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, the permittee must consider appropriate and practicable options consistent with the framework at 33 CFR 332.3(b). For activities resulting in the loss of marine or estuarine resources, permittee-responsible mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(i) Where certain functions and services of waters of the United States are permanently adversely affected by a regulated activity, such as discharges of dredged or fill

material into waters of the United States that will convert a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse environmental effects of the activity to the no more than minimal level.

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

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

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

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

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

29. Transfer of Nationwide Permit Verifications. If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:  
“When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To

validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.”

\_\_\_\_\_  
(Transferee)

\_\_\_\_\_  
(Date)

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

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

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

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

The completed certification document must be submitted to the district engineer within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.

31. Activities Affecting Structures or Works Built by the United States. If an NWP activity also requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project (a “USACE project”), the prospective permittee must submit a pre-construction notification. See paragraph (b)(10) of general condition 32. An activity that requires section 408 permission is not authorized by NWP until the appropriate Corps office issues the section 408 permission to alter, occupy, or use the USACE project, and the district engineer issues a written NWP verification.

32. Pre-Construction Notification. (a) Timing. Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the



prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

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

(2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or are in the vicinity of the activity, or to notify the Corps pursuant to general condition 20 that the activity might have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)) has been completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

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

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

(2) Location of the proposed activity;

(3) Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity;

(4) A description of the proposed activity; the activity's purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures. For single and complete linear projects, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters.

Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

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

(6) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse environmental effects are no more than minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(7) For non-Federal permittees, if any listed species or designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat, the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed activity or utilize the designated critical habitat that might be affected by the proposed activity. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with the Endangered Species Act;

(8) For non-Federal permittees, if the NWP activity might have the potential to cause effects to a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity or include a vicinity map indicating the location of the historic property. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with section 106 of the National Historic Preservation Act;

(9) For an activity that will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, the PCN must identify the Wild and Scenic River or the “study river” (see general condition 16); and

(10) For an activity that requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, the pre-construction notification must include a statement confirming that the project proponent has submitted a written request for section 408 permission from the Corps office having jurisdiction over that USACE project.

(c) Form of Pre-Construction Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is an NWP PCN and must include all of the applicable information required in paragraphs (b)(1) through (10) of this general condition. A letter containing the required information may also be used. Applicants may provide electronic files of PCNs and

supporting materials if the district engineer has established tools and procedures for electronic submittals.

(d) Agency Coordination: (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the activity's adverse environmental effects so that they are no more than minimal.

(2) Agency coordination is required for: (i) all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States; (ii) NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300 linear feet of stream bed; (iii) NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites; and (iv) NWP 54 activities in excess of 500 linear feet, or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.

(3) When agency coordination is required, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (FWS, state natural resource or water quality agency, EPA, and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to notify the district engineer via telephone, facsimile transmission, or e-mail that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse environmental effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure the net adverse environmental effects of the proposed activity are no more than minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

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

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

### **DISTRICT ENGINEER'S DECISION**

1. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal

individual or cumulative adverse environmental effects or may be contrary to the public interest. If a project proponent requests authorization by a specific NWP, the district engineer should issue the NWP verification for that activity if it meets the terms and conditions of that NWP, unless he or she determines, after considering mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity. For a linear project, this determination will include an evaluation of the individual crossings of waters of the United States to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings authorized by NWP. If an applicant requests a waiver of the 300 linear foot limit on impacts to streams or of an otherwise applicable limit, as provided for in NWPs 13, 21, 29, 36, 39, 40, 42, 43, 44, 50, 51, 52, or 54, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in only minimal individual and cumulative adverse environmental effects. For those NWPs that have a waivable 300 linear foot limit for losses of intermittent and ephemeral stream bed and a 1/2-acre limit (i.e., NWPs 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52), the loss of intermittent and ephemeral stream bed, plus any other losses of jurisdictional waters and wetlands, cannot exceed 1/2-acre.

2. When making minimal adverse environmental effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. He or she will also consider the cumulative adverse environmental effects caused by activities authorized by NWP and whether those cumulative adverse environmental effects are no more than minimal. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional or condition assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse environmental effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns.

3. If the proposed activity requires a PCN and will result in a loss of greater than 1/10-acre of wetlands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for NWP activities with smaller impacts, or for impacts to other types of waters (e.g., streams). The district engineer will consider any proposed compensatory mitigation or other mitigation measures the applicant has included in the proposal in determining whether the net adverse environmental effects of the proposed activity are no more than minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse environmental effects are no more than minimal, after considering mitigation, the district engineer will notify the permittee and

include any activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). The district engineer must approve the final mitigation plan before the permittee commences work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the proposed compensatory mitigation plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure the NWP activity results in no more than minimal adverse environmental effects. If the net adverse environmental effects of the NWP activity (after consideration of the mitigation proposal) are determined by the district engineer to be no more than minimal, the district engineer will provide a timely written response to the applicant. The response will state that the NWP activity can proceed under the terms and conditions of the NWP, including any activity-specific conditions added to the NWP authorization by the district engineer.

4. If the district engineer determines that the adverse environmental effects of the proposed activity are more than minimal, then the district engineer will notify the applicant either: (a) that the activity does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (b) that the activity is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal; or (c) that the activity is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse environmental effects, the activity will be authorized within the 45-day PCN period (unless additional time is required to comply with general conditions 18, 20, and/or 31, or to evaluate PCNs for activities authorized by NWPs 21, 49, and 50), with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation plan or a requirement that the applicant submit a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal. When compensatory mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

### **FURTHER INFORMATION**

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
3. NWPs do not grant any property rights or exclusive privileges.
4. NWPs do not authorize any injury to the property or rights of others.
5. NWPs do not authorize interference with any existing or proposed Federal project (see general condition 31).

## DEFINITIONS

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

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

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

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

Discharge: The term “discharge” means any discharge of dredged or fill material into waters of the United States.

Ecological reference: A model used to plan and design an aquatic habitat and riparian area restoration, enhancement, or establishment activity under NWP 27. An ecological reference may be based on the structure, functions, and dynamics of an aquatic habitat type or a riparian area type that currently exists in the region where the proposed NWP 27 activity is located. Alternatively, an ecological reference may be based on a conceptual model for the aquatic habitat type or riparian area type to be restored, enhanced, or established as a result of the proposed NWP 27 activity. An ecological reference takes into account the range of variation of the aquatic habitat type or riparian area type in the region.

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

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

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

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

Historic Property: Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National

Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR part 60).

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

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

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

Loss of waters of the United States: Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. The loss of stream bed includes the acres or linear feet of stream bed that are filled or excavated as a result of the regulated activity. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities that do not require Department of the Army authorization, such as activities eligible for exemptions under section 404(f) of the Clean Water Act, are not considered when calculating the loss of waters of the United States.

Navigable waters: Waters subject to section 10 of the Rivers and Harbors Act of 1899. These waters are defined at 33 CFR part 329.

Non-tidal wetland: A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

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

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

Perennial stream: A perennial stream has flowing water year-round during a typical year. The water table is located above the stream bed for most of the year. Groundwater is the

primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.

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

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

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

Protected tribal resources: Those natural resources and properties of traditional or customary religious or cultural importance, either on or off Indian lands, retained by, or reserved by or for, Indian tribes through treaties, statutes, judicial decisions, or executive orders, including tribal trust resources.

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

Rehabilitation: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

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

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

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



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

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

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

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

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

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

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

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

Tidal wetland: A tidal wetland is a jurisdictional wetland that is inundated by tidal waters. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water

surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line.

Tribal lands: Any lands title to which is either: 1) held in trust by the United States for the benefit of any Indian tribe or individual; or 2) held by any Indian tribe or individual subject to restrictions by the United States against alienation.

Tribal rights: Those rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, executive order or agreement, and that give rise to legally enforceable remedies.

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

Waterbody: For purposes of the NWP, a waterbody is a jurisdictional water of the United States. If a wetland is adjacent to a waterbody determined to be a water of the United States, that waterbody and any adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)). Examples of “waterbodies” include streams, rivers, lakes, ponds, and wetlands.

## **FINAL 2017 REGIONAL CONDITIONS**

### *NOTICE ABOUT WEB LINKS IN THIS DOCUMENT:*

*The web links (both internal to our Wilmington District and any external links to collaborating agencies) in this document are valid at the time of publication. However, the Wilmington District Regulatory Program web page addresses, as with other agency web sites, may change over the timeframe of the five-year Nationwide Permit renewal cycle, in response to policy mandates or technology advances. While we will make every effort to check on the integrity of our web links and provide re-direct pages whenever possible, we ask that you report any broken links to us so we can keep the page information current and usable. We apologize in advanced for any broken links that you may encounter, and we ask that you navigate from the Regulatory home page (Regulatory Permit Program Wetlands and Streams) of the Wilmington District Corps of Engineers, to the “Permits” section of our web site to find links for pages that cannot be found by clicking directly on the listed web link in this document.*

### **Final 2017 Regional Conditions for Nationwide Permits (NWP) in the Wilmington District**

#### **1.0 Excluded Waters**

The Corps has identified waters that will be excluded from the use of all NWP's during certain timeframes. These waters are:

##### **1.1 Anadromous Fish Spawning Areas**

Waters of the United States identified by either the North Carolina Division of Marine Fisheries (NCDMF) or the North Carolina Wildlife Resources Commission (NCWRC) as anadromous fish spawning areas are excluded during the period between February 15 and June 30, without prior written approval from the Corps and either NCDMF or NCWRC.

##### **1.2 Trout Waters Moratorium**

Waters of the United States in the designated trout watersheds of North Carolina are excluded during the period between October 15 and April 15 without prior written approval from the NCWRC, or from the Eastern Band of Cherokee Indians (EBCI) Fisheries and Wildlife Management (FWM) office if the project is located on EBCI trust land. (See Section 2.7 for information on the designated trout watersheds).

##### **1.3 Sturgeon Spawning Areas as Designated by the National Marine Fisheries Service (NMFS)**

Waters of the United States designated as sturgeon spawning areas are excluded during the period between February 1 and June 30, without prior written approval from the NMFS.

## **2.0 Waters Requiring Additional Notification**

The Corps has identified waters that will be subject to additional notification requirements for activities authorized by all NWPs. These waters are:

### **2.1 Western NC Counties that Drain to Designated Critical Habitat**

For proposed activities within waters of the United States that require a Pre-Construction Notification (PCN) and are located in the sixteen counties listed below, permittees must provide a copy of the PCN to the U.S. Fish and Wildlife Service (USFWS), 160 Zillicoa Street, Asheville, North Carolina 28801. This PCN must be sent concurrently to the U.S. Fish and Wildlife Service and the Corps Asheville Regulatory Field Office. Please see General Condition 18 for specific notification requirements related to the Endangered Species Act and the below website for information on the location of designated critical habitat.

Counties with tributaries that drain to designated critical habitat that require notification to the Asheville U.S. Fish and Wildlife Service: Avery, Cherokee, Forsyth, Graham, Haywood, Henderson, Jackson, Macon, Mecklenburg, Mitchell, Stokes, Surry, Swain, Transylvania, Union and Yancey.

Website and office addresses for Endangered Species Act Information:

The Wilmington District has developed the following website for permittees which provides guidelines on how to review linked websites and maps in order to fulfill NWP General Condition 18 requirements:

<http://www.saw.usace.army.mil/Missions/RegulatoryPermitProgram/AgencyCoordination/ESA.asp>

Permittees who do not have internet access may contact the appropriate U.S. Fish and Wildlife Service offices listed below or Corps at (910) 251-4633:

Asheville U.S. Fish and Wildlife Service Office counties: All counties west of and including Anson, Stanly, Davidson, Forsythe and Stokes Counties.

U.S. Fish and Wildlife Service  
Asheville Field Office  
160 Zillicoa Street  
Asheville, NC 28801  
Telephone: (828) 258-3939

Raleigh U.S. Fish and Wildlife Service Office counties: all counties east of and including Richmond, Montgomery, Randolph, Guilford, and Rockingham Counties.

U.S. Fish and Wildlife Service  
Raleigh Field Office  
Post Office Box 33726

Raleigh, NC 27636-3726  
Telephone: (919) 856-4520

## **2.2 Special Designation Waters**

Prior to the use of any NWP, except NWP 3, that involves a discharge of dredged or fill material in any of the following identified waters and/or adjacent wetlands in North Carolina, permittees shall submit a PCN to the District Engineer prior to commencing the activity (see General Condition 32). The North Carolina waters and wetlands that require additional notification requirements are:

“Outstanding Resource Waters” (ORW) or “High Quality Waters” (HQW) as designated by the North Carolina Environmental Management Commission; “Primary Nursery Areas” (PNA), including inland PNA, as designated by the North Carolina Marine Fisheries Commission and the NCWRC; or wetlands adjacent to these waters. Definitions of ORW, HQW and PNA waters can be found in the North Carolina State Administrative Code, Title 15A, Subchapters 2B and 10C (15A NCAC 02B, 15A NCAC 10C) and at the following World Wide Web page: <http://reports.oah.state.nc.us/ncac.asp?folderName=\Title%2015A%20-%20Environmental%20Quality&lookupError=15A%20NCAC%20000%20>. Surface water classifications for waters in North Carolina can be viewed at the North Carolina Division of Water Resources website or at the following World Wide Web Page: <https://deq.nc.gov/about/divisions/water-resources/planning/classification-standards/classifications>

Permittees who do not have internet access may contact the Corps at (910) 251- 4633.

## **2.3 Coastal Area Management Act (CAMA) Areas of Environmental Concern**

Non-federal permittees for any NWP in a designated “Area of Environmental Concern” (AEC) in the twenty (20) counties of Eastern North Carolina covered by the North Carolina Coastal Area Management Act (CAMA) must also obtain the required CAMA permit. Development activities for non-federal projects may not commence until a copy of the approved CAMA permit is furnished to the appropriate Wilmington District Regulatory Field Office (Wilmington Field Office – 69 Darlington Avenue, Wilmington, NC 28403, (910) 251-4802 or Washington Field Office – 2407 West 5th Street, Washington, NC 27889, (910) 251-4610).

## **2.4 Barrier Islands**

Prior to the use of any NWP on a barrier island of North Carolina, permittees must submit a PCN to the District Engineer prior to commencing the activity (see General Condition 32).

## **2.5 Mountain or Piedmont Bogs**

Prior to the use of any NWP in a Bog, as classified by the North Carolina Wetland Assessment Methodology (NCWAM), permittees shall submit a PCN to the District Engineer prior to commencing the activity (see General Condition 32). The latest version of NCWAM can be

viewed on the Corps RIBITS (Regulatory In-lieu Fee and Bank Information Tracking System) website or at the following World Wide Web Page:  
[https://ribits.usace.army.mil/ribits\\_apex/f?p=107:27:0::NO::](https://ribits.usace.army.mil/ribits_apex/f?p=107:27:0::NO::)

## 2.6 Animal Waste Facilities

Prior to use of any NWP for construction of animal waste facilities in waters of the United States, including wetlands, permittees shall submit a PCN to the District Engineer prior to commencing the activity (see General Condition 32).

## 2.7 Trout Waters

Prior to any discharge of dredge or fill material into streams, waterbodies or wetlands within the 294 designated trout watersheds of North Carolina, the permittee shall submit a PCN (see General Condition 32) to the District Engineer prior to commencing the activity, unless other thresholds are established in the Regional Conditions in Section 4 (Additional Regional Conditions for Specific Nationwide Permits). The permittee shall also provide a copy of the notification to the appropriate NCWRC office, or to the EBCI FWM Office (if the project is located on EBCI trust land), to facilitate the determination of any potential impacts to designated Trout Waters.

Notification to the Corps will include a statement with the name of the NCWRC or EBCI FWM biologist contacted, the date of the notification, the location of work, a delineation of wetlands and waters, a discussion of alternatives to working in the mountain trout waters, why alternatives were not selected, and, if applicable, a plan to provide compensatory mitigation for all unavoidable adverse impacts to mountain trout waters.

NCWRC and NC Trout Watersheds:

<b>NCWRC Contact**</b>	<b>Counties that are entirely within Trout Watersheds*</b>	<b>Counties that are partially within Trout Watersheds*</b>
Mountain Coordinator Balsam Depot 20830 Great Smoky Mountain Expressway Waynesville, NC 28786 Telephone: (828) 558-6011  For NCDOT Projects:  NCDOT Coordinator 206 Charter. Street Albemarle, NC 28001 Telephone: (704) 982-9181	Alleghany    Jackson Ashe            Macon Avery           Swain Graham        Transylvania Haywood       Watauga	Burke            McDowell Buncombe      Mitchell Caldwell        Polk Cherokee       Rutherford Clay              Surry Henderson     Wilkes Madison         Yancey

\*NOTE: To determine notification requirements, contact the Corps Asheville Regulatory Field Office at (828) 271-7980 or view maps for each County at the following World Wide Web page: <http://www.saw.usace.army.mil/Missions/Regulatory-Permit-Program/Agency-Coordination/Trout/>.

\*\*If a project is located on EBCI trust land, submit the PCN in accordance with Section 3.14. Contact the Corps Asheville Regulatory Field Office at (828) 271-7980 with questions.

## **2.8 Western NC Waters and Corridors**

The permittee shall submit a PCN (see General Condition 32) to the District Engineer prior to commencing the activity in waters of the United States if the activity will occur within any of the following identified waters in western North Carolina, within 0.5 mile on either side of these waters, or within 0.75 mile of the Little Tennessee River, as measured from the top of the bank of the respective water (i.e., river, stream, or creek):

Brasstown Creek  
Burningtown Creek  
Cane River  
Caney Fork  
Cartoogechaye Creek  
Chattooga River  
Cheoah River  
Cowee Creek  
Cullasaja River  
Deep Creek  
Ellijay Creek  
French Broad River  
Garden Creek  
Hiwassee River  
Hominy Creek  
Iotla Creek  
Little Tennessee River (within the river or within 0.75 mile on either side of this river)  
Nantahala River  
Nolichucky River  
North Fork French Broad River  
North Toe River  
Nottley River  
Oconaluftee River (portion not located on trust/EBCI land)  
Peachtree Creek  
Shooting Creek  
Snowbird Creek  
South Toe River  
Stecoah Creek  
Swannanoa River  
Sweetwater Creek

Tuckasegee River (also spelled Tuckaseegee or Tuckaseigee)  
Valley River  
Watauga Creek  
Watauga River  
Wayah Creek  
West Fork French Broad River

To determine notification requirements, contact the Corps Asheville Regulatory Field Office at (828) 271-7980 or view maps for all corridors at the following World Wide Web page:  
<http://www.saw.usace.army.mil/Missions/Regulatory-Permit-Program/Agency-Coordination/Designated-Special-Waters.aspx>

### **3.0 List of Corps Regional Conditions for All Nationwide Permits**

The following conditions apply to all Nationwide Permits in the Wilmington District:

#### **3.1 Limitation of Loss of Stream Bed**

NWPs may not be used for activities that may result in the loss or degradation of more than 300 total linear feet of stream bed, unless the District Engineer has waived the 300 linear foot limit for ephemeral and intermittent streams on a case-by-case basis and has determined that the proposed activity will result in minimal individual and cumulative adverse impacts to the aquatic environment. Waivers for the loss of ephemeral and intermittent streams must be in writing and documented by appropriate/accepted stream quality assessments\*. This waiver only applies to the 300 linear feet threshold for NWPs.

This Regional Condition does not apply to NWP 23 (Approved Categorical Exclusions).

\*NOTE: Permittees should utilize the most current methodology prescribed by Wilmington District to assess stream function and quality. Information can be found at:  
[https://ribits.usace.army.mil/ribits\\_apex/f?p=107:27:0::NO::](https://ribits.usace.army.mil/ribits_apex/f?p=107:27:0::NO::)

#### **3.2 Mitigation for Loss of Stream Bed**

For any NWP that results in a loss of more than 150 linear feet of stream, the permittee shall provide a mitigation proposal to compensate for more than minimal individual and cumulative adverse impacts to the aquatic environment. For stream losses of 150 linear feet or less that require a PCN, the District Engineer may determine, on a case-by-case basis, that compensatory mitigation is required to ensure that the activity results in minimal adverse effect on the aquatic environment.

#### **3.3 Pre-construction Notification for Loss of Streambed Exceeding 150 Feet**

Prior to use of any NWP for any activity which impacts more than 150 total linear feet of perennial stream, intermittent or ephemeral stream, the permittee shall submit a PCN to the District Engineer prior to commencing the activity (see General Condition 32). This applies to



NWPs that do not have specific notification requirements. If a NWP has specific notification requirements, the requirements of the NWP should be followed.

### **3.4 Restriction on Use of Live Concrete**

For all NWPs which allow the use of concrete as a building material, live or fresh concrete, including bags of uncured concrete, may not come into contact with the water in or entering into waters of the United States. Water inside coffer dams or casings that has been in contact with wet concrete shall only be returned to waters of the United States after the concrete is set and cured and when it no longer poses a threat to aquatic organisms.

### **3.5 Requirements for Using Riprap for Bank Stabilization**

For all NWPs that allow for the use of riprap material for bank stabilization, the following measures shall be applied:

**3.5.1.** Where bank stabilization is conducted as part of an activity, natural design, bioengineering and/or geoen지니어ing methods that incorporate natural durable materials, native seed mixes, and native plants and shrubs are to be utilized to the maximum extent practicable.

**3.5.2.** Filter cloth must be placed underneath the riprap as an additional requirement of its use in North Carolina waters. The placement of filter fabric is not required if the riprap will be pushed or “keyed” into the bank of the waterbody. A waiver from the specifications in this Regional Condition may be requested in writing. The waiver will only be issued if it can be demonstrated that the impacts of complying with this Regional Condition would result in greater adverse impacts to the aquatic environment.

**3.5.3.** The placement of riprap shall be limited to the areas depicted on submitted work plan drawings.

**3.5.4.** The riprap material shall be clean and free from loose dirt or any pollutant except in trace quantities that would not have an adverse environmental effect.

**3.5.5.** It shall be of a size sufficient to prevent its movement from the authorized alignment by natural forces under normal conditions.

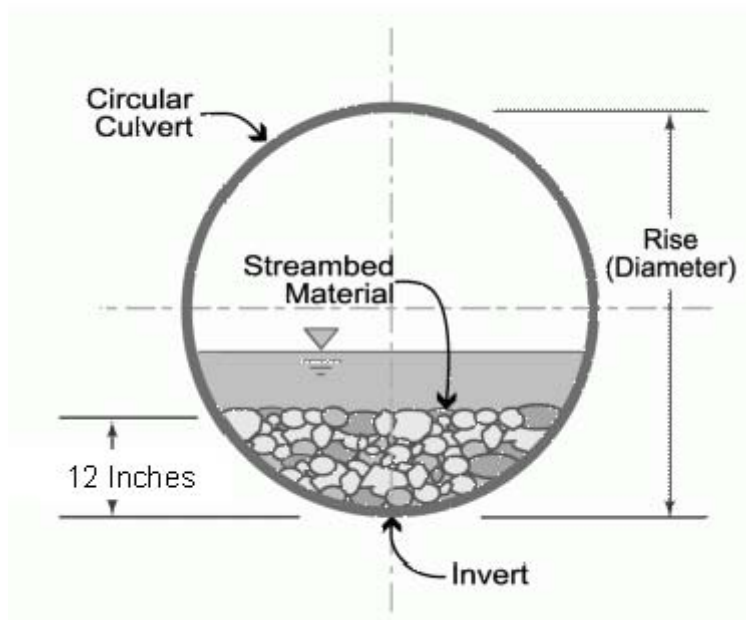
**3.5.6.** The riprap material shall consist of clean rock or masonry material such as, but not limited to, granite, marl, or broken concrete.

### **3.6 Requirements for Culvert Placement**

**3.6.1** For all NWPs that involve the construction/installation of culverts, measures will be included in the construction/installation that will promote the safe passage of fish and other aquatic organisms. The dimension, pattern, and profile of the stream above and below a pipe or culvert should not be modified by altering the width or depth of the stream profile in connection with the construction activity. The width, height, and gradient of a proposed culvert should be

sufficient to pass the average historical low flow and spring flow without adversely altering flow velocity. Spring flow is the seasonal sustained high flow that typically occurs in the spring. Spring flows should be determined from gage data, if available. In the absence of such data, bank-full flow can be used as a comparable indicator.

In Public Trust Areas of Environmental Concern (AEC) and/or the Estuarine Waters AEC as designated by the Coastal Area Management Act (CAMA): All pipes/culverts must be sufficiently sized to allow for the burial of the bottom of the culvert at least one foot below normal bed elevation.



In all other areas: Culverts greater than 48 inches in diameter will be buried at least one foot below the bed of the stream. Culverts 48 inches in diameter or less shall be buried to maintain aquatic passage and to maintain passage during drought or low flow conditions, and every effort shall be made to maintain the existing channel slope.

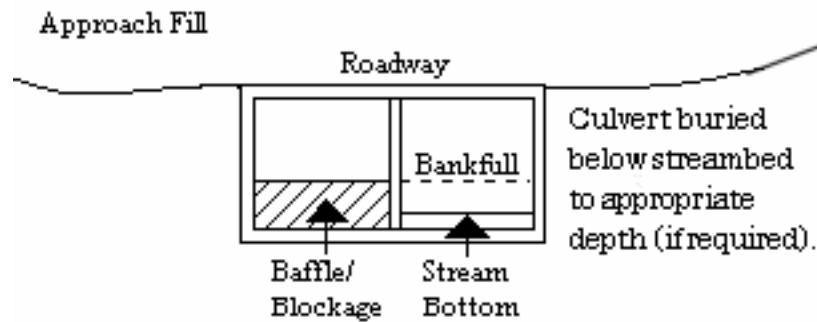
Culverts must be designed and constructed in a manner that minimizes destabilization and head cutting. Destabilizing the channel and head cutting upstream should be considered and appropriate actions incorporated in the design and placement of the culvert.

A waiver from the depth specifications in this condition may be requested, in writing, by the permittee and issued by the Corp; this request must be specific as to the reason(s) for the request. The waiver will be issued if it can be demonstrated that the proposed design would result in less impacts to the aquatic environment.

All counties: Culverts placed within riparian and/or riverine wetlands must be installed in a manner that does not restrict the flow and circulation patterns of waters of the United States.

Culverts placed across wetland fills purely for the purposes of equalizing surface water do not have to be buried, but the culverts must be of adequate size and/or number to ensure unrestricted transmission of water.

**3.6.2** Bank-full flows (or less) shall be accommodated through maintenance of the existing bank-full channel cross sectional area. Additional culverts or culvert barrels at such crossings shall be allowed only to receive bank-full flows.



**3.6.3** Where adjacent floodplain is available, flows exceeding bank-full should be accommodated by installing culverts at the floodplain elevation. Additional culverts or culvert barrels at such crossings should not be buried, or if buried, must have sills at the inlets to ensure that they only receive flows exceeding bank-full.

**3.6.4** Excavation of existing stream channels shall be limited to the minimum necessary to construct or install the proposed culvert. The final width of the impacted stream at the culvert inlet and outlet should be no greater than the original stream width. A waiver from this condition may be requested in writing; this request must be specific as to the reason(s) for the request. The waiver will be issued if the proposed design would result in less impacts to the aquatic environment and/or if it can be demonstrated that it is not practicable to restore the final width of the impacted stream at the culvert inlet and outlet to the width of the original stream channel.

**3.6.5** The width of the culvert shall be comparable to the width of the stream channel. If the width of the culvert is wider than the stream channel, the culvert shall include baffles, benches and/or sills to maintain the width of the stream channel. A waiver from this condition may be requested in writing; this request must be specific as to the reason(s) for the request. The waiver will be issued if it can be demonstrated that it is not practicable or necessary to include baffles, benches or sills and the design would result in less impacts to the aquatic environment.

### **3.7 Notification to NCDEQ Shellfish Sanitation Section**

Permittees shall notify the NCDEQ Shellfish Sanitation Section prior to dredging in or removing sediment from an area closed to shell fishing where the effluent may be released to an area open for shell fishing or swimming in order to avoid contamination from the disposal area and cause a temporary shellfish closure to be made. Such notification shall also be provided to the appropriate Corps Regulatory Field Office. Any disposal of sand to the ocean beach should occur between November 1 and April 30 when recreational usage is low. Only clean sand

should be used and no dredged sand from closed shell fishing areas may be used. If beach disposal were to occur at times other than stated above or if sand from a closed shell fishing area is to be used, a swimming advisory shall be posted, and a press release shall be issued by the permittee.

### **3.8 Submerged Aquatic Vegetation**

Impacts to Submerged Aquatic Vegetation (SAV) are not authorized by any NWP, except NWP 48, unless EFH Consultation has been completed pursuant to the Magnuson-Stevens Fisheries Conservation and Management Act (Magnuson-Stevens Act). Permittees shall submit a PCN (See NWP General Condition 32) to the District Engineer prior to commencing the activity if the project would affect SAV. The permittee may not begin work until notified by the Corps that the requirements of the Magnuson-Stevens Act have been satisfied and that the activity is authorized.

### **3.9 Sedimentation and Erosion Control Structures and Measures**

All PCNs will identify and describe sedimentation and erosion control structures and measures proposed for placement in waters of the United States. The structures and measures should be depicted on maps, surveys or drawings showing location and impacts to jurisdictional wetlands and streams.

### **3.10 Restoration of Temporary Impacts to Stream Beds**

Upon completion of work that involves temporary stream impacts, streambeds are to be restored to pre-project elevations and widths using natural streambed material such that the impacted stream reach mimics the adjacent upstream and downstream reach. The impacted area shall be backfilled with natural streambed material to a depth of at least 12 inches or to the bottom depth of the impacted area if shallower than 12 inches. An engineered in-stream structure or material can be used to provide protection of a buried structure if it provides benefits to the aquatic environment and can be accomplished by a natural streambed design. A permittee may request a waiver of this condition if it is determined a buried structure needs significant physical protection beyond those provided in this condition. This condition does not apply to NWP 27 – Aquatic Habitat Restoration, Enhancement, and Establishment Activities.

### **3.11 Restoration of Temporary Impacts to Stream Banks**

Upon completion of work involving temporary stream bank impacts, stream banks are to be restored to pre-project grade and contours or beneficial grade and contours if the original bank slope is steep and unstable. Natural durable materials, native seed mixes, and native plants and shrubs are to be utilized in the restoration. Natural designs which use bioengineered and/or geo-engineered methods are to be applied. An engineered structure or material can be used to provide protection of a buried structure if it provides benefits to the stream bank environment, provided it is not in excess of the minimum amount needed for protection and does not exceed an average of one cubic yard per running foot placed along the bank below the plane of the ordinary high water mark. A permittee may request a waiver of this condition if it is determined a buried structure

needs significant physical protection beyond those provided in this condition. This condition does not apply to NWP 27 – Aquatic Habitat Restoration, Enhancement, and Establishment Activities.

### **3.12 Federal Navigation Channel Setbacks and Corps Easements**

**3.12.1** Authorized structures and fills located in or adjacent to Federally authorized waterways will be constructed in accordance with the latest setback criteria established by the Wilmington District Engineer. You may review the setback policy at <http://www.saw.usace.army.mil/Missions/Navigation/Setbacks.aspx>. This general permit does not authorize the construction of hardened or permanently fixed structures within the Federally Authorized Channel Setback, unless the activity is approved by the Corps. The permittee shall submit a PCN (see General Condition 32) to the District Engineer prior to the construction of any structures or fills within the Federally Authorized Channel Setback.

**3.12.2** The permittee shall obtain a Consent to Cross Government Easement from the Wilmington District’s Land Use Coordinator prior to any crossing of the Corps easement and/or prior to commencing construction of any structures, authorized dredging or other work within the right-of-way of, or in proximity to, a federally designated disposal area. The Land Use Coordinator may be contacted at: CESAW-OP-N, 69 Darlington Avenue, Wilmington, North Carolina 28403-1343, email: [SAWWeb-NAV@usace.army.mil](mailto:SAWWeb-NAV@usace.army.mil)

### **3.13 Northern Long-eared Bat – Endangered Species Act Compliance**

The Wilmington District, U.S. Army Corps of Engineers has consulted with the United States Fish and Wildlife Service (USFWS) in regards to the threatened Northern long-eared bat (NLEB) (*Myotis septentrionalis*) and Standard Local Operating Procedures for Endangered Species (SLOPES) have been approved by the Corps and the USFWS. This condition concerns effects to the NLEB only and does not address effects to other federally listed species and/or federally designated critical habitat.

A. Procedures when the Corps is the lead federal\* agency for a project:

The permittee must comply with (1) and (2) below when:

- the project is located in the western 41 counties of North Carolina, to include non-federal aid North Carolina Department of Transportation (NCDOT) projects, OR;
- the project is located in the 59 eastern counties of North Carolina, and is a non-NCDOT project.

\*Generally, if a project is located on private property or on non-federal land, and the project is not being funded by a federal entity, the Corps will be the lead federal agency due to the requirement to obtain Department of the Army authorization to impact waters of the United States. If the project is located on federal land, contact the Corps to determine the lead federal agency.

(1) A permittee using a NWP must check to see if their project is located in the range of the NLEB by using the following website:

<http://www.fws.gov/midwest/endangered/mammals/nleb/pdf/WNSZone.pdf>. If the project is within the range of the NLEB, or if the project includes percussive activities (e.g., blasting, pile driving, etc.), the permittee is then required to check the appropriate website in the paragraph below to discover if their project:

- is located in a 12-digit Hydrologic Unit Code area (“red HUC” - shown as red areas on the map), AND/OR;
- involves percussive activities within 0.25 mile of a red HUC.

Red HUC maps - for the western 41 counties in NC (covered by the Asheville Ecological Services Field Office), check the project location against the electronic maps found at: [http://www.fws.gov/asheville/htmls/project\\_review/NLEB\\_in\\_WNC.html](http://www.fws.gov/asheville/htmls/project_review/NLEB_in_WNC.html). For the eastern 59 counties in NC (covered by the Raleigh Ecological Services Field Office), check the project location against the electronic maps found at:

[https://www.fws.gov/raleigh/NLEB\\_RFO.html](https://www.fws.gov/raleigh/NLEB_RFO.html).

(2) A permittee must submit a PCN to the District Engineer, and receive written authorization from the District Engineer, prior to commencing the activity, if the activity will involve any of the following:

- tree clearing/removal, construction/installation of wind turbines in a red HUC, AND/OR;
- bridge removal or maintenance, unless the bridge has been inspected and there is no evidence of bat use, (applies anywhere in the range of the NLEB), AND/OR;
- percussive activities in a red HUC, or within 0.25 mile of a red HUC.

The permittee may proceed with the activity without submitting a PCN to either the Corps or the USFWS, provided the activity complies with all applicable NWP terms and general and regional conditions, if the permittee’s review under A.(1) and A.(2) above shows that the project is:

- located outside of a red HUC (and there are no percussive activities), and the activity will NOT include bridge removal or maintenance, unless the bridge has been inspected and there is no evidence of bat use, OR;
- located outside of a red HUC and there are percussive activities, but the percussive activities will not occur within 0.25-mile of a red HUC boundary, and the activity will NOT include bridge removal or maintenance, unless the bridge has been inspected and there is no evidence of bat use, OR;

- located in a red HUC, but the activity will NOT include: tree clearing/removal; construction/installation of wind turbines; bridge removal or maintenance, unless the bridge has been inspected and there is no evidence of bat use, and/or; any percussive activities.

B. Procedures when the USACE is not the lead federal agency:

For projects where another federal agency is the lead federal agency - if that other federal agency has completed project-specific ESA Section 7(a)(2) consultation for the NLEB, and has (1) determined that the project would not cause prohibited incidental take of the NLEB, and (2) completed coordination/consultation that is required by the USFWS (per the directions on the respective USFWS office's website), that project may proceed without notification to either the USACE or the USFWS, provided all General and Regional Permit Conditions are met.

The NLEB SLOPES can be viewed on the USACE website at the following World Wide Web Page: <http://www.saw.usace.army.mil/Missions/Regulatory-Permit-Program/Agency-Coordination/ESA/>. Permittees who do not have internet access may contact the USACE at (910) 251- 4633.

### **3.14 Work on Eastern Band of Cherokee Indians Land**

All PCNs submitted for activities in waters of the United States on Eastern Band of Cherokee Indians (EBCI) trust land (i.e., Qualla Boundary and non-contiguous tracts of trust land), must comply with the requirements of the latest MOU between the Wilmington District and the Eastern Band of Cherokee Indians.

## **4.0 Additional Regional Conditions for Specific Nationwide Permits**

### **4.1 NWP #3 – Maintenance**

**4.1.1** In designated trout watersheds, a PCN is not required for impacts to a maximum of 75 linear feet (150 linear feet for temporary dewatering) of streams and waterbodies when conducting maintenance activities. Minor deviations in an existing structure's configuration, temporary structures and temporary fills are authorized as part of the maintenance activity. In designated trout watersheds, the permittee shall submit a PCN (see Regional Condition 2.7 and General Condition 32) to the District Engineer prior to commencing the activity if; 1) impacts (other than temporary dewatering to work in dry conditions) to streams or waterbodies exceed 75 linear feet; 2) temporary impacts to streams or waterbodies associated with dewatering to work in dry conditions exceeds 150 linear feet; 3) the project will involve impacts to wetlands; 4) the project involves the replacement of a bridge or spanning structure with a culvert or non-spanning structure in waters of the United States; or 5) the activity will be constructed during the trout waters moratorium (October 15 through April 15).

**4.1.2** The permittee shall submit a PCN (see NWP General Condition 32) to the District Engineer prior to commencing the activity if the activity involves repair, rehabilitation or replacement of impounding structures or parts of impounding structures or fills.

**4.1.3** The permittee shall submit a PCN to the District Engineer prior to commencing the activity if the activity will involve the discharge of dredged or fill material into more than 1/10-acre of wetlands or 150 linear feet of stream channel for the construction of temporary access fills and/or temporary road crossings. The PCN must include a restoration plan that thoroughly describes how all temporary fills will be removed, how pre-project conditions will be restored, and include a timetable for all restoration activities.



**STATE OF NORTH CAROLINA  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
DIVISION OF WATER RESOURCES**

**WATER QUALITY GENERAL CERTIFICATION NO. 4132**

**GENERAL CERTIFICATION FOR PROJECTS ELIGIBLE FOR US ARMY CORPS OF ENGINEERS**

- **NATIONWIDE PERMIT 3 (MAINTENANCE),**
- **NATIONWIDE PERMIT 4 (FISH AND WILDLIFE HARVESTING, ENHANCEMENT, AND ATTRACTION DEVICES AND ACTIVITIES),**
- **NATIONWIDE PERMIT 5 (SCIENTIFIC MEASUREMENT DEVICES),**
- **NATIONWIDE PERMIT 6 (SURVEY ACTIVITIES),**
- **NATIONWIDE PERMIT 7 (OUTFALL STRUCTURES AND ASSOCIATED INTAKE STRUCTURES),**
- **NATIONWIDE PERMIT 19 (MINOR DREDGING),**
- **NATIONWIDE PERMIT 20 (RESPONSE OPERATIONS FOR OIL OR HAZARDOUS SUBSTANCES),**
- **NATIONWIDE PERMIT 22 (REMOVAL OF VESSELS),**
- **NATIONWIDE PERMIT 25 (STRUCTURAL DISCHARGES),**
- **NATIONWIDE PERMIT 30 (MOIST SOIL MANAGEMENT FOR WILDLIFE),**
- **NATIONWIDE PERMIT 32 (COMPLETED ENFORCEMENT ACTIONS),**
- **NATIONWIDE PERMIT 36 (BOAT RAMPS),**
- **REGIONAL GENERAL PERMIT 197800056 (PIERS, DOCKS AND BOATHOUSES), AND**
- **REGIONAL GENERAL PERMIT 197800125 (BOAT RAMPS)**

Water Quality Certification Number 4132 is issued in conformity with the requirements of Section 401, Public Laws 92-500 and 95-217 of the United States and subject to the North Carolina Regulations in 15A NCAC 02H .0500 and 15A NCAC 02B .0200 for the discharge of fill material to surface waters and wetland areas as described in 33 CFR 330 Appendix A (B) (3, 4, 5, 6, 7, 19, 20, 22, 25, 30, 32, and 36) of the US Army Corps of Engineers regulations and Regional General Permits 197800056 and 197800125.

The State of North Carolina certifies that the specified category of activity will not violate applicable portions of Sections 301, 302, 303, 306 and 307 of the Public Laws 92-500 and 95-217 if conducted in accordance with the conditions hereinafter set forth.

Effective date: December 1, 2017  
Signed this day: December 1, 2017

By



*for* Linda Culpepper  
Interim Director

**Activities meeting any one (1) of the following thresholds or circumstances require written approval for a 401 Water Quality Certification from the Division of Water Resources (DWR):**

- a) If any of the conditions of this Certification (listed below) cannot be met; or
- b) Total additional permanent impacts to streams (including stream relocations or restorations) greater than 40 linear feet at an existing stream impact location; or
- c) Total temporary and permanent impacts to wetlands or open waters equal to or greater than one-tenth (1/10) of an acre; or
- d) Complete dewatering and drawdowns to a sediment layer related to pond/dam maintenance or removal; or
- e) Any impacts to streams from excavation or dredging other than excavation that is conducted as preparation for installing permanent fill or structures or projects qualifying for a Nationwide Permit 19; or
- f) Except for projects qualifying for a Nationwide permit 3, any permanent impacts to waters, or to wetlands adjacent to waters, designated as: ORW (including SAV), HQW (including PNA), SA, WS-I, WS-II, Trout, or North Carolina or National Wild and Scenic River; or
- g) Any high-density project, as defined in 15A NCAC 02H .1003(2)(a) and by the density thresholds specified in 15A NCAC 02H .1017, which:
  - i. Disturbs one acre or more of land (including a project that disturbs less than one acre of land that is part of a larger common plan of development or sale); and
  - ii. Has permanent wetland, stream or open water impacts; and
  - iii. Is proposing new built-upon area; and
  - iv. Does not have a stormwater management plan reviewed and approved under a state stormwater program<sup>1</sup> or a state-approved local government stormwater program<sup>2</sup>.

Projects that have vested rights, exemptions, or grandfathering from state or locally-implemented stormwater programs and projects that satisfy state or locally-implemented stormwater programs through use of community in-lieu programs **require written approval**; or

- h) Any permanent impacts to coastal wetlands [15A NCAC 07H .0205], or Unique Wetlands (UWL); or
- i) Any impact associated with a Notice of Violation or an enforcement action for violation(s) of NC Wetland Rules (15A NCAC 02H .0500), NC Isolated Wetland Rules (15A NCAC 02H .1300), NC Surface Water or Wetland Standards (15A NCAC 02B .0200), or State Regulated Riparian Buffer Rules (15A NCAC 02B .0200); or
- j) Any impacts to subject water bodies and/or state regulated riparian buffers along subject water bodies in the Neuse, Tar-Pamlico, or Catawba River Basins or in the Randleman Lake, Jordan Lake or Goose Creek Watersheds (or any other basin or watershed with State Regulated Riparian Area Protection Rules [Buffer Rules] in effect at the time of application) *unless*:

<sup>1</sup> e.g. Coastal Counties, HQW, ORW, or state-implemented Phase II NPDES

<sup>2</sup> e.g. Delegated Phase II NPDES, Water Supply Watershed, Nutrient-Sensitive Waters, or Universal Stormwater Management Program

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- i. The activities are listed as “EXEMPT” from these rules; or
- ii. A Buffer Authorization Certificate is issued by the NC Division of Coastal Management (DCM); or
- iii. A Buffer Authorization Certificate or a Minor Variance is issued by a delegated or designated local government implementing a state riparian buffer program pursuant to 143-215.23.

**Activities included in this General Certification that do not meet one of the thresholds listed above do not require written approval.**

### **I. ACTIVITY SPECIFIC CONDITIONS:**

1. For all dam removal projects meeting the definition under G.S. 143-215.25 and requirements under G.S. 143-215.27 of a professionally supervised dam removal, the applicant shall provide documentation that any sediment that may be released has similar or lower level of contamination than sediment sampled from downstream of the dam in accordance with Session Law 2017-145.
2. For the North Carolina Department of Transportation, compliance with the NCDOT’s individual NPDES permit NCS000250 shall serve to satisfy this condition. All other high-density projects that trigger threshold item (g) above shall comply with one of the following requirements: [15A NCAC 02H .0506(b)(5) and (c)(5)]
  - a. Provide a completed Stormwater Management Plan (SMP) for review and approval, including all appropriate stormwater control measure (SCM) supplemental forms and associated items, that complies with the high-density development requirements of 15A NCAC 02H .1003. Stormwater management shall be provided throughout the entire project area in accordance with 15A NCAC 02H .1003. For the purposes of 15A NCAC 02H .1003(2)(a), density thresholds shall be determined in accordance with 15A NCAC 02H .1017.
  - b. Provide documentation (including calculations, photos, etc.) that the project will not cause degradation of downstream surface waters. Documentation shall include a detailed analysis of the hydrological impacts from stormwater runoff when considering the volume and velocity of stormwater runoff from the project built upon area and the size and existing condition of the receiving stream(s).

Exceptions to this condition require application to and written approval from DWR.

### **II. GENERAL CONDITIONS:**

1. When written authorization is required, the plans and specifications for the project are incorporated into the authorization by reference and are an enforceable part of the Certification. Any modifications to the project require notification to DWR and may require an application submittal to DWR with the appropriate fee. [15A NCAC 02H .0501 and .0502]

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2. No waste, spoil, solids, or fill of any kind shall occur in wetlands or waters beyond the footprint of the impacts (including temporary impacts) as authorized in the written approval from DWR; or beyond the thresholds established for use of this Certification without written authorization. [15A NCAC 02H .0501 and .0502]

No removal of vegetation or other impacts of any kind shall occur to state regulated riparian buffers beyond the footprint of impacts approved in a Buffer Authorization or Variance or as listed as an exempt activity in the applicable riparian buffer rules. [15A NCAC 02B .0200]

3. In accordance with 15A NCAC 02H .0506(h) and Session Law 2017-10, compensatory mitigation may be required for losses of greater than 300 linear feet of perennial streams and/or greater than one (1) acre of wetlands. Impacts associated with the removal of a dam shall not require mitigation when the removal complies with the requirements of Part 3 of Article 21 in Chapter 143 of the North Carolina General Statutes. Impacts to isolated and other non-404 jurisdictional wetlands shall not be combined with 404 jurisdictional wetlands for the purpose of determining when impact thresholds trigger a mitigation requirement. For linear publicly owned and maintained transportation projects that are not determined to be part of a larger common plan of development by the US Army Corps of Engineers, compensatory mitigation may be required for losses of greater than 300 linear feet per perennial stream.

Compensatory stream and/or wetland mitigation shall be proposed and completed in compliance with G.S. 143-214.11. For applicants proposing to conduct mitigation within a project site, a complete mitigation proposal developed in accordance with the most recent guidance issued by the US Army Corps of Engineers Wilmington District shall be submitted for review and approval with the application for impacts.

4. All activities shall be in compliance with any applicable State Regulated Riparian Buffer Rules in Chapter 2 of Title 15A.
5. When applicable, all construction activities shall be performed and maintained in full compliance with G.S. Chapter 113A Article 4 (Sediment and Pollution Control Act of 1973). Regardless of applicability of the Sediment and Pollution Control Act, all projects shall incorporate appropriate Best Management Practices for the control of sediment and erosion so that no violations of state water quality standards, statutes, or rules occur. [15A NCAC 02H .0506 (b)(3) and (c)(3) and 15A NCAC 02B .0200]

Design, installation, operation, and maintenance of all sediment and erosion control measures shall be equal to or exceed the requirements specified in the most recent version of the *North Carolina Sediment and Erosion Control Manual*, or for linear transportation projects, the *NCDOT Sediment and Erosion Control Manual*.

All devices shall be maintained on all construction sites, borrow sites, and waste pile (spoil) sites, including contractor-owned or leased borrow pits associated with the project. Sufficient materials required for stabilization and/or repair of erosion control measures and stormwater routing and treatment shall be on site at all times.

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For borrow pit sites, the erosion and sediment control measures shall be designed, installed, operated, and maintained in accordance with the most recent version of the *North Carolina Surface Mining Manual*. Reclamation measures and implementation shall comply with the reclamation in accordance with the requirements of the Sedimentation Pollution Control Act and the Mining Act of 1971.

If the project occurs in waters or watersheds classified as Primary Nursery Areas (PNAs), SA, WS-I, WS-II, High Quality Waters (HQW), or Outstanding Resource Waters (ORW), then the sedimentation and erosion control designs shall comply with the requirements set forth in 15A NCAC 04B .0124, *Design Standards in Sensitive Watersheds*.

6. Sediment and erosion control measures shall not be placed in wetlands or waters except within the footprint of temporary or permanent impacts authorized under this Certification. Exceptions to this condition require application to and written approval from DWR. [15A NCAC 02H .0501 and .0502]
7. Erosion control matting that incorporates plastic mesh and/or plastic twine shall not be used along streambanks or within wetlands. Exceptions to this condition require application to and written approval from DWR. [15A NCAC 02B .0201]
8. An NPDES Construction Stormwater Permit (NCG010000) is required for construction projects that disturb one (1) or more acres of land. The NCG010000 Permit allows stormwater to be discharged during land disturbing construction activities as stipulated in the conditions of the permit. If the project is covered by this permit, full compliance with permit conditions including the erosion & sedimentation control plan, inspections and maintenance, self-monitoring, record keeping and reporting requirements is required. [15A NCAC 02H .0506(b)(5) and (c)(5)]

The North Carolina Department of Transportation (NCDOT) shall be required to be in full compliance with the conditions related to construction activities within the most recent version of their individual NPDES (NCS000250) stormwater permit. [15A NCAC 02H .0506(b)(5) and (c)(5)]

9. All work in or adjacent to streams shall be conducted so that the flowing stream does not come in contact with the disturbed area. Approved best management practices from the most current version of the *NC Sediment and Erosion Control Manual*, or the *NC DOT Construction and Maintenance Activities Manual*, such as sandbags, rock berms, cofferdams, and other diversion structures shall be used to minimize excavation in flowing water. Exceptions to this condition require application to and written approval from DWR. [15A NCAC 02H .0506(b)(3) and (c)(3)]
10. If activities must occur during periods of high biological activity (e.g. sea turtle nesting, fish spawning, or bird nesting), then biological monitoring may be required at the request of other state or federal agencies and coordinated with these activities. [15A NCAC 02H .0506 (b)(2) and 15A NCAC 04B .0125]

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All moratoriums on construction activities established by the NC Wildlife Resources Commission (WRC), US Fish and Wildlife Service (USFWS), NC Division of Marine Fisheries (DMF), or National Marine Fisheries Service (NMFS) shall be implemented. Exceptions to this condition require written approval by the resource agency responsible for the given moratorium. A copy of the approval from the resource agency shall be forwarded to DWR.

Work within a designated trout watershed of North Carolina (as identified by the Wilmington District of the US Army Corps of Engineers), or identified state or federal endangered or threatened species habitat, shall be coordinated with the appropriate WRC, USFWS, NMFS, and/or DMF personnel.

11. Culverts shall be designed and installed in such a manner that the original stream profiles are not altered and allow for aquatic life movement during low flows. The dimension, pattern, and profile of the stream above and below a pipe or culvert shall not be modified by widening the stream channel or by reducing the depth of the stream in connection with the construction activity. The width, height, and gradient of a proposed culvert shall be such as to pass the average historical low flow and spring flow without adversely altering flow velocity. [15A NCAC 02H .0506(b)(2) and (c)(2)]

Placement of culverts and other structures in streams shall be below the elevation of the streambed by one foot for all culverts with a diameter greater than 48 inches, and 20% of the culvert diameter for culverts having a diameter less than or equal to 48 inches, to allow low flow passage of water and aquatic life.

If multiple pipes or barrels are required, they shall be designed to mimic the existing stream cross section as closely as possible, including pipes or barrels at flood plain elevation and/or sills where appropriate. Widening the stream channel shall be avoided.

When topographic constraints indicate culvert slopes of greater than 5%, culvert burial is not required, provided that all alternative options for flattening the slope have been investigated and aquatic life movement/connectivity has been provided when possible (e.g. rock ladders, cross vanes, etc.). Notification, including supporting documentation to include a location map of the culvert, culvert profile drawings, and slope calculations, shall be provided to DWR 60 calendar days prior to the installation of the culvert.

When bedrock is present in culvert locations, culvert burial is not required provided that there is sufficient documentation of the presence of bedrock. Notification, including supporting documentation such as a location map of the culvert, geotechnical reports, photographs, etc. shall be provided to DWR a minimum of 60 calendar days prior to the installation of the culvert. If bedrock is discovered during construction, then DWR shall be notified by phone or email within 24 hours of discovery.

If other site-specific topographic constraints preclude the ability to bury the culverts as described above and/or it can be demonstrated that burying the culvert would result in destabilization of the channel, then exceptions to this condition require application to and written approval from DWR.

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Installation of culverts in wetlands shall ensure continuity of water movement and be designed to adequately accommodate high water or flood conditions. When roadways, causeways, or other fill projects are constructed across FEMA-designated floodways or wetlands, openings such as culverts or bridges shall be provided to maintain the natural hydrology of the system as well as prevent constriction of the floodway that may result in destabilization of streams or wetlands.

The establishment of native woody vegetation and other soft stream bank stabilization techniques shall be used where practicable instead of rip-rap or other bank hardening methods.

12. Bridge deck drains shall not discharge directly into the stream. Stormwater shall be directed across the bridge and pre-treated through site-appropriate means to the maximum extent practicable (e.g. grassed swales, pre-formed scour holes, vegetated buffers, etc.) before entering the stream. Exceptions to this condition require application to and written approval from DWR. [15A NCAC 02H .0506(b)(5)]
13. Application of fertilizer to establish planted/seeded vegetation within disturbed riparian areas and/or wetlands shall be conducted at agronomic rates and shall comply with all other Federal, State and Local regulations. Fertilizer application shall be accomplished in a manner that minimizes the risk of contact between the fertilizer and surface waters. [15A NCAC 02B .0200 and 15A NCAC 02B .0231]
14. If concrete is used during construction, then all necessary measures shall be taken to prevent direct contact between uncured or curing concrete and waters of the state. Water that inadvertently contacts uncured concrete shall not be discharged to waters of the state. [15A NCAC 02B .0200]
15. All proposed and approved temporary fill and culverts shall be removed and the impacted area shall be returned to natural conditions within 60 calendar days after the temporary impact is no longer necessary. The impacted areas shall be restored to original grade, including each stream's original cross sectional dimensions, planform pattern, and longitudinal bed profile. For projects that receive written approval, no temporary impacts are allowed beyond those included in the application and authorization. All temporarily impacted sites shall be restored and stabilized with native vegetation. [15A NCAC 02H .0506(b)(2) and (c)(2)]
16. All proposed and approved temporary pipes/culverts/rip-rap pads etc. in streams shall be installed as outlined in the most recent edition of the *North Carolina Sediment and Erosion Control Planning and Design Manual* or the *North Carolina Surface Mining Manual* or the *North Carolina Department of Transportation Best Management Practices for Construction and Maintenance Activities* so as not to restrict stream flow or cause dis-equilibrium during use of this Certification. [15A NCAC 02H .0506(b)(2) and (c)(2)]

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17. Any rip-rap required for proper culvert placement, stream stabilization, or restoration of temporarily disturbed areas shall be restricted to the area directly impacted by the approved construction activity. All rip-rap shall be placed such that the original stream elevation and streambank contours are restored and maintained. Placement of rip-rap or other approved materials shall not result in de-stabilization of the stream bed or banks upstream or downstream of the area or in a manner that precludes aquatic life passage. [15A NCAC 02H .0506(b)(2)]
18. Any rip-rap used for stream or shoreline stabilization shall be of a size and density to prevent movement by wave, current action, or stream flows and shall consist of clean rock or masonry material free of debris or toxic pollutants. Rip-rap shall not be installed in the streambed except in specific areas required for velocity control and to ensure structural integrity of bank stabilization measures. [15A NCAC 02H .0506(b)(2)]
19. Applications for rip-rap groins proposed in accordance with 15A NCAC 07H .1401 (NC Division of Coastal Management General Permit for construction of Wooden and Rip-rap Groins in Estuarine and Public Trust Waters) shall meet all the specific conditions for design and construction specified in 15A NCAC 07H .1405.
20. All mechanized equipment operated near surface waters should be inspected and maintained regularly to prevent contamination of surface waters from fuels, lubricants, hydraulic fluids, or other toxic materials. Construction shall be staged in order to minimize the exposure of equipment to surface waters to the maximum extent practicable. Fueling, lubrication and general equipment maintenance shall be performed in a manner to prevent, to the maximum extent practicable, contamination of surface waters by fuels and oils. [15A NCAC 02H .0506 (b)(3) and (c)(3) and 15A NCAC 02B .0211 (12)]
21. Heavy equipment working in wetlands shall be placed on mats or other measures shall be taken to minimize soil disturbance. [15A NCAC 02H .0506 (b)(3) and (c)(3)]
22. In accordance with 143-215.85(b), the applicant shall report any petroleum spill of 25 gallons or more; any spill regardless of amount that causes a sheen on surface waters; any petroleum spill regardless of amount occurring within 100 feet of surface waters; and any petroleum spill less than 25 gallons that cannot be cleaned up within 24 hours.
23. If an environmental document is required under the State Environmental Policy Act (SEPA), then this General Certification is not valid until a Finding of No Significant Impact (FONSI) or Record of Decision (ROD) is issued by the State Clearinghouse. If an environmental document is required under the National Environmental Policy Act (NEPA), then this General Certification is not valid until a Categorical Exclusion, the Final Environmental Assessment, or Final Environmental Impact Statement is published by the lead agency. [15A NCAC 01C .0107(a)]
24. This General Certification does not relieve the applicant of the responsibility to obtain all other required Federal, State, or Local approvals before proceeding with the project, including those required by, but not limited to, Sediment and Erosion Control, Non-Discharge, Water Supply Watershed, and Trout Buffer regulations.



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25. The applicant and their authorized agents shall conduct all activities in a manner consistent with State water quality standards (including any requirements resulting from compliance with §303(d) of the Clean Water Act), and any other appropriate requirements of State and Federal Law. If DWR determines that such standards or laws are not being met, including failure to sustain a designated or achieved use, or that State or Federal law is being violated, or that further conditions are necessary to assure compliance, then DWR may revoke or modify a written authorization associated with this General Water Quality Certification. [15A NCAC 02H .0507(d)]
26. The permittee shall require its contractors and/or agents to comply with the terms and conditions of this permit in the construction and maintenance of this project, and shall provide each of its contractors and/or agents associated with the construction or maintenance of this project with a copy of this Certification. A copy of this Certification, including all conditions shall be available at the project site during the construction and maintenance of this project. [15A NCAC 02H .0507 (c) and 15A NCAC 02H .0506 (b)(2) and (c)(2)]
27. When written authorization is required for use of this Certification, upon completion of all permitted impacts included within the approval and any subsequent modifications, the applicant shall be required to return a certificate of completion (available on the DWR website <https://edocs.deq.nc.gov/Forms/Certificate-of-Completion>). [15A NCAC 02H .0502(f)]
28. Additional site-specific conditions, including monitoring and/or modeling requirements, may be added to the written approval letter for projects proposed under this Water Quality Certification in order to ensure compliance with all applicable water quality and effluent standards. [15A NCAC 02H .0507(c)]
29. If the property or project is sold or transferred, the new permittee shall be given a copy of this Certification (and written authorization if applicable) and is responsible for complying with all conditions. [15A NCAC 02H .0501 and .0502]

### III. GENERAL CERTIFICATION ADMINISTRATION:

1. In accordance with North Carolina General Statute 143-215.3D(e), written approval for a 401 Water Quality General Certification must include the appropriate fee. An applicant for a CAMA permit under Article 7 of Chapter 113A of the General Statutes for which a Water Quality Certification is required shall only make one payment to satisfy both agencies; the fee shall be as established by the Secretary in accordance with 143-215.3D(e)(7).
2. This Certification neither grants nor affirms any property right, license, or privilege in any waters, or any right of use in any waters. This Certification does not authorize any person to interfere with the riparian rights, littoral rights, or water use rights of any other person and this Certification does not create any prescriptive right or any right of priority regarding any usage of water. This Certification shall not be interposed as a defense in any action respecting the determination of riparian or littoral rights or other rights to water use. No consumptive user is deemed by virtue of this Certification to possess any prescriptive or

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other right of priority with respect to any other consumptive user regardless of the quantity of the withdrawal or the date on which the withdrawal was initiated or expanded.

3. This Certification grants permission to the Director, an authorized representative of the Director, or DWR staff, upon the presentation of proper credentials, to enter the property during normal business hours. [15A NCAC 02H .0502(e)]
4. This General Certification shall expire on the same day as the expiration date of the corresponding Nationwide Permit and/or Regional General Permit. The conditions in effect on the date of issuance of Certification for a specific project shall remain in effect for the life of the project, regardless of the expiration date of this Certification. This General Certification is rescinded when the US Army Corps of Engineers reauthorizes any of the corresponding Nationwide Permits and/or Regional General Permits or when deemed appropriate by the Director of the Division of Water Resources.
5. Non-compliance with or violation of the conditions herein set forth by a specific project may result in revocation of this General Certification for the project and may also result in criminal and/or civil penalties.
6. The Director of the North Carolina Division of Water Resources may require submission of a formal application for Individual Certification for any project in this category of activity if it is deemed in the public's best interest or determined that the project is likely to have a significant adverse effect upon water quality, including state or federally listed endangered or threatened aquatic species, or degrade the waters so that existing uses of the waters or downstream waters are precluded.

*History Note: Water Quality Certification (WQC) Number 4132 issued December 1, 2017 replaces WCQ 4085 issued March 3, 2017; WQC 3883 issued March 19, 2012; WQC Number 3687 issued November 1, 2007; WQC Number 3624 issued March 19, 2007; WQC Number 3494 issued December 31, 2004; and WQC Number 3376 issued March 18, 2002.*