

# **PWC**

## Fayetteville's

### HOME TOWN UTILITY

**PUBLIC WORKS COMMISSION**  
**FAYETTEVILLE, NORTH CAROLINA**

**SPECIFICATIONS AND BID DOCUMENTS**  
**FOR**

**REPLACE STANDBY POWER GENERATOR AT THE**  
**CROSS CREEK WATER RECLAMATION FACILITY**

**ISSUED FOR BIDS**  
**SEPTEMBER 2022**



**FAYETTEVILLE PUBLIC WORKS COMMISSION  
FAYETTEVILLE, NORTH CAROLINA**

**REPLACE STANDBY POWER GENERATOR AT THE  
CROSS CREEK WATER RECLAMATION FACILITY**

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**FAYETTEVILLE PUBLIC WORKS COMMISSION  
FAYETTEVILLE, NORTH CAROLINA**

**REPLACE STANDBY POWER GENERATOR AT THE  
CROSS CREEK WATER RECLAMATION FACILITY**

**NOTICE TO PROSPECTIVE BIDDERS**

Pursuant to NCGS §143–129, sealed proposals will be received by the Fayetteville Public Works Commission (“PWC”) on December 1, 2022 until 2:00p.m, at which time all properly received bids will be publicly opened and read outside of the entrance doors of the PWC Administration Building located at 955 Old Wilmington Road in Fayetteville, NC 28301 for the furnishing and delivery of all materials and equipment and performing all necessary installation and construction consistent with the Contract Documents for the replacement of the Standby Power Generator and controls at the Rockfish Creek Water Reclamation Facility all as set forth in the Bid Schedules. Any untimely submitted bid will be promptly returned to the Bidder unopened.

Specifications and Bid Documents, may be obtained from the PWC Procurement Department at <https://www.faypwc.com/purchasing> and in the offices of the PWC Procurement Department, 1st floor, PWC Administration Building, 955 Old Wilmington Road, Fayetteville, North Carolina, between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday.

A pre-bid conference will be held at 11:00 a.m., November 17, 2022 at the Cross Creek Water Reclamation Facility (WRF), 601 N. Eastern Boulevard, Fayetteville, NC 28301. Prospective bidders will be allowed to inspect the project site as part of the meeting. Bidders may attend the mandatory pre-bid conference via web conference. All potential bidders must email Tanya Hazlett, PWC Procurement Advisor, at [Tanya.hazlett@faypwc.com](mailto:Tanya.hazlett@faypwc.com) of their intent to attend at least twenty-four hours in advance of the conference to be added to the web conference.

Potential bidders will have the ability to join the web conference via phone at: 910-302-6113 meeting ID: 673076725 and/or via web base with the Microsoft application TEAMS. It is encouraged to utilize the application via web as this pre-bid will contain a presentation of plans and an agenda. Should you need assistance accessing the TEAMS application via web, smart-phone, or tablet please reach out to Tanya Hazlett via email at the email address listed above or via phone at (910) 223-4023.

Bidders who attend the pre-bid virtually and are not able to complete a site visit on the same day may schedule a site visit through Tanya Hazlett at [Tanya.hazlett@faypwc.com](mailto:Tanya.hazlett@faypwc.com) or via phone at (910) 223-4023.

Each Proposal shall be accompanied by cash, cashier’s check, or certified check drawn on a bank insured by the Federal Deposit Insurance Corporation or Savings Association Insurance Fund. Checks shall be made payable to the Fayetteville Public Works Commission in an amount not less than five percent (5%) of the total bid as a guarantee that a contract, if awarded, will be entered into by and between the Bidder and PWC. In lieu thereof, a Bid Bond which conforms to the provisions of NCGS §143-129 as amended by Chapter 1104 of the Public Laws of 1951 may be submitted by the Bidder.

Proposals shall be enclosed in a sealed envelope and are to be marked **“BIDS FOR REPLACE STANDBY POWER GENERATOR AT THE ROCKFISH CREEK WATER RECLAMATION FACILITY, NOT TO BE OPENED UNTIL 2:00 P.M. LOCAL TIME, DECEMBER 1, 2022.**

Bidders are to mail or deliver their proposals as follows: Fayetteville Public Works Commission; Attn: Tanya Hazlett, Procurement Advisor; 955 Old Wilmington Road, Fayetteville, NC 28301.

PWC reserves its right to reject any or all bids and to waive all informalities concerning any bid, or award bid to the lowest responsive, responsible Bidder or Bidders taking into consideration quality, performance, and the time specified in the proposals for the performance of the contract.

FAYETTEVILLE PUBLIC WORKS COMMISSION

Trent Ensley Procurement Manager

FAYETTEVILLE PUBLIC WORKS COMMISSION  
FAYETTEVILLE, NORTH CAROLINA

REPLACE STANDBY POWER GENERATOR AT THE  
CROSS CREEK WATER RECLAMATION FACILITY

INSTRUCTIONS TO BIDDERS

1. Bidder Qualification

- a. Bids will be accepted only from Bidders deemed by PWC to be qualified to provide the materials, equipment, and services described by the Technical Specifications or otherwise in the Contract Documents. The experience of Bidders in providing the same or similar materials, equipment, and services will be factors in determining qualifications. The Bidder shall include information to establish such qualifications.

2. Proposals:

- a. Only bids submitted in full and complete accordance with these instructions and the Contract Documents will be considered (also referred to as “proposals”).
- b. Proposals must be made on the Form of Proposal provided herein, or an exact copy thereof, and must not be altered, erased, or interlined in any manner. Bidders shall fill in the *Form of Proposal* as detailed in the instructions. Bidders may retain a copy, but the original, fully executed, must be inserted or be attached to the Specification Documents. In addition, one (1) additional copy of all executed forms and supporting information shall be submitted with the original.
- c. The Bidder shall furnish certain information, as required by the Specifications, regarding the equipment which he is bidding. Two copies of the information, together with the manufacturer’s literature setting forth the guarantees and describing the equipment which he is bidding shall be included as part of the Proposal. **Each bid must include the bidder’s proposal and a copy of the manufacturer’s information or specifications** even if another bidder is quoting the same manufacturer. Additional sets of the Specifications may be obtained by contacting Tanya Hazlett, Procurement Advisor, at (910) 223-4023 or by email at [Tanya.hazlett@faypwc.com](mailto:Tanya.hazlett@faypwc.com).
- d. Proposals shall include a Form of Exceptions utilizing forms provided herein which shall itemize each and every exception from the Specifications. The Form of Exceptions shall state the section, subsection, and paragraph designations from the part of the Specifications to which exception is taken and explain in detail the nature of the exception. A copy of this Form of Exceptions is included in the *Form of Proposal*. Exceptions will not necessarily eliminate a Bidder from consideration, even if bids without exceptions are received from others. The treatment of exceptions will be based entirely on the overall best interests of PWC. PWC reserves the right to accept or reject any proposal.
- e. Bids may only be modified in writing, contained in a sealed envelope, received prior to the time of bid opening which upon receipt shall be included in the public reading of

bids. No oral or telephonic proposals or modifications will be considered.

- f. Should the Bidder find discrepancies in or omissions from the Drawings or Documents or should he be in doubt as to their meaning, he shall at once notify Tanya Hazlett, Procurement Advisor, by e-mail to [tanya.hazlett@faypwc.com](mailto:tanya.hazlett@faypwc.com) who will send written instructions to all Bidders. The Commission will be responsible for any oral instructions. If Plans and Specifications are found to disagree after Contract is awarded, the Commission shall be the judge as to what was intended. The Successful Bidder is hereby made responsible for the furnishing of the necessary labor, tools and equipment reasonably inferred or evidently necessary for the proper execution and completion of the work; for any additional work involved in the correction of apparent errors or inconsistencies, and in executing the true intent and meaning of the Drawings and Specifications as interpreted by the Commission and all such labor and equipment shall be provided at the Materialman's expense, and under no condition will any such labor and equipment be allowed as an extra.
- g. After opening, bids may not be withdrawn for a period of ninety (90) days.
- h. Questions regarding this bid must be submitted in writing to the attention of Tanya Hazlett, Procurement Advisor by email to [tanya.hazlett@faypwc.com](mailto:tanya.hazlett@faypwc.com), no later than 5:00 pm, November 22, 2022.
- i. Bidders are prohibited from contacting any PWC official, employee, or agent other than as listed above. Failure to comply with this provision will result in disqualification of the bidder.

## **2. Bid Security**

- a. Each Proposal shall be accompanied by a cash deposit, cashier's check, or certified check drawn on a bank or trust company insured by the Federal Deposit Insurance Corporation or Savings Association Insurance Fund, or a Bid Bond in an amount not less than five percent (5%) of the proposal. Said deposit will be retained by the Commission as liquidated damages, in the amount of \$1,000 per day in the event of failure of the Successful Bidder to execute the Contract within ten (10) days after the award.
- b. Bid Bond shall be conditioned that the Surety will, upon demand, forthwith make payment to the obligee upon said Bond if the Bidder fails to execute.
- c. Only one (1) Bid Bond is required, the amount of which shall be based on the total amount of the bid.

## **3. Bulletins and Addenda**

Any bulletins or addenda to the Specifications issued during the time of bidding are to be considered covered in the Proposal, and in closing a Contract, they will become a part thereof. Receipt of addenda shall be acknowledged by the Bidder.

## **4.0 Award of Contract**

- a. The award of the Contract will be made to the lowest responsive, responsible Bidder as soon as practicable. The bid shall be awarded to the Bidder who, in the judgment of PWC, offers the best value to PWC. PWC reserves the right to accept or reject any and all bids.
- b. The Commission reserves the right to waive minor irregularities or minor errors in any Proposal if it appears to the Commission that such irregularities or errors were made through inadvertence. In all cases concerning cost, unit price shall be the governing factor if a discrepancy exists between the extension of unit cost, times quantity.
- c. In determining the most responsive, responsible Bidder, the Commission will consider, in addition to the prices quoted in the Proposal, the following:
  - i. Completion date,
  - ii. Adherence to the Plans and Specifications,
  - iii. Bidder's capabilities, crew experience, and past performance,
  - iv. Any additional factors deemed appropriate by the Commission.
- d. PWC reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. PWC will reject the Bid of any Bidder that PWC finds, after reasonable inquiry and evaluation, to not be responsible. If Bidder purports to add terms or conditions to its Bid, takes exception to any provision of the Contract Documents, or attempts to alter the contents of the Contract Documents for purposes of the Bid, then PWC will reject the Bid as nonresponsive; provided that PWC also reserves the right to waive all minor informalities not involving price, time, or changes in the Work.
- e. In the event the Bidder proposes any change or deviation from the Plans and Specifications or other Contract Documents, such proposed changes or deviations must be submitted at the time bids are opened on the Form of Exceptions included. The Commission reserves the right to reject any proposed changes or deviations. All exceptions must be stated on the Form of Exceptions. Failure to provide a Form of Exceptions with the Proposal shall imply strict adherence to all details of the Plans and Specifications.
- f. The Contract, when awarded, shall be deemed to include the Specifications for the equipment, and the Bidder shall not claim any modification thereof resulting from any representation or promise made at any time by any officer, agent, or employee of PWC or by any other person.

## **5.0 Performance Bond/Payment Bond**

- 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 Contract price as security for the faithful performance of this Contract and as security for the payment of all persons performing labor and furnishing materials and equipment in connection with this 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, and shall be acceptable to the Fayetteville Public Works Commission. All contract payment bonds and contract performance bonds shall be executed on “Performance Bond” and “Payment Bond” forms provided in this Proposal 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 Contract 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 Materialman, whichever occurs last.
- d. Whenever the Surety or Sureties on the bond so furnished shall be deemed by the Fayetteville Public Works Commission to be insufficient or unsatisfactory, the Materialman, within ten (10) business days after notice to that effect shall furnish and deliver a new bond to the Fayetteville Public Works Commission in the same penalty and on the same conditions with Surety satisfactory to the Fayetteville Public Works Commission and this duty shall continue on the part of the Materialman, whenever and so often as the Fayetteville Public Works Commission shall require a new bond with a satisfactory Surety or Sureties. If the Materialman shall fail to furnish such bond, within ten (10) business days after said notice is mailed to his address, the Fayetteville Public Works 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 Materialman.

## **6.0 Examination of Conditions**

Prior to submission of the Proposal, the Bidder shall make and shall be deemed to have made a careful examination of the Plans and Specifications on file with the Commission and all other matters that may affect the cost and the time of completion of the work.

## **7.0 Bids to be Retained**

No bid may be withdrawn after the scheduled closing time for the receipt of bids for a period of ninety (90) days pending the execution of a Contract by the Successful Bidder. Should the Successful Bidder default and not execute a Contract, then the Contract may be offered to the next lowest responsible Bidder whose Proposal is evaluated as acceptable.

## **8.0 Proposal Form**

Bidders are required to submit a BASE BID in order to be considered responsive. Submittal of the ALTERNATE BID is optional, at the bidder’s discretion. Those bids not received on Materialman’s Proposal Form, contained herein will be considered unresponsive. The bid forms shall be filled out completely. Any omissions may cause the entire Proposal to be rejected.



## **9.0 Small Local Supplier (SLS) Program / Small Disadvantaged Business Enterprise Program**

PWC is committed to promoting the utilization of small, local businesses in the Fayetteville Metropolitan Statistical Area (MSA) by increasing opportunities for those businesses to participate in PWC procurements. The MSA consists of Cumberland County, Hoke County, and Harnett County. PWC requires Bidders to report efforts to utilize Small Disadvantaged Business Enterprises (SDBEs) and Historically Underutilized Businesses (HUBs) for specific projects and encourages all Bidders to report all such efforts for SDBEs, HUBs, and small, local businesses regardless of the requirements of a specific project. Bidders should document any good-faith efforts and utilization in the SDBE forms provided within the Contract Documents.

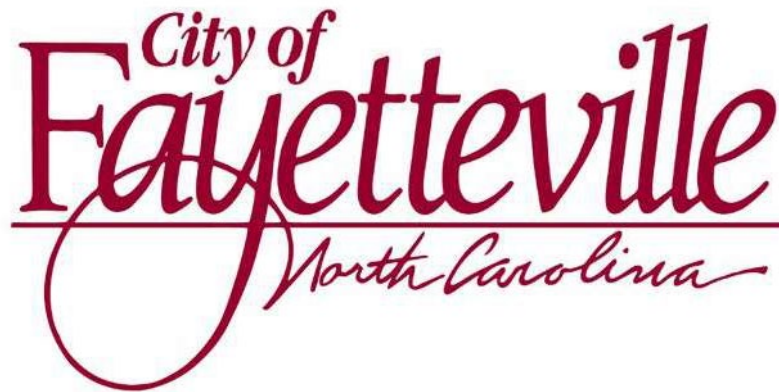
NCDOT Disadvantaged Business Enterprise (DBE) and Historically NC DOA Underutilized Business firms with current certifications are acceptable for listing in the bidder's submittal of SDBE participation and will be considered to meet any necessary contract goal. Firms that are certified through NCDOT 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 their Proposal, the SDBE documentation required in the Contract Documents. It is strongly recommended that the Bidder attend the Pre-Bid Conference, as important information will be reviewed.

### **Small Local Supplier (SLS) Program**

PWC is committed to promoting the utilization of small, local businesses in the Fayetteville Metropolitan Statistical Area (MSA) by increasing opportunities for those businesses to participate in PWC procurements. The MSA consists of Cumberland County, Hoke County, and Harnett County. PWC encourages Bidders to solicit SDBEs, HUBs, and small, local businesses and report any efforts to do so. Bidders should report such good-faith efforts and any subcontractor, vendor, or supplier utilization in the forms provided within this bid package.

**\*\*End of Section\*\***



**CITY OF FAYETTEVILLE**

**SMALL DISADVANTAGED BUSINESS  
ENTERPRISE PROGRAM  
FOR  
CONSTRUCTION, PROCUREMENT, AND  
PROFESSIONAL SERVICES**

**FAYETTEVILLE CITY COUNCIL  
433 HAY STREET  
FAYETTEVILLE, NORTH CAROLINA 28301**

**SMALL DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**

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## SMALL DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

### I. Applicability.

(a) This program shall apply to all construction and repair work involving the expenditure of City funds, regardless of the sources of other funds, in the amounts set forth in G.S. 143-129 and G.S. 143-131; this program shall also apply to the procurement of architectural, engineering and surveying services as outlined in G.S. 143-64.31. This program shall not apply to contracts established by the State or any agency of the State.

(b) If any section, subsection, clause or provision of this chapter, including those groups found to be presumptively socially disadvantaged, is held to be invalid by a court of competent jurisdiction, the remainder of the chapter shall not be affected by such invalidity.

### II. Definitions.

As used in this part, the following terms shall have the following meanings:

*Affiliation* - One firm controls or has the power to control the other, or a third party or parties controls or has the power to control both, or an identity of interests exists between such firms. In determining whether firms are Affiliates, the City shall consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a firm is a Small Business Enterprise.

*Bidder/Participant* - Any person, firm, partnership, corporation, limited liability company, association or joint venture seeking to be awarded a public contract or subcontract.

*Brokering* - Filling orders by purchasing or receiving supplies from a third party supplier rather than out of existing inventory, and providing no Commercially Useful Function other than acting as a conduit between a supplier and a customer.

*City* - The awarding authority for contracts awarded by the City of Fayetteville and the City of Fayetteville Public Works Commission.

*City's Marketplace* - The geographic and procurement areas in which the City contracts on an annual basis.

*Commercially Useful Function* - Responsibility for the execution of a distinct element of the work of the contract which is carried out by actually performing, managing, and supervising the work involved, or fulfilling responsibilities as a joint venture.

*Contract* - A mutually binding legal relationship or any modification thereof obligating the seller to furnish equipment or services and obligating the buyer to pay for them, not including leases or emergency procurements.

*Doing Business* - Having a physical location from which to engage in for profit activities in the scope(s) of expertise of the firm.

*Economically Disadvantaged* - An individual whose Personal Net Worth is less than the amount identified in 49 CFR Part 26

*Equipment* - Materials, supplies, commodities and apparatuses.

*Expertise* - Demonstrated skills, knowledge, or ability to perform in the field of endeavor in which certification is sought by the firm as defined by normal industry practices, including licensure where required.

*Good Faith Efforts* - Actions undertaken by a Bidder/Participant to achieve a SDBE goal which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the Program's requirements.

*Joint Venture* - An association of two or more persons, or any combination of types of business enterprises and persons numbering two or more, proposing to perform a single for profit business enterprise, in which each joint venture partner contributes property, capital, efforts, skill and knowledge, and in which the SDBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture is commensurate with its ownership interest. Joint ventures must have an agreement in writing specifying the terms and conditions of the relationships between the partners and their relationship and responsibility to the contract.

*Managers* - The City Manager.

*Manufacturer* - A firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

*Personal Net Worth* - The net value of the assets of an individual after total liabilities are deducted. An individual's Personal Net Worth does not include the individual's ownership interest in an applicant or the individual's equity in his or her primary place of residence. An individual's Personal Net Worth includes only his or her share of assets held jointly with the individual's spouse.

*Program* - The SDBE Program.

*Project Specific Goal* - The Goal established for a particular project or contract based upon the availability of SDBEs in the scopes of work of the Contract.

*Regular Dealer* - A firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a Regular Dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A firm may be a Regular Dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business if the firm both owns and operates distribution equipment for the products. Any supplementing of a Regular Dealer's distribution equipment shall be by a long-term lease agreement and not on an *ad hoc* or contract-by-contract basis. Packagers, manufacture representatives, or other persons who arrange or expedite transactions are not Regular Dealers.

*Schedule of Participation* - The list of SDBEs that the Bidder/Participant commits will be utilized, their scopes of the work, and dollar value or the percentage of the project they will perform.

*Socially Disadvantaged* - An individual who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a member of a group and without regard to individual qualities. Social disadvantage must stem from circumstances beyond the individual's control. A Socially Disadvantaged individual must be a citizen or lawfully admitted permanent resident of the United States who is either:

- (a) A person whose lifelong cultural and social affiliation is with one of the following groups, which are rebuttably presumed to be Socially Disadvantaged:
  - (i) Blacks/African - Americans (persons having origins in any of the Black racial groups of Africa);
  - (ii) Hispanic - Americans (persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race);

- (iii) Native - Americans (persons having origins in the original groups of North America);
  - (iv) Asian - Americans (persons having origins in any of the original groups of the Far East, Southeast Asia, the islands of the Pacific or the Indian Subcontinent);
  - (v) Women; or
- (b) Any socially disadvantaged individual as defined by 15 U.S.C. 637.

*Small Disadvantaged Business Enterprise (SDBE)* - Means a business, including a sole proprietorship, partnership, corporation, limited liability company, joint venture or any other business or professional entity:

- (a) Which is at least 51 percent owned by one or more Socially and Economically Disadvantaged individuals, or in the case of a publicly owned business, at least 51 percent of all classes of the stock of which is owned by one or more Socially and Economically Disadvantaged individuals;
- (b) Whose management, policies, major decisions and daily business operations are independently managed and controlled by one or more such Socially and Economically Disadvantaged individuals;
- (c) Which is a Small Business Enterprise as defined by 13 CFR Part 121;
- (d) Which is Doing Business in the City's Marketplace; and
- (e) Which is certified as a SDBE by the City of Fayetteville.

*SDBE Program Coordinator* - The person designated by the Managers to administer the Program.

### **III. SDBE Program Administration.**

The Coordinator shall administer the SDBE Program, which duties shall include:

- (a) Formulating, proposing, and implementing rules and regulations for the further development, implementation, and monitoring of the Program.
- (b) Informing SDBEs of City contracting opportunities through outreach activities.
- (c) Providing information and assistance to SDBEs relating to City procurement practices and procedures, and bid specifications, requirements, and prerequisites.
- (d) Certifying businesses as SDBEs, maintaining certification records, and ensuring that all City departments have current certification listings.
- (e) Establishing Project Specific Goals.
- (f) Evaluating Bidder/Participant's achievement of Project Specific Goals or Good Faith Efforts to meet Project Specific Goals.
- (g) Working with City departments to monitor Contracts to ensure prompt payments to SDBEs, compliance with Project Specific Goals and commitments and the Program's operations and objectives.
- (h) Receiving, reviewing, and acting upon complaints and suggestions concerning the Program.

- (i) Collecting data to evaluate the Program.
- (j) Monitoring the Program and reporting to the Managers, the Mayor and the City Council on the administration and operations of the Program.

**IV. Race- and Gender-Neutral Measures to Ensure Equal Opportunities for All Bidders/Participants.**

The City shall develop and use measures to facilitate the participation of all firms in City contracting activities. These measures shall include, but are not limited to:

- (a) Arranging solicitation times for the presentations of bidding opportunities, which includes quantities, specifications and delivery schedules so as to facilitate the participation of interested firms.
- (b) Dividing requests for bids or proposals into work elements to facilitate the participation of small firms.
- (c) Providing timely information on specific contracting opportunities, contracting procedures, and bid preparation.
- (d) Holding pre-bid conferences, where appropriate, to explain the projects.
- (e) Enforcing prompt payment requirements and procedures, including requiring by contract that prime contractors promptly pay subcontractors.
- (f) Reviewing bonding and insurance requirements to eliminate unnecessary barriers to contracting with the City.
- (g) Maintaining information on all firms bidding on City prime contracts and subcontracts.

**V. SDBE Program Eligibility.**

- (a) Only businesses that meet the criteria of SDBEs may participate in the Program.
- (b) The City shall apply the certification criteria and procedures of 49 CFR Part 26 to applicants for participation in the Program.
- (c) The City shall certify the eligibility of joint ventures involving SDBEs and non-SDBEs.
- (d) In lieu of conducting its own certifications, the Coordinator may accept formal certifications by other entities as meeting the requirements of the Program, if the eligibility standards of such entities are comparable to those of the City. Certification decisions, including decertification and graduation determinations, by those other entities shall be accepted by the City in its discretion.
- (e) It is the responsibility of the SDBE to notify the Coordinator of any change in its circumstances affecting its continued eligibility for the Program. Failure to do so may result in the firm's decertification.
- (f) A SDBE may be decertified if it submitted inaccurate, false, or incomplete information to the City or failed to comply with requirements of a contract with the City or with the requirements of the Program.
- (g) A third party may challenge the eligibility of a certified firm:
  - (1) The challenge shall be made in writing under oath and shall include all information relied upon by the challenging party.

- (2) The Coordinator shall provide an opportunity to the parties for an informal hearing. The parties may appear and provide documentation or other evidence and be represented by counsel.
  - (3) The Coordinator shall render a written decision within 15 days of the hearing.
  - (4) If the Coordinator determines that the firm is not eligible, it may appeal the determination to the Manager in writing within 7 days of receipt of the written decision. The challenging party shall have no right of appeal from the Coordinator's determination.
  - (5) The Manager shall issue a written decision within 15 days of receipt of the appeal. The Manager's determination shall be final.
- (h) A firm that has been decertified may not reapply for certification for one year from the effective date of its decertification.

#### **VI. SDBE Goal Setting.**

The Coordinator shall establish a Project Specific Goal for appropriate Contracts based on normal industry practice as determined in consultation with the appropriate Department, the availability of SDBEs to perform the functions of the Contracts and the City's utilization of SDBEs to date.

#### **VII. Counting Participation of SDBEs.**

(a) The entire amount of that portion of a construction Contract that is performed by the SDBE's own forces shall be counted, including the cost of equipment obtained by the SDBE for the work of the Contract, and equipment purchased or leased by the SDBE (except equipment the SDBE subcontractor or Joint Venture partner purchases or leases from the prime contractor or its Affiliate).

(b) The entire amount of fees or commissions charged by a SDBE for providing a *bona fide* service, such as professional, technical, consultant or managerial services, or for providing bonds or insurance specifically required for the performance of the Contract, shall be counted, provided the fee is reasonable and not excessive as compared with fees customarily charged for similar services.

(c) When a SDBE performs as a participant in a Joint Venture, only the portion of the total dollar value of the Contract equal to the distinct, clearly defined portion of the work of the Joint Venture's Contract that the SDBE performs with its own forces and for which it is separately at risk shall be counted.

(d) Only expenditures to a SDBE that is performing a Commercially Useful Function shall be counted. To determine whether a firm is performing a Commercially Useful Function, the City will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the Contract is commensurate with the work it is actually performing and other relevant factors. To perform a Commercially Useful Function, the SDBE must be responsible, with respect to equipment used on the Contract, for negotiating price, determining quality and quantity, ordering the material, installing (where applicable) and paying for the material itself. A SDBE does not perform a Commercially Useful Function if its role is limited to that of an extra participant in the Contract through which funds are passed in order to obtain the appearance of SDBE participation. If a SDBE subcontracts a greater portion of the work of a Contract than would be expected on the basis of normal industry practice, it is presumed not to perform a Commercially Useful Function. When a SDBE is presumed not to be performing a Commercially Useful Function, the SDBE may present evidence to rebut this presumption.

(e) One hundred percent of the cost of the materials or supplies obtained from a SDBE Manufacturer or Regular Dealer shall be counted. One hundred percent of the fees or transportation charges for the delivery of materials or supplies required on a job site shall be counted only if the payment of such fees is a customary industry



practice and are commensurate with fees customarily charged for similar services. The cost of the materials and supplies shall not be counted.

(f) If a firm is decertified during performance of a Contract, the dollar value of work performed under a Contract with that firm after it has been decertified shall not be counted.

(g) In determining achievement of a Project Specific Goal, the participation of a SDBE shall not be counted until that amount has been paid to the SDBE.

#### **VIII. Procurement of Architectural, Engineering and Surveying Services (G.S. 143-64.31)**

(a) The City shall use good faith efforts to notify minority firms of the opportunity to submit qualifications for architectural, engineering, surveying and construction management at risk services.

#### **IX. Informal Construction and Repair Work (G.S. 143-131)**

(a) The City shall solicit minority participation for construction and repair projects in the amount of five thousand dollars (\$5,000) or more, but less than three hundred thousand dollars (\$300,000). The City shall maintain a record of contractors solicited and shall document efforts to recruit minority business participation in these contracts.

#### **X. Formal Construction and Repair Work (G.S. 143-129)**

(a) For all solicitations, the Bidder/Participant shall submit a Schedule of Participation detailing all subcontractors from which the Bidder/Participant solicited bids or quotations, and if a Project Specific Goal has been established, its achievement of the Goal or its Good Faith Efforts to do so. The list of SDBEs provided by the City to a Bidder/Participant establishes the minimum universe from which a Bidder/Participant must solicit SDBEs. The Schedule of Participation shall be due at the time set out in the solicitation documents.

(b) Any agreement between a Bidder/Participant and a SDBE in which the Bidder/Participant requires that the SDBE not provide subcontracting quotations to other bidders/proposers is prohibited.

(c) SDBEs shall respond to relevant requests for quotations.

(d) Where the Bidder/Participant cannot achieve the Project Specific Goal, the Coordinator will determine whether the Bidder/Participant has made Good Faith Efforts. At a minimum, the Bidder/Participant must engage in the following Good Faith Efforts that total at least 50 points for the bid or proposal to be responsive.

(1) Contacting SDBEs from the list provided by the City at least ten days before the bid or proposal date and notifying them of the nature and scope of the work to be performed. The Bidder/Participant shall provide interested SDBEs with timely, adequate information about the plans, specifications, and requirements of the Contract to allow SDBEs to respond to the solicitation. The Bidder/Participant must follow up initial solicitations with interested SDBEs. 10 points.

(2) Providing or making the construction plans, specifications, and requirements available for review by SDBEs at least ten days before the bid or proposals are due. 10 points.

(3) Breaking down or combining elements of work into economically feasible units to facilitate minority participation. 15 points.

(4) Working with SDBE, minority, women, trade, community or contractor organizations identified by the City in the bid documents that provide assistance in recruitment of SDBEs. 10 points.

(5) Attending any prebid meetings scheduled by the City. 10 points.

- (6) Providing assistance in getting required bonding or insurance or providing alternatives to bonding or insurance for subcontractors. 20 points.
- (7) Negotiating in good faith with interested SDBEs and not rejecting them as unqualified without sound reasons based on their capabilities. Evidence of such negotiation includes the names, addresses, and telephone numbers of SDBEs that were contacted; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and why agreements could not be reached with SDBEs. The Bidder/Participant may not reject SDBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. Any rejection of a SDBE based on price or lack of qualifications must be documented in writing. 15 points.
- (8) Providing assistance to an otherwise qualified SDBE in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisting SDBEs in obtaining the same unit pricing with the bidder's suppliers in order to help minority SDBEs to establish credit. 25 points.
- (9) Negotiating joint venture and partnership arrangements with SDBEs to increase opportunities for SDBE participation. 20 points.
- (10) Providing quick pay agreements and policies to enable SDBEs to meet cash-flow demands. 20 points.

(e) In determining whether a Bidder/Participant has made Good Faith Efforts, the performance of other bidders/proposers in meeting the Project Specific Goal may be considered. For example, when the apparent successful Bidder/Participant fails to meet the Project Specific Goal but others meet it, it may be reasonably questioned whether, with additional reasonable efforts, the apparent successful Bidder/Participant could have met the Goal. Similarly, if the apparent successful Bidder/Participant fails to meet the Goal, but meets or exceeds the average SDBE participation obtained by other bidders/proposers, this may be evidence that the apparent successful Bidder/Participant made Good Faith Efforts.

(f) The Coordinator shall timely review the Schedule of Participation prior to award, including the scope of work and the letters of intent from SDBEs. The Coordinator may request clarification in writing of items listed in the Schedule of Participation, provided such clarification shall not include the opportunity to augment listed SDBE participation or Good Faith Efforts.

(g) The Schedule of Participation and supporting documents shall be reviewed by a Bid Selection Committee, composed of the operating departments, Purchasing Department, Coordinator and other representatives as appropriate. If the Bid Selection Committee initially determines the bid to be responsive, it shall recommend award of the Contract to the Managers. If the Bid Selection Committee determines the bid to be non-responsive, it shall confer with the City Attorney prior to recommending the rejection of the bid.

(h) A Bidder/Participant found to be non-responsive may appeal this determination pursuant to the City's bid protest procedures.

## **XI. Contract Performance Compliance Procedures.**

(a) Upon award of a Contract by the City that includes a Project Specific Goal, the Goal becomes a covenant of performance by the Bidder/Participant in favor of the City.

(b) The Bidder/Participant shall provide a listing of all subcontractors to be used in the performance of the Contract, and subcontractor payment information to the City with each request for payment submitted to the City. The Coordinator and the operating department shall monitor subcontractor participation during the course of the Contract and shall have reasonable access to all Contract-related documentation held by the Bidder/Participant. The Bidder/Participant shall submit reports at such times and in such formats as requested by the City.

- (c) The Bidder/Participant shall cooperate with the City in studies and surveys related to the Program.
- (d) The Bidder/Participant cannot make changes to the Schedule of Participation or substitute subcontractors named in the Schedule of Participation without the prior written approval of the Coordinator. Unauthorized changes or substitutions shall be a violation of this program, and may constitute grounds for rejection of the bid or proposal or cause termination of the executed Contract for breach, the withholding of payment and/or subject the Bidder/Participant to Contract penalties or other sanctions.
- (1) All requests for changes or substitutions of the subcontractors named in the Schedule of Participation shall be made to the Coordinator in writing, and shall clearly and fully set forth the basis for the request. A Bidder/Participant shall not substitute a subcontractor or perform the work designated for a subcontractor with its own forces unless and until the Coordinator approves such substitution in writing.
- (2) The facts supporting the request must not have been known nor reasonably should have been known by either party prior to the submission of the Schedule of Participation. Bid shopping is prohibited.
- (3) Substitutions of the subcontractor shall be permitted only on the following basis:
- (i) Unavailability after receipt of reasonable notice to proceed.
  - (ii) Failure of performance.
  - (iii) Financial incapacity.
  - (iv) Refusal by the subcontractor to honor the bid or proposal price.
  - (v) Mistake of fact or law about the elements of the scope of work of a solicitation where agreement upon a reasonable price cannot be reached.
  - (vi) Failure of the subcontractor to meet insurance, licensing, or bonding requirements; or
  - (vii) The subcontractor's withdrawal of its bid or proposal.
- (4) Where the Bidder/Participant has established the basis for the substitution to the satisfaction of the Coordinator, the Bidder/Participant shall make Good Faith Efforts to fulfill the Schedule of Participation if the Project Specific Goals will not otherwise be met. The Bidder/Participant may seek the assistance of the SDBE Office in obtaining a new SDBE subcontractor. If the Project Specific Goal cannot be reached and Good Faith Efforts have been made, the Bidder/Participant may substitute with a non-SDBE.
- (e) If a Bidder/Participant plans to hire a subcontractor on any scope of work that was not previously disclosed in the Schedule of Participation, the Bidder/Participant shall obtain the approval of the Coordinator to modify the Schedule of Participation and must make Good Faith Efforts to ensure that SDBEs have a fair opportunity to bid on the new scope of work.
- (f) The SDBE Compliance Committee, comprised of the Coordinator as the Chair and a representative from the Purchasing Department or any requested representative, shall be responsible for evaluating and reviewing issues and concerns concerning the Program, including whether a Bidder has complied with the GoodFaith Efforts.
- (g) If the Bidder/Participant is found to be in noncompliance with the Program or the Contract and fails to correct such noncompliance within ten working days after written notification, the City will withhold 5

percent of the amount of completed work on all monthly payments until the Bidder/Participant has come into compliance.

## **XII. Protest Procedure.**

A Bidder/Participant may protest a decision regarding the implementation of the Program, including the determination that it has not made Good Faith Efforts, by filing a written grievance with supporting evidence with the Coordinator. The Coordinator shall provide a written response within ten working days of receipt of the grievance. The Bidder/Participant may appeal the Coordinator's determination in writing within ten working days of receipt to the Purchasing Director. The Director shall refer the grievance to the SDBE Compliance Committee, which shall hold a hearing and issue a written recommendation within ten working days. The Manager, upon receipt of the SDBE Compliance Committee's recommendation, shall make a final determination within ten working days.

## **XIII. Dispute Resolution.**

Notwithstanding the protest procedures outlined above, mediation shall be required for all parties involved in a dispute under this program prior to initiating litigation concerning the dispute. The procedures for mediation shall be those adopted by City Council Resolution #2002-066 which is incorporated herein by reference as if fully set forth herein.

## **XIV. Penalties.**

(a) Providing false or misleading information to the City in connection with an application for or challenge to certification, recertification or decertification as a SDBE, submission of a bid, responses to requests for qualifications or proposals, Good Faith Efforts documentation, post-award compliance, or other actions in violation of this program may render any bid award or contract void. A contract that is void under this section may continue in effect until an alternative can be arranged when immediate termination would result in harm to the public health or welfare.

(b) A Bidder/Participant is subject to withholding of payments under the Contract, termination of the Contract for breach, Contract penalties, decertification as a SDBE, or being barred or deemed non-responsive in future City solicitations and Contracts for up to two years, if it is found to have:

- (1) Provided false or misleading information in connection with the submission of a bid or proposal or documentation of Good Faith Efforts, post-award compliance, or other Program operations.
- (2) Failed in bad faith to fulfill the Project Specific Goal, thereby materially breaching the Contract.
- (4) Repeatedly failed to comply in good faith with substantive provisions of this program.

(c) The City reserves the right to pursue all remedies available in law or in equity for violations of this program.

## **XV. Program Review.**

(a) The Managers, the Mayor, and the City Council shall receive an annual report from the Coordinator detailing the City's performance under the Program.

(b) The Managers, the Mayor, and the City Council will review this report, including the City's progress towards eliminating discrimination in its contracting activities and marketplace, and revise the Program as necessary to meet legal and Program requirements.

(c) If the Managers, the Mayor, and the City Council find that the objectives of the Program have been achieved, the City Council shall sunset the Program.

**CITY OF FAYETTEVILLE AND FAYETTEVILLE PUBLIC  
WORKS COMMISSION’S SDBE/HUB COMPLIANCE PROVISIONS**

**APPLICATION:**

The requirements of the City of Fayetteville’s Small Disadvantaged Business Program (the “SDBE Program”) for participation specific contracts are hereby made part of the Contract Documents. Copies of the Program may be obtained from:

Fayetteville Public Works Commission  
Procurement Department/Trent Ensley  
P.O. Box 1089 Fayetteville, North Carolina 28302  
Phone (910) 223-4333 Fax (910) 483-1429  
e-mail: [trent.ensley@faypwc.com](mailto:trent.ensley@faypwc.com)

NCDOT DBE Directory: [www.ebs.nc.gov/VendorDirectory](http://www.ebs.nc.gov/VendorDirectory)  
HUB Directory <https://ncadmin.nc.gov/businesses/hub>

**SDBE Compliance Requirements**

1. The Bidder shall provide, with the bid, the documents set forth below, properly executed. Returning executed copies indicates and establishes that the Bidder understands and agrees to any incorporated SDBE contract provisions.
2. All Bidders must provide with their Bid Proposal Form a properly completed and executed copy of the Identification of SDBE/HUB Participation Form
3. All Bidders must provide with their Bid Proposal Form a properly completed and executed copy of **either** Affidavit A – Listing of Good-Faith Efforts **OR** Affidavit B – Intent to Self-Perform with Own Workforce.
4. Upon being identified as the apparent lowest responsive, responsible Bidder, a Bidder shall, within seven (7) calendar days provide a properly completed and executed copy of **either** Affidavit C – Percentage of SDBE/HUB Participation **OR** Affidavit D – Good-Faith Efforts.

All written statements, certifications, or intentions made by the Bidder shall become a part of the agreement between the Contractor and the City of Fayetteville for performance of this contract.

**SUBCONTRACTOR PAYMENT REQUIREMENTS:**

North Carolina General Statutes 143-134.1 (N.C.G.S.) states that the percentage of retainage on payments made by the prime contractor to the subcontractor shall not exceed the percentage of retainage on payments made by the City of Fayetteville to the prime contractor. Failure to comply with this provision shall be considered a breach of the contract, and the contract may be terminated in accordance with the termination provisions of the contract.

The Contractor shall provide an itemized statement of payments to each SDBE subcontractor before final payment is processed.

The Contractor shall provide an itemized statement of payments to each NON-SDBE subcontractor before final payment is processed.

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Date

**Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid**

**Affidavit A: Listing of the Good Faith Efforts**

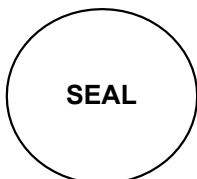
Affidavit of \_\_\_\_\_  
(Name of Bidder)

**I have made a good faith effort to comply under the following areas checked:**  
(A value of 50 points or greater achieves "good faith efforts")

- (1) Contacting minority businesses that reasonably could have been expected to submit a quote and that were known to the contractor or available on State or local government maintained lists at least 10 days before the bid or proposal date and notifying them of the nature and scope of the work to be performed. Value = Ten (10) points.
- (2) Making the construction plans, specifications and requirements available for review by prospective minority businesses, or providing these documents to them at least 10 days before the bid or proposals are due. Value = Ten (10) points.
- (3) Breaking down or combining elements of work into economically feasible units to facilitate minority participation. Value = Fifteen (15) points.
- (4) Working with minority trade, community, or contractor organizations identified by the Office for Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority businesses. Value = Ten (10) points.
- (5) Attending any pre-bid meetings scheduled by the public owner. Value = Ten (10) points.
- (6) Providing assistance in getting required bonding or insurance or providing alternatives to bonding or insurance for subcontractors. Value = Twenty (20) points.
- (7) Negotiating in good faith with interested minority businesses and not rejecting them as unqualified without sound reasons based on their capabilities. Any rejection of a minority business based on lack of qualification should have the reasons documented in writing. Value = Fifteen (15) points.
- (8) Providing assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisting minority businesses in obtaining the same unit pricing with the bidder's suppliers in order to help minority businesses in establishing credit. Value = Twenty-five (25) points.
- (9) Negotiating joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible. Value = Twenty (20) points.
- (10) Providing quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands. Value = Twenty (20) points.

In accordance with NCGS 143-128.2(d) the undersigned will enter into a formal agreement with the firms listed in the Identification of Small Disadvantaged Business Participation schedule conditional upon execution of a contract with the Owner. Failure to abide by any applicable statutory provision may constitute a breach of the contract. The undersigned hereby certifies that he or she has read the terms of the small disadvantaged business commitment and is authorized to bind the Bidder to the commitment herein set forth.

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



State of North Carolina, County of \_\_\_\_\_  
Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_  
Notary Public \_\_\_\_\_  
My commission expires \_\_\_\_\_



**Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid**

**Affidavit B: Intent to Perform Contract with Own Workforce:**

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

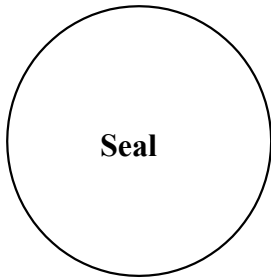
I hereby certify that it is our intent to perform 100% of the work required for the \_\_\_\_\_  
\_\_\_\_\_ contract (Name of Project)

In making this certification, the Bidder states that the Bidder does not customarily subcontract elements of this type project, and normally performs and has the capability to perform and will perform **all elements of the work** on this project with his/her own current workforces; and will complete all elements of this project **without** the use of subcontractors, material suppliers, or providers of professional services.

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

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

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



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

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

State of North Carolina, County of \_\_\_\_\_  
Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_ 2022  
Notary Public \_\_\_\_\_  
My commission expires \_\_\_\_\_

**Affidavit C: Percentage of SDBE/HUB Participation**

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

\$

(Project Number)

(Dollar Amount of Total Bid)

I will expend a minimum of \_\_\_% of the total dollar amount of the contract with small disadvantaged business enterprises. SDBE's will be employed as subcontractors, vendors, or providers of professional services. Such work will be subcontracted to the following firms listed below.

Name, Address and Phone No.	*SDBE HUB Category	Description	Dollar Value	% of Contract

\*SDBE categories: Black-African Americans (B), Hispanic-Americans (H), Asian- Americans (A), Native-Americans (I), Women (F), Socially/Economically Disadvantaged (D)

\*HUB Statewide Uniform Certification (SWUC)

Pursuant to NCGS 143-128.2(d), the undersigned will enter into a formal agreement with small disadvantaged business enterprises for work listed in this schedule conditional upon execution of a contract with the Owner. Failure to fulfill this commitment may constitute a breach of the contract.

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

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

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

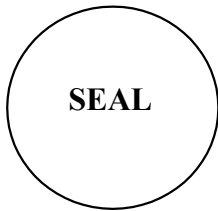
Signature: \_\_\_\_\_

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

State of North Carolina, County of \_\_\_\_ Subscribed and sworn to  
before me this \_\_\_\_ day of \_\_\_\_ 20

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

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



**\*THIS FORM IS NOT TO BE SUBMITTED WITH THE BID PROPOSAL\***

Affidavit D: Good Faith Efforts

If Owner determines using reasonable discretion that Affidavit C is insufficient, Bidder agrees to provide the following information regarding any good-faith efforts.

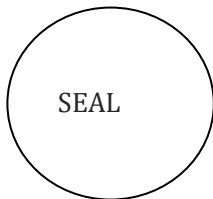
Name, Address and Phone No.	*SDBE/HUB Category	Description	Dollar Value

\*SDBE categories: Black-African Americans (B), Hispanic-Americans (H), Asian- Americans (A), Native-Americans (I), Women (F), Socially/Economically Disadvantaged (D)  
 \*HUB Statewide Uniform Certification (SWUC)

Bidder may be requested to provide documentation of the Bidder’s good-faith efforts. Examples of documentation may include the following:

- A. Copies of solicitations for quotes to small disadvantaged business firms. Each solicitation may include a specific description of the work to be subcontracted, location where bid documents can be reviewed, representative of the Prime Bidder to contact, and location, date and time when quotes must be received.
- B. Copies of quotes or responses received from each firm responding to the solicitation.
- C. A telephone log of follow-up calls to each firm sent a solicitation.
- D. For subcontracts where a small disadvantaged business firm is not considered the lowest responsible sub-bidder, copies of quotes received from all firms submitting quotes for that particular subcontract.
- E. Documentation of any contacts or correspondence to small disadvantaged businesses, community or contractor organizations in an attempt to meet the goal.
- F. Copy of pre-bid roster.
- G. Letter documenting efforts to provide assistance in obtaining required bonding or insurance for small disadvantaged businesses.
- H. Letter detailing reasons for rejection of a small disadvantaged business due to lack of qualification.
- I. Letter documenting proposed assistance offered to small disadvantaged businesses in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letter of credit, including waiving credit that is ordinarily required.

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



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

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

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

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

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

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

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

**Identification of Small Disadvantaged/Local Business Participation**

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

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

Firm Name, Address, and Phone No.	Description	SDBE*/HUB**/Local*** Category	Dollar Value

\*SDBE categories: Black-African Americans (B), Hispanic-Americans (H), Asian- Americans (A), Native-Americans (I), Women (F), Socially/Economically Disadvantaged (D)

\*\*HUB Statewide Uniform Certification (SWUC)

\*\*\*Local: Fayetteville Metropolitan Statistical Area (MSA) comprising of Cumberland County, Hoke County, and Harnett County. PWC is requesting this information for reporting purposes only, and use of local entities will not be considered for compliance with the requirements of the SDBE Program.

The total value of small disadvantaged/local business contracting will be \$ \_\_\_\_\_

**FAYETTEVILLE PUBLIC WORKS COMMISSION**  
**Small Local Supplier Subcontractor Disclosure Form**

Contractor: \_\_\_\_\_

Address & Phone: \_\_\_\_\_

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

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

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

Please complete the below form by providing the necessary information for the estimated payment to be made to each subcontractor, vendor, or supplier for the work associated with the identified pay application. This form must be fully completed and attached to each pay application.

<b>Firm Name, Address, and Contact Information</b>	<b>Estimated Payment Amount</b>	<b>Type of Work/Commodity (Include NAICS Code)</b>

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Date



GENERAL CONDITIONS FOR

REPLACE STANDBY POWER GENERATOR AT THE  
CROSS CREEK WATER RECLAMATION FACILITY

FOR THE FAYETTEVILLE PUBLIC WORKS COMMISSION

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### **Article I. Definitions and Terminology**

#### **Section 1.01 Definitions**

Capitalized terms used in the Bid Documents or Contract Documents, including the singular and plural forms, shall have the meaning indicated in the definitions below. In addition to terms specifically defined below, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

- (a) **Addenda**—Written or graphic instruments issued before the opening of Bids which clarify, correct, or change the Bid Documents or other Contract Documents.
- (b) **Agreement**—The written instrument, executed by PWC and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties, designates the specific documents that encompass the Contract Documents, and provides other material provisions that govern the relationship between the parties as it relates to the Project. The Agreement is also referred to, and titled as, the “Construction Agreement.”
- (c) **Application for Payment**—The form that Contractor shall use during the Work in requesting progress or final payments. Any Application for Payment shall be accompanied by such supporting documentation as is required by the Contract Documents.
- (d) **Bid**—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
- (e) **Bidder**—An individual or entity that submits a Bid to PWC for the Project.
- (f) **Bid Documents**—The Bidding Requirements, the proposed Contract Documents, and all Addenda.
- (g) **Bidding Requirements**—The Invitation to Bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bidder’s original Bid with any requisite attachments.
- (h) **Business Day**—each calendar day that is not a Saturday, Sunday, or holiday observed by PWC (New Year’s Day, Martin Luther King, Jr. Day, Good Friday, Memorial Day, Independence Day, Labor Day, Veteran’s Day, Thanksgiving Day (and the day after), and Christmas (2 days) for its employees.
- (i) **Change Order**—A document that is signed by Contractor and PWC, which authorizes an addition, deletion, or revision in the Work, an adjustment in the Contract Price or the Contract Times, a change in the scope of the Project, or other revision to the Agreement, issued on or after the Effective Date of the Agreement.
- (j) **Change Proposal**—A written request by Contractor, submitted in compliance with the procedural requirements set forth in the Contract Documents, seeking an adjustment in Contract Price or Contract Times, or both; contesting an initial decision by PWC concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Agreement.

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- (k) Completion of the Project—Has the meaning as set forth in the Construction Agreement.
- (l) Constituent of Concern—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5101 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
- (m) Contract Price—The money that PWC has agreed to pay Contractor for Completion of the Project in accordance with the Contract Documents. May also be referred to as “Price” throughout the Contract Documents.
- (n) Contract Times—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; and (b) Completion of the Project.
- (o) Contractor—The individual or entity with which PWC has contracted for performance of the Work and Completion of the Project.
- (p) Day—a calendar day of 24 hours measured from midnight to the next midnight. Also referred to throughout the Contract Documents as “days” or “calendar days.”
- (q) Design Engineer—The Engineering firm identified on the Contract Drawings and their duly authorized employees and agents, such employees and agents acting within the scope of the particular duties entrusted to them in each case.
- (r) Drawings—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
- (s) Field Order—A written order issued by Project Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
- (t) Final Completion—The day the on which any specified Work is complete in accordance with the Contract Documents.
- (u) Laws and Regulations; Laws or Regulations—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction. Such terms, unless otherwise specified, shall refer to North Carolina laws and regulations.
- (v) Milestone—A principal event in the performance of the Work that the Agreement requires Contractor to achieve by an intermediate completion date or by a time prior to Completion of the Project.
- (w) Non-Compliance Notice—A written notice issued by PWC to Contractor indicating a

## General Conditions

violation of any term, provision, or requirement of the Contract Documents.

- (x) Notice of Award—The written notice by PWC to a Bidder providing of PWC's acceptance of the Bid upon timely compliance by the Bidder with any conditions precedent provided in the notice.
- (y) Notice to Proceed—A written notice by PWC to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.
- (z) Progress Schedule—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.
- (aa) Project—has the meaning ascribed to it in the Agreement and is as more specifically set forth throughout the Contract Documents. "Project" includes the total undertaking to be accomplished for PWC by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.
- (bb) Project Engineer—the PWC employee assigned by PWC to coordinate, manage, monitor, and otherwise perform the administration necessary and consistent with PWC's responsibilities for the Completion of the Project. The Project Engineer has authority to coordinate and work with the Design Engineer regarding any engineering questions, concerns, revisions, alterations, deletions, or additions to the Work, and has authority to approve any changes in the scope of the Work. Project Engineer may assign a "Project Coordinator" who will also be an employee of PWC and have the duties and responsibilities set by the Project Engineer.
- (cc) PWC—Fayetteville Public Works Commission. PWC may also be referred to in the Contract Documents as "Owner."
- (dd) Samples—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
- (ee) Schedule of Submittals—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Project Engineer's review of the submittals and the performance of related construction activities.
- (ff) Schedule of Values—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.
- (gg) Shop Drawings—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Contract Drawings and are not Contract Documents.
- (hh) Site—Lands or areas indicated in the Contract Documents as being furnished by PWC upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by PWC which are designated for the use of Contractor.

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- (ii) Specifications—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
- (jj) 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.
- (kk) Substantial Completion—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Project Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
- (ll) Successful Bidder—The Bidder whose Bid PWC accepts, and to which PWC provides a Notice of Award.
- (mm) Supplementary Conditions—Any part of the Agreement that amends or supplements these General Conditions.
- (nn) Supplier—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
- (oo) Technical Data—Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (a) subsurface conditions at the Site, or physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) or (b) Hazardous Environmental Conditions at the Site. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then the data contained in boring logs, recorded measurements of subsurface water levels, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical or environmental report prepared for the Project and made available to Contractor are hereby defined as Technical Data with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06.
- (pp) 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 but not limited to those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, fiber optic transmissions, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
- (qq) Unit Price Work—Work to be paid for on the basis of unit prices.
- (rr) Work—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, materials, equipment, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents and necessary to achieve Completion of the Project.

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- (ss) Work Change Directive—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by PWC and recommended by the Project Engineer, ordering an addition, deletion, or revision in the Work.

### Section 1.02 Terminology

The words and terms discussed in the following paragraphs are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.

(a) Intent of Certain Terms or Adjectives:

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

(b) Defective—when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:

- (i) does not conform to the Contract Documents; or  
(ii) does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or  
(iii) has been damaged prior to Project Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by PWC at Substantial Completion in accordance with the Contract Documents).

(c) Furnish, Install, Perform, Provide

- (i) 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.  
(ii) 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.  
(iii) 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.  
(iv) If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.

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

## **Article II. Preliminary Matters**

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

- (a) Bonds: Contractor shall deliver to PWC such bonds as Contractor is required to furnish simultaneously with delivering the executed Agreement to PWC.
- (b) Contractor's Insurance: Contractor shall deliver to PWC the certificates and other evidence of the insurance required by the Contract Documents simultaneously with delivering the executed Agreement to PWC.

### Section 2.02 Copies of Documents

- (a) PWC will furnish to Contractor up to five (5) printed copies of the Contract Documents upon request by Contractor, and one (1) copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.
- (b) PWC will maintain and safeguard at least one original printed record version of the Agreement, including Drawings and Specifications signed and sealed by Design Engineer or other design professionals as applicable. PWC agrees to make such original printed record version of the Agreement reasonably available to Contractor for review during PWC's normal business hours. PWC may delegate the responsibilities under this provision to Design Engineer.

### Section 2.03 Before Starting any Work

- (a) Within ten (10) Days after the Contractor receives the Notice of Award from PWC (or as otherwise specifically required by the Contract Documents), Contractor shall submit to PWC for timely review:
  - (i) a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the identifiable aspects of the Work, including any Milestones specified in the Contract Documents;
  - (ii) a preliminary Schedule of Submittals; and
  - (iii) Any Shop Drawings, Samples, and other submittals required by the Contract Documents before the Preconstruction Conference.

### Section 2.04 Preconstruction Conference; Designation of Authorized Representatives

- (a) Before any Work at the Site is started, a preconstruction conference attended by PWC, Project Engineer, Contractor, Design Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss general Project issues including, but not limited, the following:
  - (i) The schedules and submittals referred to in Section 2.03;
  - (ii) Contractor's designated authorized representative as described in Section 2.04(b);
  - (iii) Safety;
  - (iv) Procedures for handling Shop Drawings, Samples, and other submittals;



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- (v) Processing Applications for Payment, electronic or digital transmittals;
- (b) At the preconstruction conference Contractor shall designate, in writing, a specific individual to act as its authorized representative with respect to its services and responsibilities under the Contract Documents. Such individual shall have the authority to transmit and receive information, render decisions relative to the requirements of the Contract Documents, and otherwise act on behalf of the Contractor.

### Section 2.05 Initial Acceptance of Schedules

- (a) At least twenty (20) Days before submission of the first Application for Payment a conference, attended by Contractor, PWC, and others as appropriate, will be held to review for acceptability to Project Engineer as provided below the schedules submitted in accordance with Paragraph 2.03(a). PWC shall have ten (10) Days to review the submission and provide feedback to Contractor. Contractor shall then have ten (10) days to make any corrections and adjustments as indicated by PWC and to complete and resubmit the schedules as necessary. No progress payment shall be made to Contractor until acceptable schedules are submitted to and approved by Project Engineer.
- (b) The Progress Schedule will be acceptable to Project Engineer if it provides an orderly progression of the Work to achieve Completion of the Project within the Contract Times. Such acceptance will not impose on Project Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
- (c) Contractor's Schedule of Submittals will be acceptable to Project Engineer if it provides a workable arrangement for reviewing and processing the required submittals.

### Section 2.06 Electronic Transmittals

- (a) Except as otherwise stated elsewhere in the Contract Documents, PWC and Contractor and their authorized agents may transmit, and shall accept, Project-related correspondence, text, data, documents, drawings, information, and graphics, including but not limited to Shop Drawings and other submittals, in electronic media or digital format, either directly, or through electronic mail at the address(es) designated by each Party.
- (b) When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

## **Article III. Contract Documents: Intent, Requirements, Reuse**

### Section 3.01 Intent

- (a) The Contract Documents are complementary; what is required by one is as binding as if required by all.
- (b) It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents.

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- (c) Project Engineer, Design Engineer, or both, will issue clarifications and interpretations of the Contract Documents as provided herein.
- (d) To the extent necessary that Work, construction, or conditions not covered by these General Conditions is required for Contractor to achieve Completion of the Project, "Special Conditions" for such Work will be provided to Contractor and shall be part of the Contract Documents.
- (e) In case of any inconsistency, conflict, or ambiguity among the Contract Documents, the documents shall govern in the following order: (1) Change Orders; (2) Addenda; (3) the fully executed Agreement; (4) Special Conditions; (5) any Drawings and Technical Specifications; and (6) General Conditions.

### Section 3.02 Reference Standards

- (a) Standards Specifications, Codes, Laws and Regulations
  - (i) Reference in the Contract Documents to standard specifications, manuals, reference standards, 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, reference standard, code, or North Carolina laws and regulations in effect as of the Effective Date of the Agreement, except as may be otherwise specifically stated in the Contract Documents.
  - (ii) No provision of any such standard specification, manual, reference standard, or code, or any instruction of a Supplier shall be effective to change the duties or responsibilities of PWC or Contractor, or any of their subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to PWC or any of its officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the part of the Contract Documents.

### Section 3.03 Reporting and Resolving Discrepancies

- (a) Contractor's Verification of Figures and Measurements
  - (i) Before undertaking any portion of the Work, Contractor shall review all of the Contract Documents to and check and verify all figures and dimensions for the Project. Contractor shall promptly report in writing to Project Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Project Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to these General Conditions.
  - (ii) If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Project Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as defined hereinafter) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification

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or interpretation by Project Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to these General Conditions.

### (b) Resolving Discrepancies:

- (i) Except as may be otherwise specifically stated in the Contract Documents, the provisions of the part of the Contract Documents prepared by or for PWC shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:
  - 1) the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); or
  - 2) 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).

## Section 3.04 Reuse of Documents

- (a) Contractor and its Subcontractors and Suppliers shall not have or acquire any title to or ownership rights in any of the:
  - (i) Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Design Engineer or its consultants, including electronic media editions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of PWC and Design Engineer and specific written verification or adaptation by Design Engineer, where applicable; or
  - (ii) Contract Documents and shall not reuse any such Contract Documents for any purpose without PWC's express written consent.
- (b) The prohibitions of this provision shall survive final payment or termination of the Agreement. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

## **Article IV. Commencement and Progress of the Work**

### Section 4.01 Commencement of Work

- (a) The Contract Times will commence to run on the day indicated in the Notice to Proceed issued by PWC to Contractor. A Notice to Proceed may be given at any time after the Effective Date of the Contract.
- (b) Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to such date. Contractor's failure to commence the Work within fifteen (15) Days of the date stated in the Notice to Proceed shall be deemed a material breach of the Agreement unless PWC otherwise determines in its sole discretion and agrees in writing to a delay of the Contract Times based on the applicable circumstances.

### Section 4.02 Reference Points

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- (a) Construction staking will be performed by Design Engineer, who will also prepare and furnish construction cut sheets, signed and sealed by a North Carolina professional land surveyor, to PWC and Contractor. Contractor shall not install any utilities without a sheet. All requests for staking shall be made not less than 96 hours in advance.
- (b) Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and staking, and shall make no changes or relocations without the prior written approval of Project Engineer. Contractor shall report to Project Engineer whenever any reference point staking is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or staking by professionally qualified personnel.

### Section 4.03 Progress Schedule

- (a) Contractor shall adhere to the Progress Schedule established in accordance with Section 2.03 as it may be adjusted from time-to-time as provided below. Contractor shall submit to Project Engineer for acceptance any proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article IX.
- (b) Contractor shall carry on the Work and adhere to the Progress Schedule during any disputes or disagreements with PWC. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by these General Conditions or as PWC and Contractor may otherwise agree in writing.

### Section 4.04 Delays in Contractor's Progress

- (a) If PWC, Project Engineer, anyone for whom PWC is responsible, or a Force Majeure Event delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Times and Contract Price. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- (b) Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- (c) Contractor must submit any Change Proposal, consistent with the procedure set forth in Article IX, seeking an adjustment in Contract Price or Contract Times under this provision within ten (10) calendar days of the commencement of the event that causes the delay, disruption, or interference with the Work and Contract Times.

## **Article V. Availability of Lands; Subsurface and Physical Conditions; Hazardous Environmental Conditions**

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### Section 5.01 Availability of Lands

- (a) PWC will be responsible for obtaining any required easements and encroachments, and otherwise furnishing the Site, necessary to complete the Work, except as provided elsewhere in the Contract Documents.
- (b) Upon reasonable written request, PWC shall furnish to Contractor a current statement of record legal title and legal description of the lands upon which the Work is to be completed and PWC's interest therein.
- (c) Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment necessary to complete the Work. Any and all agreements between the Contractor and any individual property owner(s) shall not obligate PWC, PWC's employees, Project Engineer, or Design Engineer in any manner, and Contractor shall, before performing any work on any such property, obtain a signed and notarized release of liability of PWC and Design Engineer that is suitable to PWC as confirmed in writing.
- (d) Contractor and any of its Subcontractors shall exercise care and caution to avoid damage to any private property. Should any such damage to private property occur, it is Contractor's responsibility to notify the Project Engineer promptly in writing that such damage occurred, the extent of the damage, and Contractor's written plan to remedy the damage. If Contractor fails to timely correct damage to private property, PWC reserves the right to withhold progress payments until damage is corrected and/or to correct damage and back-charge Contractor for costs incurred. At the Completion of the Project, Contractor shall obtain a signed release from all owners of private property to which damage occurred that releases PWC and Design Engineer and acknowledges a settlement for the damage or that such damage was adequately remedied.

### Section 5.02 Use of Site and Other Areas

- (a) Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site and other adjacent areas permitted by Laws and Regulations and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.
- (b) Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris during the progress of the Work. Removal and disposal of such debris shall conform to applicable Laws and Regulations.
- (c) Prior to Completion of the Project, Contractor shall clean the Site and the Work and make it ready for utilization by PWC. At the completion of all of the Work, Contractor shall remove from the Site and adjacent areas 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.

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- (d) 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 structures or land to stresses or pressures that will endanger them.

### Section 5.03 Differing Subsurface or Physical Conditions or Underground Facilities

- (a) If Contractor believes that any subsurface or physical condition or Underground Facilities that is uncovered or revealed at the Site either:
  - (i) is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely is materially inaccurate;
  - (ii) is of such a nature as to require a change in the Contract Documents;
  - (iii) differs materially from that shown or indicated in the Contract Documents; or
  - (iv) is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or Underground Facilities or performing any Work in connection therewith, notify PWC and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement approved by PWC permitting Contractor to do so.

- (b) After receipt of Contractor's written notice, Project Engineer will review the subsurface or physical condition or Underground Facilities in question; determine the necessity of PWC obtaining additional exploration or tests with respect to the condition; conclude whether the condition falls within any of the differing site condition categories in this Section 5.03; and obtain any pertinent cost or schedule information from Contractor.
- (c) Project Engineer will issue a written statement to Contractor regarding the subsurface or physical condition or Underground Facilities in question, which addresses the resumption of Work in connection with such condition and indicates whether any change in the Contract Documents will be made.
- (d) Possible Price and Times Adjustments:
  - (i) Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, or both, to the extent that the existence of a differing subsurface or physical condition or Underground Facilities, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
    - 1) such condition must fall within at least one of the categories in this Section 5.03; and,
    - 2) Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
  - (ii) Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition or Underground Facilities if:
    - 1) Contractor knew of the existence of such condition at the time Contractor proffered its

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- 2) Bid to PWC or executed the applicable Agreement for the Project; or
  - 2) the existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's Bid; or
  - 3) Contractor failed to give the written notice as required.
- (iii) If PWC and Contractor agree regarding Contractor's entitlement to, and the amount or extent of, any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
- (iv) Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 calendar days after Project Engineer's written statement to Contractor regarding the subsurface or physical condition or Underground Facilities in question.

### Section 5.04 Underground Utilities

- (a) Contractor shall ascertain the location and type of all underground utility lines or structures that may be located within the limits of the Site or any area where Work is to be performed.
- (i) The exact location of underground utilities or structures may vary from prior plans, permits, maps, or other documentation, and others may not be designated. The Contractor is fully responsible for verification of the exact location of all underground utility lines or structures within the limits of the Site or the area where the work is to be performed, whether known or unknown by PWC, and for providing necessary protection and/or repair if damage.
  - (ii) Should uncharted or incorrectly charted piping or other utilities be encountered during excavations, the Contractor shall immediately halt any Work, notify PWC, and await direction from PWC before proceeding with any Work. The Contractor shall fully cooperate with PWC and any other utility company in keeping respective services and facilities in operation.
- (b) PWC has used reasonable care 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. Actual horizontal and vertical locations have not been verified. As part of the 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) Days in advance of actual installation of new utilities to allow PWC an opportunity to adjust grades and alignments, to avoid a conflict, and to address any other issues.
- (c) The Contractor shall adhere to the provisions of the North Carolina Underground Utility Safety and Damage Prevention Act. The Contractor shall make a documented request to the North Carolina One Call Center, and/or individual utility owners, in order to locate any facilities within the Site limits or any area where Work is to be performed at least forty-eight (48) hours in advance of the day the Work is scheduled to begin. The Contractor shall include the cost of any coordination and cooperation for utilities in its Bid.

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- (i) Location assistance requested from PWC by Contractor should include the actual horizontal location, type number, size, and depth of all lines. All costs associated with locating and marking existing utilities or the utilities representatives shall be the responsibility of the Contractor.
- (ii) 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.
- (d) 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 Project Engineer at the Contractor's expense. The Contractor's failure to advance plan (minimum fourteen (14) 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.
  - (i) The Contractor shall inform all equipment operators, either those employed by him or those employed by his subcontractors, of information obtained from the utility owners prior to initiation of any aspect of any Work.
- (e) PWC and Design Engineer shall not be responsible for the accuracy or completeness of any information or data provided to the Contractor with respect to underground facilities.
- (f) The entire cost of all of the following will be included in the Contract Price, and Contractor shall bear full responsibilities for all such costs, including but not limited to:
  - (i) Reviewing and checking all such information and data;
  - (ii) Locating all underground facilities shown or indicated in the Contract Documents;
  - (iii) Coordination of the Work with the owners of such underground facilities, including PWC, during any portion of the Work; and
  - (iv) The safety and protection of all such underground facilities and repairing any damage thereto resulting from the Work.
- (g) Contractor shall be responsible for the discovery of existing underground installations, in advance of any excavating or trenching as required in the Contract Documents.
- (h) If an underground facility is discovered at or contiguous to the Site that was not shown or indicated in the Contract Documents or of which Contractor was not aware prior to starting that portion of any Work, 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), identify the owner of such underground facility and give written notice to PWC. Upon receipt of written notice, PWC will review the pertinent condition, determine the necessity of obtaining additional information, and advise Contractor in writing. During such time, Contractor shall be responsible for the safety and



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protection of such underground facility. If PWC concludes that a change in the Contract Documents is required, a Change Order will be issued.

- (i) The Contract Price and/or the Contract Time, may be adjusted if PWC determines, in its discretion, 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:
  - 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.

### Section 5.05 Hazardous Environmental Conditions at Site

- (a) Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work or Hazardous Environmental Condition was caused by Contractor.
- (b) Contractor shall be responsible for controlling, containing, and removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- (c) If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency); and (3) immediately notify Project Engineer (and promptly thereafter confirm such notice in writing). Project Engineer will evaluate such condition or take corrective action, if any. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then PWC may have the Hazardous Environmental Condition removed and remediated and impose a set-off against payments to Contractor to account for the reasonable associated costs.
- (d) Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after PWC has delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- (e) If PWC and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, then within thirty (30) calendar days of PWC's written notice regarding the resumption of Work, Contractor may submit a Change Proposal or PWC may impose a set-off.
- (f) If after receipt of such written notice Contractor does not agree to resume such Work

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based on reasonable evidence it is unsafe or does not agree to resume such Work under such special conditions, then PWC may order the portion of the Work that is in the area affected by such condition to be deleted from the Work.

## Article VI. Bonds and Insurance

### Section 6.01 Performance and Payment Bonds

- (a) Contractor shall obtain and furnish to PWC a performance bond in the amount of one hundred percent (100%) of the Contract 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.
- (b) Contractor shall obtain and furnish to PWC a payment bond in the amount of one hundred percent (100%) of the Contract 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.
- (c) 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.
- (d) In the event PWC deems the surety or sureties upon any bond necessary for the 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, and within ten (10) days after the receipt of notice from PWC, furnish such additional bond(s) 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.
- (e) By executing the Agreement, Contractor understands and acknowledges that PWC, as a public authority, and the City, as a municipal corporation, are 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.

### Section 6.02 Insurance

- (a) Contractor shall maintain during the life of the Agreement and during the completion of any Work the following insurance coverages, which insurance shall be placed with insurance companies authorized to do business in the State of North Carolina and rate A minus VII or better by the current edition of Best's Key Rating Guide or otherwise approved in writing by PWC:
  - (i) 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. Commercial general liability coverage shall be written on an "occurrence" basis.

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- (ii) 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.
- (iii) Workers' compensation insurance as required by the Laws and Regulations. In the event any employee(s), contractor(s), or subcontractor(s) engaged to perform any Work under the Agreement is not protected under the applicable workers' compensation laws, the Contractor shall provide adequate coverage for the protection of such employee(s), contractor(s), or subcontractor(s) not otherwise protected.
- (iv) In the event the Project concerns building construction or repair work, Contractor shall purchase and maintain "Builder's Risk" insurance. This insurance shall include the interests of the PWC, Contractor, and any Subcontractor(s) 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 Contract Price), and to remain in force until Completion of the Project.
- (v) 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 or stored on Site for any period of time. This coverage shall be an "Installation Floater." If no building construction or repair is involved for the Project, the amount of the coverage shall equal the value of the materials stored on site.
- (b) Prior to initiating any Work on the Project, Contractor shall deliver certificates of insurance confirming each such coverage set forth above, and Contractor shall direct its insurers to provide annually to PWC certificates confirming each such coverage during the coverage period.
- (c) PWC shall be named as an additional insured in the comprehensive automobile and commercial liability insurance policies.
- (d) 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.
- (e) The insurance coverage requirements 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.
- (f) If Contractor fails to obtain and maintain any required insurance, PWC may exclude Contractor from the Site, impose an appropriate set-off against payment, and exercise PWC's termination rights pursuant to the Contract Documents.

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- (g) PWC does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests.

## **Article VII. Contractor's Responsibilities**

### Section 7.01 Supervision and Superintendence

- (a) Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction subject to the terms, provisions, and specifications set forth in the Contract Documents.
- (b) At all times during the progress of the Work, Contractor shall assign a competent superintendent, satisfactory to Project Engineer, to supervise the Work and to respond to Project Engineer concerning PWC's interests in the Work.
- (c) Contractor's superintendent shall have full authority to act on behalf of Contractor and all communications, instructions, directions, and notices given to the superintendent by the Project Engineer shall be binding to the Contractor.
- (d) Contractor's superintendent shall be responsible for coordination of the Work with other contractors or subcontractors. The superintendent shall not be replaced without written notice to PWC except under extraordinary circumstances.
- (e) Subcontractors
  - (i) Contractor shall submit the names and references all Subcontractors to the Project Engineer for approval before commencing any Work.
    - 1) In the event Contractor seeks to substitute any Subcontractor that was identified in Contractor's Bid, Contractor shall promptly provide PWC with: (1) the Subcontractor it seeks to substitute; (2) the identity of the Subcontractor to be substituted; and (3) the reason for the requested substitution.
    - 2) PWC will review the requested substitution within five (5) Business Days and provide written approval or denial of the substitution, with such approval not to be unreasonably withheld.
  - (ii) Contractor's superintendent shall be available to be present at the Site at any time that any Subcontractor(s) is performing any of the Work. Construction activity shall be stopped if the Contractor's superintendent is not available to be at the Site.

### Section 7.02 Labor; Working Hours

- (a) Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site. Contractor shall remove from the

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Project any person who appears incompetent, disorderly, or otherwise unsatisfactory. Contractor shall also remove any person who appears in PWC's sole discretion to be incompetent, disorderly, or otherwise unsatisfactory

- (b) Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed on Business Days. Contractor will not perform Work on non-Business Days. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with PWC's written consent, which will not be unreasonably withheld. In such circumstances, Contractor shall submit a written request to PWC at least two (2) Business Days prior to any Work that it requests to complete on a non-Business Day and PWC will, in its sole discretion, approve or deny such request. If such work outside of a Business Day is approved, PWC will set forth the specific parameters that Contractor must follow, including time of work, personnel, and any other issues.<sup>8</sup>

### Section 7.03 Services, Materials, and Equipment

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

### Section 7.04 "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 of such an item 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 is permitted, Contractor may request that Project Engineer authorize the use of other items of material or equipment under the circumstances described below.
  - (i) If Project Engineer determines that an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Project Engineer shall deem it an "or equal" item and confirm such in writing to Contractor. A proposed item of material or equipment will be considered functionally equal to an item so named if:
    - 1) in the exercise of reasonable judgment Project Engineer determines that:

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- a) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
  - b) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
  - c) it has a proven record of performance and availability of responsive service; and
  - d) it is not objectionable to PWC.
- 2) Contractor certifies that, if approved and incorporated into the Work:
- a) there will be no increase in the Contract Price or Contract Times; and
  - b) it will conform substantially to the detailed requirements of the item specified in the Contract Documents.
- (b) Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- (c) Project Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Project Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Project Engineer will be the sole judge of acceptability. Contractor shall not order, furnish, install, or utilize any "or-equal" it until Project Engineer has reviewed the request, determined that the proposed item is an "or-equal," and provided written confirmation to Contractor.
- (d) Project Engineer's denial of an "or-equal" request shall be final and binding and may not be reversed through an appeal under any provision of the Contract Documents.

### Section 7.05 Concerning Subcontractors, Suppliers, and Others

- (a) Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to PWC.
- (b) Contractor shall not subcontract more than forty-nine percent (49%) of the final Contract Price.
- (c) Contractor shall retain specific Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work if required by the Contract Documents.
- (d) After the submittal of Contractor's Bid or final negotiation of the terms of the Agreement, PWC may not require Contractor to retain any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work.
- (e) Prior to entry into any binding subcontract or purchase order, Contractor shall submit to PWC the identity of the proposed Subcontractor or Supplier (unless PWC has already deemed such proposed Subcontractor or Supplier acceptable, during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to PWC unless PWC raises a substantive, reasonable objection within five (5) Business Days.
- (f) No acceptance by PWC of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of the right of PWC to the completion of the Work in accordance with the Contract Documents.

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- (g) Contractor shall be fully responsible to PWC for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions.
- (h) Contractor shall be solely responsible for scheduling and coordinating the Subcontractors, Suppliers, and all other individuals or entities performing or furnishing any of the Work.
- (i) Contractor shall restrict all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work from communicating with PWC, except through Contractor or in case of an emergency, or as otherwise expressly allowed herein.
- (j) All Work performed for Contractor by a Subcontractor or Supplier shall be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of PWC.
- (k) PWC may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor on account of Work performed for Contractor by the particular Subcontractor or Supplier.
- (l) Nothing in the Contract Documents:
  - (i) shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between PWC or Design Engineer and any such Subcontractor, Supplier, or other individual or entity; nor
  - (ii) shall create any obligation on the part of PWC or Design Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

### Section 7.06 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 that is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of PWC, 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 PWC in the Contract Documents.

### Section 7.07 Permits

- (a) Unless otherwise specified in the Contract Documents, Contractor shall obtain and pay for all construction permits and licenses necessary to achieve Completion of the Project. Contractor shall timely seek assistance from PWC if necessary to obtain any permits or licenses; provided that, the Contract Time shall not be extended if PWC determines, in its discretion, that Contractor delayed or otherwise did not act expeditiously in requesting such assistance. PWC shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for Completion of the Project that are applicable at the time of the submission of Contractor's Bid.

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### Section 7.08 Taxes

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

### Section 7.09 Laws and Regulations

- (a) Contractor shall give all notices required by, and shall comply with, all Laws and Regulations applicable to the Project. Except as otherwise expressly required, PWC shall not be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- (b) Contractor shall bear all resulting costs and losses for any of its actions or inactions that are contrary to Laws or Regulations.
- (c) PWC or Contractor may give notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under the Agreement) concerning any Laws or Regulations having an effect on the Contract Price or Contract Times, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If PWC and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 calendar days of such notice Contractor may submit a Change Proposal.

### Section 7.10 Record Documents

- (a) Contractor shall maintain in good order one (1) printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and approved Shop Drawings. These record documents, together with all approved Samples, will be available to Project Engineer for reference. Upon completion of the Work, Contractor shall deliver these record documents to PWC.

### Section 7.11 Safety and Protection

- (a) Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
  - (i) all persons on the Site or who may be affected by the Work;
  - (ii) all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
  - (iii) other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- (b) Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or



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loss, and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify PWC, the owners of adjacent property or Underground Facilities, and other contractors and owners performing work at or adjacent to the Site, when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.

- (c) Contractor shall comply with the requirement of any of PWC's applicable health programs, which may be revised from time to time based on specific circumstances or applicable guidance from the Center for Disease Control or other applicable entity. Such health programs will be identified in the Special Conditions if applicable to the Project.
- (d) Contractor shall comply with the requirements of PWC's applicable safety programs. The Special Conditions identify any of PWC's safety programs that are applicable to the Project.
- (e) Contractor shall remedy, at its expense, all damage, injury, or loss to any property 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.
- (f) Contractor's duties and responsibilities for safety and protection shall continue until such time as Completion of the Project is achieved.
- (g) Contractor's duties and responsibilities for safety and protection shall resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.
- (h) Contractor shall designate in writing to PWC 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.

### Section 7.12 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, and shall, act to prevent threatened damage, injury, or loss. Contractor shall give PWC 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 any emergency. If PWC 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.

### Section 7.13 Shop Drawings, Samples, and Other Submittals

- (a) Contractor shall timely submit Shop Drawings and Samples required by the Contract Documents to Project Engineer for review and approval in accordance with applicable specifications.
- (b) Before submitting a Shop Drawing or Sample, Contractor shall have
  - (i) reviewed the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;

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- (ii) verified all measurements, quantities, dimensions, performance and design criteria, installation requirements, materials, catalog numbers, and similar information;
  - (iii) verified the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
  - (iv) verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
- (c) With each submittal, Contractor shall give Project Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be a written communication separate from the Shop Drawings or Sample submittal; and, in addition, in the case of Shop Drawings by a specific notation made on each Shop Drawing submitted to PWC for review and approval of each such variation.
- (d) Where a Shop Drawing or Sample is required by the Contract Documents, any related Work performed prior to Project Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.
- (e) Project Engineer will provide timely review of any required Shop Drawings and Samples. Such review, and subsequent determination of approval, will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
- (f) Project Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs incident thereto.
- (g) Project Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, shall not change the Contract Times or Contract Price, unless such changes are included in a Change Order.
- (h) Project Engineer's receipt, review, acceptance or approval of a Shop Drawing, Sample, or other submittal shall not result in such item becoming a Contract Document.
- (i) Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples.
- (j) Resubmittal Procedures:
- (i) Contractor shall make corrections required by Project Engineer and shall return the required number of corrected copies of Shop Drawings and submit new Samples as required for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by PWC or Project Engineer on previous submittals.
  - (ii) Contractor shall furnish required submittals with sufficient information and accuracy to obtain required approval of an item with no more than three (3) submittals. If PWC has

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engaged a Design Engineer for the Project, Design Engineer will record Design Engineer's time for reviewing a fourth or subsequent submittal of a Shop Drawings, sample, or other item requiring approval, and Contractor shall be responsible for Design Engineer's charges to PWC for such time. PWC may impose a set-off against payments due to Contractor to secure reimbursement for such charges.

- (iii) If Contractor requests a change of a previously approved submittal item, Contractor shall be responsible for Design Engineer's charges to PWC for its review time, and PWC may impose a set-off against payments due to Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

### Section 7.14 Contractor's General Warranty and Guarantee

- (a) In order to induce PWC to enter into an Agreement with Contractor for the Project, Contractor warrants and guarantees to PWC that:
  - (i) 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 the Agreement in accordance with the terms and conditions of the Agreement, and the Agreement constitutes a legal, valid, and binding obligation of Contractor enforceable against it in accordance with its terms.
  - (ii) Contractor has read the Contract Documents, and acknowledges and understands all data, materials, specifications, and requirements identified in the Contract Documents.
  - (iii) 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.
  - (iv) Contractor is familiar with and is satisfied as to all laws and regulations that may affect cost, progress, and performance to complete the Project.
  - (v) 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 Detail Specifications 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.
  - (vi) 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.
  - (vii) Based on the information and observations referred to in subsection "(v)" 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 Contract Price and in accordance with the other terms and conditions of the Contract Documents.
  - (viii) 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.
  - (ix) Contractor has given PWC written notice of all conflicts, errors, ambiguities, or

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- discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by PWC is acceptable to Contractor.
- (x) The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
  - (xi) 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.
  - (xii) 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.
- (b) Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
- (i) observations by Project Engineer;
  - (ii) recommendation by Project Engineer or payment by PWC of any progress or final payment;
  - (iii) the issuance of a certificate of Substantial Completion by Project Engineer or any payment related thereto by PWC;
  - (iv) use or occupancy of the Work or any part thereof by PWC;
  - (v) any review and approval of a Shop Drawing or Sample submittal;
  - (vi) the issuance of a notice of acceptability by Project Engineer;
  - (vii) any inspection, test, or approval by others; or
  - (viii) any correction of defective Work by PWC.
- (c) If the Contract Documents requires the Contractor to accept the assignment of a contract entered into by PWC, then the specific warranties, guarantees, and correction obligations contained in the assigned contract shall govern with respect to Contractor's performance obligations to PWC for the Work described in the assigned contract.

## Section 7.15 Indemnification

- (a) Contractor shall indemnify, defend, and hold harmless PWC and its Commissioners, officers, employees, agents, and representatives and the City 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.
- (b) Contractor's obligation to indemnify, defend, and hold harmless the Indemnitees shall survive the termination of the Agreement.
- (c) In any and all claims against the Indemnitees 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, Contractor's 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 such Subcontractor, Supplier, or other individual or entity under workers' compensation acts,

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disability benefit acts, or other employee benefit acts.

### Section 7.16 Claims Procedure

- (a) PWC shall notify the Contractor of all potential claims related to the Work within seven (7) calendar days of receiving notification or having knowledge of such potential claim. Should the Contractor receive a potential claim related to the Work, the Contractor shall notify PWC within seven (7) calendar days of receiving notification. The Contractor shall provide the claimant and PWC with a written response acknowledging receipt of the claim within seven (7) calendar days.
- (b) If the Contractor meets with the Claimant about the claim, a representative designated by PWC shall be present at all times. PWC shall maintain a record of any claim received, and the steps taken to resolve. PWC shall also concurrently investigate each case. The Contractor agrees to furnish PWC any information regarding the claim, the actions which led to the claim and/or the investigation of the claim. Contractor shall provide their proposed response to PWC within thirty (30) calendar days of receiving the claim. Upon receipt of the response PWC and the Contractor will discuss and reach a mutual agreement of the response necessary to send to the Claimant within fifteen (15) calendar days. Once the agreement is made the Contractor shall make a formal written resolution to the claimant.
- (c) Failure to act in good faith or respond to a claim in the timelines established by the Contract Documents will constitute a lack of response by the Contractor, therefore validating the claim. PWC 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 PWC, result in breach of contract.
- (d) The Contractor is aware of these claims procedures and understands that it is the PWC'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 Contract Documents and allowed within the applicable statute of limitations.

### Section 7.17 Delegation of Professional Design Services

- (a) Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable Laws and Regulations.
- (b) If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of Contractor by the Contract Documents, PWC will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to PWC.

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- (c) PWC shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, or approvals performed by such design professionals, provided PWC has specified to Contractor all performance and design criteria that such services must satisfy.
- (d) Pursuant to this Section, PWC's, or its designee's, review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. PWC specifically retains final approval of such submittals.
- (e) Contractor shall not be responsible for the adequacy of the performance or design criteria specified by PWC.

## **Article VIII. PWC's Responsibilities**

- (a) In awarding the bid to Contractor and executing the applicable Agreement, PWC acknowledges the following responsibilities:
  - (i) Except as otherwise provided in these General Conditions, PWC shall issue all communications directly to Contractor or its designee.
  - (ii) PWC may at its discretion replace Design Engineer and Project Engineer. The replacement Design Engineer or Project Engineer's status under the Contract Documents shall be that of the former Design Engineer or Project Engineer.
  - (iii) PWC shall promptly furnish the data required of PWC under the Contract Documents.
  - (iv) PWC shall make payments to Contractor when they are due as provided in the Contract Documents.
  - (v) PWC 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. PWC will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
  - (vi) Upon request of Contractor, PWC shall furnish to Contractor reasonable evidence that financial arrangements have been made to satisfy PWC's obligations under the Contract Documents (including obligations under proposed changes in the Work).
  - (vii) While at the Site, PWC's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which PWC has been informed.
  - (viii) PWC shall furnish copies of any applicable PWC safety program(s) to Contractor, which Contractor shall review and implement.

## **Article IX. Amending the Contract Documents; Changes in the Work**

### Section 9.01 Amending and Supplementing Contract Documents

- (a) The Contract Documents may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
  - (i) Change Orders: If an amendment or supplement to the Contract Documents includes a change in the Contract Price or the Contract Times, such amendment or supplement

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must be set forth in a Change Order. A Change Order also may be used to establish amendments and supplements of the Contract Documents that do not affect the Contract Price or Contract Times.

- (ii) **Work Change Directives:** A Work Change Directive will not change the Contract Price or the Contract Times, but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 9.04 regarding change of Contract Price. Contractor must submit any Change Proposal seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 30 days after the completion of the Work set out in the Work Change Directive. PWC must submit any dispute or request seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 60 days after issuance of the Work Change Directive.
- (iii) **Field Orders:** Project Engineer may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on PWC and on Contractor, which shall perform promptly the Work involved. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

### Section 9.02 PWC-Authorized Changes in the Work

- (a) Without invalidating the Agreement and without notice to any surety, PWC may, at any time or from time to time, order additions, deletions, or revisions in the Work. Such changes shall be supported by Design Engineer's recommendation when applicable and to the extent the change involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters. Such changes may be accomplished by a Change Order or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work as revised. Nothing in this paragraph shall obligate Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

### Section 9.03 Unauthorized Changes in the Work

- (a) Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented.

### Section 9.04 Change of Contract Price

- (a) The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price shall comply with the provisions of these General Conditions.
- (b) An adjustment in the Contract Price will be determined as follows:

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- (i) where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved; or
  - (ii) where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit as agreed to in writing by the Parties); or
  - (iii) where the Work involved is not covered by unit prices contained in the Contract Documents and the Parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work plus a reasonable Contractor's fee for overhead and profit.
- (c) Contractor's Fee: When applicable, the Contractor's fee for overhead and profit shall be determined as follows:
- (i) a mutually acceptable fixed fee; or
  - (ii) if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
    - 1) for unit prices, the Contractor's fee shall be fifteen percent (15%);
    - 2) for all other costs incurred, the Contractor's fee shall be five percent (5%);
    - 3) the amount of credit to be allowed by Contractor to PWC for any change that results in a net decrease in the Contract Price will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
    - 4) when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change.

### Section 9.05 Change of Contract Times

- (a) The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times shall comply with the provisions of Paragraph 9.06.
- (b) An adjustment of the Contract Times shall be subject to the limitations set forth in these Contract Document as it concerns delays in Contractor's progress.

### Section 9.06 Change Proposals

- (a) Contractor shall submit a Change Proposal to PWC to request an adjustment in the Contract Times and/or Contract Price. The Change Proposal shall specify any proposed change in Contract Times or Contract Price, or both, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents.
  - (i) Procedures: Contractor shall submit each Change Proposal to PWC promptly (but in no event later than 30 days) after the start of the event giving rise thereto, or after such initial decision. The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to PWC within 15 calendar days after the submittal of the Change Proposal. The supporting data shall be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event.
  - (ii) PWC Action: PWC will review each Change Proposal and, within 30 calendar days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole,



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approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing to Contractor. If PWC does not take action on the Change Proposal within 30 calendar days, then the Change Proposal is deemed denied, thereby commencing the time for appeal under these General Conditions.

- (iii) Binding Decision: PWC's decision will be final and binding unless Contractor appeals the decision.

### Section 9.07 Execution of Change Orders

- (a) PWC and Contractor shall execute appropriate Change Orders covering:
  - (i) changes in the Contract Price or Contract Times that are agreed to by the parties, including any undisputed sum or amount of time for Work performed in accordance with a Work Change Directive;
  - (ii) changes in Contract Price resulting from a PWC set-off, unless Contractor has duly contested such set-off;
  - (iii) changes in the Work which are: (a) ordered by PWC, (b) required because of PWC's acceptance of defective Work or PWC's correction of defective Work, or (c) agreed to by the parties, subject to the need for Design Engineer's recommendation if the change in the Work involves the design (as set forth in the Contract Documents), or other engineering or technical matters; and
  - (iv) changes in the Contract Price or Contract Times, or other changes, which embody the substance of any final and binding results.
- (b) If PWC or Contractor refuses to execute a Change Order that is required to be executed under the terms of this Section, it shall be deemed to be of full force and effect as if fully executed.

### Section 9.08 Notification to Surety

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

## **Article X. Tests, Inspections, and Approvals; Correction, Removal, or Acceptance of Defective Work**

### Section 10.01 Access to Work

- (a) PWC, Design Engineer, their consultants and other representatives and personnel of PWC, independent testing laboratories, and authorities having jurisdiction will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply therewith as applicable.

### Section 10.02 Tests, Inspections, and Approvals

- (a) Contractor shall give Project Engineer timely notice of readiness of the Work (or specific

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parts thereof) for all required inspections and tests and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.

- (b) PWC shall retain and pay for the initial services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by PWC, except those costs incurred in connection with tests or inspections of covered Work shall be governed by the provisions of Paragraph 10.05.
- (c) If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish the required certificates of inspection or approval to PWC.
- (d) Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
  - (i) by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to PWC;
  - (ii) to attain PWC's and Design Engineer's acceptance of materials or equipment to be incorporated in the Work;
  - (iii) by manufacturers of equipment furnished under the Contract Documents;
  - (iv) for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
  - (v) for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests shall be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to PWC, as confirmed in writing by Project Engineer to Contractor.

- (e) If the Contract Documents require the Work (or part thereof) to be approved by PWC or its designee, then Contractor shall assume full responsibility for arranging and obtaining such approvals.
- (f) If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Project Engineer, Contractor shall, if requested by Project Engineer, uncover such Work for observation. Such uncovering shall be at Contractor's expense unless Contractor had given PWC timely notice of Contractor's intention to cover the same and PWC had not acted with reasonable promptness in response to such notice.

## Section 10.03 Defective Work

- (a) It is Contractor's obligation to assure that the Work is not defective.
- (b) PWC or its designee has the authority to determine whether Work is defective, and to reject defective Work.
- (c) Prompt notice of all defective Work of which PWC has actual knowledge will be given to Contractor.

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- (d) Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if PWC has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.
- (e) When correcting defective Work, Contractor shall take no action that would void or otherwise impair PWC's special warranty and guarantee, if any, on said Work.
- (f) In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against PWC by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if PWC and Contractor are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then PWC may impose a reasonable set-off against payments due.

### Section 10.04 Acceptance of Defective Work

- (a) If, instead of requiring correction or removal and replacement of defective Work, PWC prefers to accept it, PWC may do so (subject, if such acceptance occurs prior to final payment, to Design Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles and will not endanger public safety).
- (b) Contractor shall pay all claims, costs, losses, and damages attributable to PWC's evaluation of and determination to accept such defective Work (such costs to be approved by PWC as to reasonableness), and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work shall be incorporated in a Change Order.
- (c) If the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then PWC may impose a reasonable set-off against payments due. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to PWC.

### Section 10.05 Uncovering Work

- (a) PWC has discretion to require, at its initial cost, additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- (b) If any Work is covered contrary to the written request of PWC, then Contractor shall, if requested by PWC or its designee, uncover such Work for observation, and then replace the covering, all at Contractor's expense.
- (c) If PWC considers it necessary or advisable that covered Work be observed by PWC or inspected or tested by others, then Contractor, at PWC's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as PWC may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.

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- (i) If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility PWC shall be entitled to impose a reasonable set-off against payments due.
- (ii) If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 calendar days of the determination that the Work is not defective.

### Section 10.06 PWC May Stop the Work

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

### Section 10.07 PWC May Correct Defective Work

- (a) If Contractor fails within the time specified by PWC in a written notice from PWC to correct defective Work, or to remove and replace rejected Work as required by PWC, 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, then PWC may, after seven (7) calendar days written notice to Contractor, correct or remedy any such deficiency.
- (b) In exercising the rights and remedies under this Section, PWC shall proceed expeditiously. In connection with such corrective or remedial action, PWC 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 stored at the Site or for which PWC has paid Contractor but which are stored elsewhere. Contractor shall allow PWC and its officers, employees, representatives, agents and other contractors, and Design Engineer and its employees and agents access to the Site to enable PWC to exercise the rights and remedies under this Section.
- (c) All claims, costs, losses, and damages incurred or sustained by PWC in exercising the rights and remedies under this Section will be charged against Contractor as set-offs against payments due. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- (d) Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by PWC of PWC's rights and remedies under this Section.

## **Article XI. Claims**

### **Section 11.01      Claims Process**

- (a) The following disputes between PWC and Contractor shall be submitted to the Claims process set forth in this Article:
  - (i) Appeals by PWC or Contractor of Design Engineer's decisions regarding Change Proposals;
  - (ii) PWC or Contractor's demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents; and
  - (iii) Disputes that Design Engineer has been unable to address because they do not involve the design (as set forth in the Contract Documents), the acceptability of the Work, or other engineering or technical matters.

### **Section 11.02      Submittal of Claim**

- (a) The party submitting a claim shall deliver it directly to the other party to the Agreement promptly (but in no event later than 30 calendar days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 calendar days of the decision under appeal. The responsibility to substantiate a claim shall rest with the party making the claim. In the case of a claim by Contractor seeking an increase in the Contract Times or Contract Price, or both, Contractor shall certify that the claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.

### **Section 11.03      Review and Resolution**

- (a) The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim shall be stated in writing and submitted to the other party.

### **Section 11.04      Dispute Resolution**

- (a) 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, Design Engineer, 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) calendar 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) calendar 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

## General Conditions

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 Design Engineer, 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.

## **Article XII. Payments to Contractor; Set-Offs; Completion; Correction Period**

### Section 12.01      Progress Payments

- (a) The Schedule of Values will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to the Project Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed during the pay period. Progress payments for cost-based Work will be based on the Cost of the Work completed by the Contractor during the pay period.
- (b) Applications for Payments:
  - (i) Contractor shall submit to Project Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that PWC has received the materials and equipment free and clear, and evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect PWC's interest.
  - (ii) Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
  - (iii) The amount of retainage for progress payments will be as stipulated in the Contract Documents.
- (c) Review of Applications:
  - (i) Project Engineer will, within ten (10) Business Days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of

## General Conditions

payment and present the Application to PWC, or return the Application to Contractor indicating in writing Project Engineer's reason(s) for refusing to recommend payment. In the latter case, the Contractor may make the necessary corrections and resubmit the Application.

- (ii) Project Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Project Engineer to PWC, based on Project Engineer's observations of the executed Work, and on Project Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Project Engineer's knowledge, information, and belief:
  - 1) the Work has progressed to the point indicated;
  - 2) the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work, and any other qualifications stated in the recommendation); and
  - 3) the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Project Engineer's responsibility to observe the Work.
  
- (iii) By recommending any such payment Project Engineer will not thereby be deemed to have represented that:
  - 1) inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Project Engineer in the Contract Documents; or
  - 2) there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by PWC or entitle PWC to withhold payment to Contractor.
  
- (iv) 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:
  - 1) to supervise, direct, or control the Work, or
  - 2) for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
  - 3) for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
  - 4) to make any examination to ascertain how or for what purposes Contractor has used the money paid on account of the Contract Price.
  
- (v) 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 PWC outlined in this Section.
  
- (d) Project Engineer will recommend reductions in payment (set-offs) necessary in Project Engineer's opinion to protect PWC from loss because:
  - (i) the Work is defective, requiring correction or replacement;
  - (ii) the Contract Price has been reduced by Change Orders;
  - (iii) PWC has been required to correct defective Work or has accepted defective Work in

## General Conditions

- accordance with these General Conditions;
- (iv) PWC has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
  - (v) Project Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.
- (e) Payment Becomes Due:
- (i) Twenty (20) Business Days after presentation of the Application for Payment to PWC with Project Engineer's recommendation, the amount recommended (subject to any PWC set offs) will become due, and when due will be paid by PWC to Contractor.
- (f) Reductions in Payment by PWC:
- (i) In addition to any reductions in payment (set-offs) recommended by Project Engineer, PWC is entitled to impose a set-off against payment based on any of the following:
    - 1) PWC has incurred costs, losses, or damages on account of Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;
    - 2) Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
    - 3) Contractor has failed to provide and maintain required bonds or insurance;
    - 4) PWC has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
    - 5) PWC has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
    - 6) the Work is defective, requiring correction or replacement;
    - 7) PWC has been required to correct defective Work or has accepted defective Work in accordance with the Contract Documents;
    - 8) the Contract Price has been reduced by Change Orders;
    - 9) an event that would constitute a default by Contractor and therefore justify a termination for cause has occurred;
    - 10) liquidated damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or Completion of the Project; or
    - 11) there are other items entitling PWC to a set off against the amount recommended.
  - (ii) If PWC imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Project Engineer, PWC will give Contractor immediate written notice stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. PWC shall promptly pay Contractor the amount so withheld, or any adjustment agreed to by PWC and Contractor if Contractor remedies the reasons for such action. The reduction imposed shall be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.
  - (iii) Upon a subsequent determination that PWC's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due and subject to interest as provided in the Contract Documents.



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### Section 12.02 Substantial Completion

- (a) When Contractor considers the entire Work ready for its intended use Contractor shall notify PWC and Design Engineer in writing that the entire Work is substantially complete and request that PWC acknowledge in writing that Contractor has met Substantial Completion.
- (b) Promptly after Contractor's notification, PWC, Contractor, and Design Engineer shall make an inspection of the Work to determine the status of completion. If PWC does not consider the Work substantially complete, PWC will notify Contractor in writing giving the reasons therefor. PWC shall thereafter submit to Contractor an initial draft of punch list items to be completed or corrected before final payment.
- (c) If Design Engineer considers the Work substantially complete, Design Engineer will deliver to PWC a preliminary certificate of Substantial Completion which shall fix the date of Substantial Completion. Design Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. PWC shall have seven (7) Business Days after receipt of the preliminary certificate to make written objection to Design Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, PWC concludes that the Work is not substantially complete, PWC will, within fourteen (14) calendar days after submission of the preliminary certificate to PWC, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor.
- (d) At the time of receipt of the preliminary certificate of Substantial Completion, PWC and Contractor will confer regarding PWC's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by PWC. Unless PWC and Contractor agree otherwise in writing, PWC shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon PWC use or occupancy of the Work.
- (e) After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment and shall complete such items within the time specified by PWC. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- (f) PWC shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

### Section 12.03 Partial Use or Occupancy

- (a) Prior to Substantial Completion of all the Work, PWC may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which PWC, Design Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by PWC for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:

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- (i) At any time PWC may request in writing that Contractor permit PWC to use or occupy any such part of the Work that PWC believes to be substantially complete.
- (ii) At any time Contractor may notify PWC and Design Engineer in writing that Contractor considers any such part of the Work substantially complete and request Design Engineer to issue a certificate of Substantial Completion for that part of the Work.
- (iii) Within a reasonable time after either such request, PWC, Contractor, and Design Engineer shall make an inspection of that part of the Work to determine its status of completion. If Design Engineer does not consider that part of the Work to be substantially complete, Design Engineer will notify PWC and Contractor in writing giving the reasons therefor.
- (iv) No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements regarding builder's risk or other property insurance.

### Section 12.04 Final Inspection

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

### Section 12.05 Final Payment

- (a) Application for Payment:
  - (i) After Contractor has, in the opinion of PWC, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents, and other documents, Contractor may make application for final payment.
  - (ii) The final Application for Payment shall be accompanied (except as previously delivered) by:
    - 1) all documentation called for in the Contract Documents;
    - 2) consent of the surety, if any, to final payment;
    - 3) satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to PWC free and clear or will so pass upon final payment;
    - 4) a list of all disputes that Contractor believes are unsettled; and
    - 5) complete and legally effective releases or waivers (satisfactory to PWC) required by the Contract Documents.
  - (iii) If Design Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Design Engineer will, within ten (10) Business Days after receipt of the final Application for Payment, indicate in writing Design Engineer's recommendation of final payment and present the Application for Payment to PWC for payment. Such recommendation shall account for any set-offs against payment that are necessary in Design Engineer's opinion to protect PWC from loss for the reasons stated above with respect to progress payments. At the same time Design Engineer will also give written notice to PWC and Contractor that the Work is acceptable and that

## General Conditions

Completion of the Project has been achieved. Otherwise, Design 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.

- (iv) Within thirty (30) calendar days after the presentation to PWC of the final Application for Payment and accompanying documentation, the amount recommended by Design Engineer (less any further sum PWC is entitled to set off against Design Engineer's recommendation, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions above with respect to progress payments) will become due and shall be paid by PWC to Contractor.

### Section 12.06 Waiver of Claims

- (a) The making of final payment will not constitute a waiver by PWC of claims or rights against Contractor. PWC expressly reserves claims and rights arising from defective Work appearing after final inspection, from Contractor's failure to comply with the Contract Documents or the terms of any special guarantees specified therein, from Contractor's indemnification obligations, or from Contractor's continuing obligations under the Contract Documents.
- (b) The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against PWC other than those pending matters that have been duly submitted or appealed under the provisions of the Contract Documents.

### Section 12.07 Correction Period

- (a) If within one (1) year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents, or by any specific provision of the Contract Documents), any Work is found to be defective, or if the repair of any damages to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas used by Contractor as permitted by Laws and Regulations, is found to be defective, then Contractor shall promptly, without cost to PWC and in accordance with PWC's written instructions:
  - (i) correct the defective repairs to the Site or such other adjacent areas;
  - (ii) correct such defective Work;
  - (iii) if the defective Work has been rejected by PWC, remove it from the Project and replace it with Work that is not defective, and
  - (iv) satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting therefrom.
- (b) If Contractor does not promptly comply with the terms of PWC's written instructions, or in an emergency where delay would cause serious risk of loss or damage, PWC may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. 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 repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others).
- (c) In special circumstances where a particular item of equipment is placed in continuous

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service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date only as provided in the Contract Documents.

- (d) Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Article XII, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- (e) Contractor's obligations under this Article XII are in addition to all other obligations and warranties. The provisions of this Article XII shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

## **Article XIII. Suspension of Work and Termination**

### Section 13.01 PWC May Suspend Work

- (a) At any time and without cause, PWC may suspend the Work or any portion thereof for a period of not more than 90 consecutive calendar days by written notice to Contractor and Design Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension. Any Change Proposal seeking such adjustments shall be submitted no later than thirty (30) calendar days after the date fixed for resumption of Work.

### Section 13.02 PWC May Terminate for Cause

- (a) The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
  - (i) Contractor's continued failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule);
  - (ii) Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
  - (iii) Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
  - (iv) Contractor's repeated disregard of the authority of PWC, Project Engineer, or Design Engineer.
- (b) If one or more of the events identified in Paragraph 13.02(a) occurs, then after giving Contractor (and any surety) ten (10) calendar days written notice that PWC is considering a declaration that Contractor is in default and termination of the Agreement, PWC may proceed to:
  - (i) declare Contractor to be in default, and give Contractor (and any surety) notice that the Contract is terminated; and
  - (ii) enforce the rights available to PWC under any applicable performance bond.
- (c) Subject to the terms and operation of any applicable performance bond, if PWC has terminated the Contract for cause, PWC may 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 PWC has paid Contractor but which are stored elsewhere, and complete the Work as PWC may deem expedient.

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- (d) PWC may not proceed with termination of the Contract under Paragraph 13.02(b) if Contractor within seven (7) calendar days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure and such efforts are agreed to by PWC.
- (e) If PWC proceeds as provided in Paragraph 13.02(b), Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by PWC, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to PWC. Such claims, costs, losses, and damages incurred by PWC will be reviewed by PWC as to their reasonableness and, when so approved by PWC, incorporated in a Change Order.
- (f) Where Contractor's services have been so terminated by PWC, the termination will not affect any rights or remedies of PWC against Contractor then existing or which may thereafter accrue, or any rights or remedies of PWC against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by PWC will not release Contractor from liability.
- (g) The provisions of any applicable payment or performance bond shall govern over any inconsistent provisions of this Section.

### Section 13.03 PWC May Terminate For Convenience

- (a) Upon seven (7) calendar days written notice to Contractor, PWC may, without cause and without prejudice to any other right or remedy of PWC, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
  - (i) 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;
  - (ii) 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; and
  - (iii) other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- (b) Contractor shall not be paid on account of loss of anticipated overhead, profits, or revenue, or other economic loss arising out of or resulting from such termination.

### Section 13.04 Contractor May Stop Work or Terminate

- (a) If, through no act or fault of Contractor, (1) the Work is suspended for more than ninety (90) consecutive calendar days by PWC or under an order of court or other public authority or (2) PWC fails for sixty (60) calendar days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven (7) calendar days written notice to PWC, and provided PWC does not remedy such suspension or failure within that time, terminate the Contract and recover from PWC payment on the same terms as provided in this Article.

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- (b) In lieu of terminating the Contract and without prejudice to any other right or remedy, if PWC 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 PWC, 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 submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

### Section 13.05 Morality

- (a) If, in the sole opinion of PWC, at any time Contractor or any of its owner(s) or employee(s) or agent(s) (each party, owner, employee, and agent is an "Actor") engages in any one or more actions that bring disrepute, contempt, scandal, or public ridicule to the Actor or subject the Actor to prosecution or offend the community or public morals or decency or denigrate individuals or groups in the community served by PWC or are scandalous or inconsistent with community standards or good citizenship or may adversely affect PWC's finances, public standing, image, or reputation or are embarrassing or offensive to PWC or may reflect unfavorably on PWC or are derogatory or offensive to one or more employee(s) or customer(s) of PWC, PWC may immediately upon written notice to Contractor terminate the Agreement, in addition to any other rights and remedies that PWC may have pursuant to the Contract Documents or at law or in equity.

## **Article XIV. Miscellaneous**

### Section 14.01 Additional General Terms and Conditions

- (a) Contractor shall be subject to any additional terms and conditions for this Project as set forth in the applicable Appendices as specific in the Agreement, which is incorporated by reference as if set forth word-for-word herein.

### Section 14.02 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:
  - (i) delivered in person, by a commercial courier service or otherwise, to the individual or to a member of the firm or to an officer of the corporation for which it is intended;
  - (ii) delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the sender of the notice; or
  - (iii) sent to PWC or Contractor's designee(s) via email, with a confirmation of receipt.

### Section 14.03 Computation of Times

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

### Section 14.04 Cumulative Remedies

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

### Section 14.05 Limitation of Damages

- (a) With respect to any and all Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither PWC nor Design Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

### Section 14.06 No Waiver

- (a) A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or any other provision of the Contract Documents.

### Section 14.07 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 Agreement or termination of the services of Contractor.

### Section 14.08 Controlling Law

- (a) The Agreement shall be governed by the law of the State of North Carolina.

### Section 14.09 Headings

- (a) Article and paragraph headings, numbers, and letters are inserted for convenience only and do not constitute parts of these General Conditions.

## SPECIAL CONDITIONS

### 1. Drawings and Specifications

The Drawings and Specifications are complementary one to the other. That which is shown on the Drawings or called for in the Specifications shall be as binding as if it were both called for and shown. The intention of the Drawings and Specifications is to include all labor, materials, transportation, equipment, and any and all other things necessary to do a complete job. In case of discrepancy or disagreement in the Contract Documents, the order of precedence shall be: Contract, Technical Specifications, and Small-Scale Drawings.

### 2. Clarifications of Work

In cases where the nature of the work requires clarification by the Commission, such clarification shall be furnished by the Commission with reasonable promptness by means of written instructions. Clarifications shall be consistent with the intent of Contract Documents and shall become a part thereof.

### 3. Contract Time / Extensions

The Materialman shall commence work to be performed under this agreement on a date specified in a written Notice to Proceed from the Fayetteville Public Works Commission and shall fully complete all work hereunder within 360 consecutive calendar days from said date.

### 4. Assignments

The Materialman shall not assign any portion of this Contract nor Subcontract in its entirety except as fully explained in the Materialman's Proposal and accepted by the Commission. No funds or sums of money due or to become due the Materialman under this Contract may be assigned.

### 5. Payment

Payment by the Commission to the Successful Bidder shall be made in milestone payments on a Net 30 day basis, less retainage for each milestone payment, and after the Materialman has verified and coordinated the quantities based on the work completed and bill of materials, with the Project Coordinator/Engineer.

Milestone Payments shall be as follows:

Equipment:

20% upon receipt and acceptance of purchase order

20% for fifty percent (50%) completion of manufactured and assembly

Remaining balance of equipment upon delivery, unloading, and placement and acceptance of PWC Installations:

Payments for installation shall be monthly estimates, based on percentage quantities for a "Schedule of Values" submitted by the Materialman and approved by the PROJECT COORDINATOR/ENGINEER.

The Materialman shall prepare and submit a completed pay application to the PROJECT COORDINATOR/ENGINEER, including the following documentation:

a. Completed sales tax certificate, documenting the state and county sales tax paid for all materials consumed or to be consumed as part of the Work,

b. Copies of all invoices of materials claimed on the sales tax certificate. The Materialman shall furnish two (2) copies of the pay application and all supporting documentation. Invoices for items delivered shall be submitted in duplicate to Vance McGougan, for review, and approval. Invoices should be directed to: The Fayetteville Public Works Commission, 955 Old Wilmington Rd, Fayetteville, North Carolina 28301, and Attention: Vance McGougan. There shall be a five-percent (5%) retainage on invoices until all equipment, with proper drawing and specifications, certified test reports have been approved, and installation has been accepted by PWC. The Commission reserves the right to hold this retainage up to ninety (90) days after all of the units have been installed to verify completeness of delivery.



## 6. Liquidated Damages

If the progress of completion of the Work is delayed by any fault, neglect, act or failure to act, on the part of the Materialman or anyone acting for or on behalf of the Materialman so as to cause any additional costs, expense liability or damage to the Commission or any damage or additional cost or expense for which the Owner may or shall become liable, the Materialman shall and does hereby agree to compensate the Commission for, and to indemnify the Commission against all such costs, expenses, liabilities, and damages.

For each consecutive calendar day of delay beyond the time specified for the Contract Completion date, the Materialman shall be assessed liquidated damages \$1,000 per day. Liquidated damages will be withheld from amounts which may be or may become payable to the Materialman by the Commission. Should the cost of these sustained damages exceed the amounts owed by the Commission, the Materialman shall pay the difference to the Commission.

## 7. Inspection at Materialman's Site

The Commission reserves the right to inspect, at a reasonable time, the equipment/item, plant or other facilities of a prospective Materialman prior to Contract award and during the Contract term as necessary for the Commission's determination that such equipment/item, plant or other facilities conform with the specifications/requirements and are adequate and suitable for the proper and effective performance of the Contract.

## 8. Advertising

Materialman agrees not to use the existence of this Contract or the name of the Commission as part of any commercial advertisement.

## 9. Access to Person and Records

An independent auditor shall have access to persons and records as a result of all Contracts or grants entered into by the Commission in accordance with General Statute 147-64.7.

## 10. Equal Employment Opportunity

During the performance of this Contract, the Materialman agrees as follows:

The Materialman will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age or physical handicap. The Materialman will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to race, color, religion, sex, national origin political affiliation or belief, age or physical handicap. Such action shall include but not 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 Materialman agrees to post in conspicuous places available to employees and applicants for employment notices setting forth the provision of the nondiscrimination clause.

The Materialman will, in all solicitations or advertisements for employees placed by or on behalf of the Materialman; state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age or physical handicap.

The Materialman will send to each labor union representative of workers with which he has a collective bargaining agreement or other Contract or other understanding, a notice advising the labor union or worker's representative of the Materialman'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.

In the event of the Materialman'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 Materialman may be declared ineligible for further Commission contracts.

11. Definitions

- a. Bidder or Materialman: Any individual, firm, or corporation submitting a Proposal for the work contemplated, acting directly or through a duly authorized representative

FAYETTEVILLE PUBLIC WORKS COMMISSION  
FAYETTEVILLE, NORTH CAROLINA

REPLACE STANDBY POWER GENERATOR AT THE CROSS  
CREEK WATER RECLAMATION FACILITY

**MATERIALMAN PROPOSAL**

1. The prices of the Material and Equipment set forth herein do not include any sums which may be payable by the Materialman on account of North Carolina sales tax upon the sale, purchase, or use of the materials here- under. The amount thereof shall be added to the purchase price and paid by the Commission after Materialman has ascertained the actual sales tax to be included.
2. The Materials will conform to the “Technical Specifications” attached hereto and made a part hereof.
3. The Commission may accept any Schedule or portion thereof.
4. The prices quoted in the Proposal shall be firm for the duration of the contract.
5. **The prices quoted shall include delivery, unloading of the materials and equipment by open-top truck, in addition to** furnishing all materials, equipment, installation of the generator to include grading, and constructing of concrete foundations, testing, and commissioning of equipment at the project site. **PWC. F.O.B. point of delivery, Fayetteville, North Carolina.**
6. The prices of the materials and equipment set forth herein shall include the cost of delivery to the site at the Materialman’s risk. The time of delivery shall be as follows:
  - 6.1 The time for delivery shall be extended for the period of any reasonable delay due exclusively to causes beyond the control and without fault of the Materialman, including acts of God, fires, floods, strikes, and delays in transportation.
  - 6.2 Delivery of all items of equipment to the Commission’s designated delivery point shall be made to permit unloading between the hours of 9:00 a.m. and 3:00 p.m., Monday through Friday, holidays excluded.
7. **Receipt of Approval Drawings by the Materialman constitutes authorization for manufacture predicated upon the Drawings and corrections found thereon. After the return of Approval Drawings, release for shipment is to be granted by the Commission based upon the manufacturer’s compliance with the following:**
  - 7.1 Furnishing of the requested number of copies of the Final Drawings as called for in the Specifications.
  - 7.2 Coordination of manufacturing and delivery with the Commission’s construction scheduled as may be noted in these Specifications.

- 7.3 Thirty days' (30) notification of tentative shipping schedule and forty-eight (48) hours notification prior to all deliveries.
8. Title to materials and equipment shall pass to the Commission upon final delivery, completion of work, and passed testing of each unit specified herein.
  9. This Proposal is made pursuant to the provision of the Notice and Instructions to Bidders and the Specifications, and the Materialman agrees to the terms and conditions thereof.
  10. The Materialman warrants the accuracy of all statements contained in the Bidder's qualifications, if any shall be submitted, and agrees that the Commission shall rely upon such accuracy as a condition of the in the event that this Proposal is accepted.
  11. The Materialman warrants that the Materials will conform to the performance data and guarantees which are attached hereto and by this reference made a part hereof.
  12. A Form of Exceptions to the Specifications, prepared in accordance with the instructions to Bidders, is attached hereto.
  13. Non-Collusive Bidding Certification – By the submission of this bid, the Materialman certifies that:
    - 13.1. The bid has been arrived at by the Materialman independently and has been submitted without collusion with any other Materialman of materials, supplies, or equipment of the type described in the Notice to Prospective Bidders or the Specifications.
    - 13.2. The contents of the bid have not been communicated by the Materialman, or, to his best knowledge and belief, by any of his employees or agents to any person not an employee or agent of the Materialman or his Surety on any Bond furnished herewith and will not be communicated to any person prior to the official opening of the bid.
  14. The undersigned further agrees that in cases of failure on his part to accept said Contract within ten (10) consecutive calendar days after written notice has been given of the award of the Contract, the check, cash, or Bid Bond accompanying this bid and the monies payable thereon, shall be paid into the funds of the Commission account set aside for this project as liquidated damages for such failure; otherwise, the check, cash, or Bid Bond accompanying the Proposal shall be returned to the Undersigned.
  15. If, in submitting this Proposal, the Materialman has made any change in the Materialman's Proposal, the Materialman understands that the Commission may evaluate the effect of such change as it sees fit or may exclude the Proposal from consideration in determining the award of the Contract.

\*\*End of Section\*\*

## PROPOSAL FORM

### PROJECT: Replace Standby Power Generator at the Cross Creek WRF

Materialman has examined and carefully studied the entirety of the Specifications and Bid Documents, other related data identified in the Specifications and Bid Documents, and the following Addenda, receipt of which is hereby acknowledged:

Addendum No. Addendum Date

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Materialman will complete the Work in accordance with the Specifications and Bid Documents for the following price(s):

### **BASE BID**

The Total Base Bid shall consist of Items 1 through 5. Materialman shall include in Items 1 through 5 the Total Base Bid Amount for all work in the scope of Work identified in the Specifications and Bid Documents to make a complete and operable facility. Submission of a bid that is determined by the Owner to be unbalanced among the components shall be cause for determining a bid to be unresponsive.

#### BASE BID ITEMS SCHEDULE

ITEM DESCRIPTION	TOTAL AMOUNT
1. All materials to complete the project as an EPA Tier 2 Emissions compliant system as described in the Specifications and Bid Documents.	\$
2. All labor to complete the project as an EPA Tier 2 Emissions compliant system described in the Specifications and Bid Documents.	\$
3. All materials and labor associated with demolition and removal of existing equipment as described in the Specifications and Bid Documents.	\$
4. DEDUCT for re-purposing the existing switchgear building to house new switchgear	(\$ )
5. Building Permit Allowance	\$12,500.00
<b>TOTAL OF BID ITEMS 1, 2, 3, 4 AND 5 AMOUNT</b>	<b>\$</b>

**TOTAL BASE BID AMOUNT (in words):** \_\_\_\_\_

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**THE TOTAL BASE BID AMOUNT OF THE BID SUMMARY ABOVE SHALL BE SHOWN IN BOTH WORDS AND NUMBERS. IN CASE OF DISCREPANCY, THE AMOUNT SHOWN IN WORDS WILL GOVERN. IN THE EVENT OF A DISCREPANCY BETWEEN THE SUM OF THE EXTENDED AMOUNTS AND THE BASE BID TOTAL, THE SUM OF THE EXTENDED AMOUNTS SHALL GOVERN.**

**ALTERNATE BID**

The Total Alternate Bid shall consist of Items 1 through 5. Materialman shall include in Items 1 through 5 the Total Alternate Bid Amount for all work in the scope of Work identified in the Specifications and Bid Documents to make a complete and operable facility. Submission of a bid that is determined by the Owner to be unbalanced among the components shall be cause for determining a bid to be unresponsive. Furnishing an alternate bid is not required. If an alternate bid is not furnished by the Materialman, include the text “N/A” for each item in the Alternate Bid Items Schedule.

**ALTERNATE BID ITEMS SCHEDULE**

ITEM DESCRIPTION		TOTAL AMOUNT
1. All materials to complete the project as an EPA Tier 4 Emissions factory certified system as described in the Specifications and Bid Documents.		\$
2. All labor to complete the project as an EPA Tier 4 Emissions factory certified system described in the Specifications and Bid Documents.		\$
3. All materials and labor associated with demolition and removal of existing equipment as described in the Specifications and Bid Documents.		\$
4. DEDUCT for re-purposing the existing switchgear building to house new switchgear		(\$ )
5. Building Permit Allowance		\$12,500.00
<b>TOTAL OF BID ITEMS 1, 2, 3, 4 AND 5</b>		<b>\$</b>

**TOTAL ALTERNATE BID AMOUNT (in words):** \_\_\_\_\_

\_\_\_\_\_

**THE TOTAL ALTERNATE BID AMOUNT OF THE BID SUMMARY ABOVE SHALL BE SHOWN IN BOTH WORDS AND NUMBERS. IN CASE OF DISCREPANCY, THE AMOUNT SHOWN IN WORDS WILL GOVERN. IN THE EVENT OF A DISCREPANCY BETWEEN THE SUM OF THE EXTENDED AMOUNTS AND THE ALTERNATE BID TOTAL, THE SUM OF THE EXTENDED AMOUNTS SHALL GOVERN.**

The following "Major Equipment Table" designates major equipment items to be provided. The Materialman must select the one (1) manufacturer that will be provided for each item of major equipment.

**MAJOR EQUIPMENT TABLE**

<b>Spec Section</b>	<b>Item</b>	<b>Manufacturer (CIRCLE ONE)</b>
26 32 13	Engine Generators	Power Secure Caterpillar Cummins
26 23 00	Low Voltage Switchgear	Power Secure Caterpillar Cummins Russelectric ASCO





**NORTH CAROLINA BID BOND**

KNOW ALL MEN BY THESE PRESENT, THAT WE \_\_\_\_\_  
as Principal, and \_\_\_\_\_ as Surety, who  
is duly licensed to act as Surety in North Carolina, are held and firmly bound unto the Fayetteville Public  
Works Commission of Fayetteville, North Carolina, as Obligee, in the penal sum of \$\_\_\_\_\_ DOLLARS (5%  
Bid Bond), lawful money of the United States of America, for the payment of which, well and truly to be  
made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally,  
firmly by these present.

SIGNED, Sealed and dated this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

WHEREAS, the Principal is herewith submitting Proposal for

**REPLACE STANDBY POWER GENERATOR AT THE CROSS CREEK WATER  
RECLAMATION FACILITY**

and the Principal desires to file this Bid Bond in lieu of making the cash deposit as required by GS 143-129  
amended in Chapter 1104 of the Public Laws of 1951;

NOW, THEREFORE, THE CONDITION OF THE ABOVE OBLIGATION is such that if the  
Principle shall be awarded the Contract for which the bid is submitted and shall execute the Contract and  
give Bond for the faithful performance thereof within ten (10) days after the award of same to the Principal,  
then this obligation shall be null void, but if the Principal fails to so execute such Contract and give Bond as  
required by GS 143- 129, as amended by Chapter 1104 of the Public Laws of 1951, the Surety shall, upon  
demand, forthwith pay to the Obligee the amount set forth in the first paragraph hereof, and upon failure to  
forthwith make such payment, the Surety shall pay the Obligee an amount equal to double the amount of this  
Bid Bond as set forth in the first paragraph herein. Power of Attorney from the Surety to its Attorney-in-Fact  
is attached hereto.

By \_\_\_\_\_ (SEAL)  
Principal

By \_\_\_\_\_ (SEAL)  
Corporate Surety

**FAYETTEVILLE PUBLIC WORKS COMMISSION  
FAYETTEVILLE, NORTH CAROLINA**

**NOTICE OF AWARD**

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

**PROJECT DESCRIPTION: REPLACE STANDBY POWER GENERATOR AT THE CROSS CREEK WATER RECLAMATION FACILITY**

The OWNER has considered the BID submitted by you for the above described work in response to its Advertisement for Bids dated \_\_\_\_\_ 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 Instructions to Bidders to execute the Agreement and furnish the required 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 Agreement 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 \_\_\_\_\_, 2022.

**OWNER: FAYETTEVILLE PUBLIC WORKS COMMISSION  
OF THE CITY OF FAYETTEVILLE**

**BY:** Trent K. Ensley

**TITLE:** Procurement Manager

**FAYETTEVILLE PUBLIC WORKS COMMISSION  
FAYETTEVILLE, NORTH CAROLINA**

**ACCEPTANCE OF AWARD**

**PROJECT DESCRIPTION: REPLACE STANDBY POWER GENERATOR AT THE CROSS CREEK WATER RECLAMATION FACILITY**

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

**CONTRACTOR**

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

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

State of North Carolina  
Cumberland County

## 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. Notice to Bidders

- c. Performance and Delivery
- d. Instructions to Bidders
- e. City of Fayetteville Small Disadvantaged Business Enterprise Program Requirements and Affidavits
- f. Bid Submittal Documents, including but not limited to Bid Proposal, Bid Summary, List of Subcontractors, Bid Proposal Checklist, and City of Fayetteville Small Disadvantaged Business Enterprise Program Requirements and Affidavits
- g. Notice of Award
- h. Acceptance of Award
- i. Performance Bond
- j. Payment Bond
- k. Power of Attorney
- l. Certificate(s) of Insurance
- m. Notice to Proceed and Acceptance
- n. Definitions and Terminology
- o. General Conditions
- p. Special Conditions
- q. Measurement and Payment
- r. Submittals
- s. Quality Control
- t. Project Closeout

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:

- m. Notice to Proceed and Acceptance of Notice
- n. Work Change Directive(s)
- o. Change Order(s)
- p. 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 the sewer manhole rehabilitation cip – fiberglass reinforced epoxy, 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 \$ \_\_\_\_\_ (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 \_\_\_\_\_, plus any **modifications 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 on 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; 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 the daily amount specified in the Contract Documents ("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 Detail Specifications 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.

l. 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 ten (10) 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, and the City, as a municipal corporation, are 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 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 General Conditions.

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 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. Contractor's warranties to PWC pursuant to the General Conditions 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: Marion J Noland, Interim CEO/General Manager  
  
PO Box 1089  
Fayetteville, NC 28302

To Contractor: **INSERT  
MAILING ADDRESS**

23. Termination. This Agreement may be terminated in accordance with the General Conditions.

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: \_\_\_\_\_  
Marion J Noland, Interim 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 Execution: \_\_\_\_\_

Name of Principal: \_\_\_\_\_  
(Contractor)

Name of Surety: \_\_\_\_\_

Name of Contracting  
Body: Fayetteville Public Works Commission, N.C.

**Amount of Bond:** \_\_\_\_\_

**PROJECT: Replace Standby Power Generator at the Rockfish Creek Water  
Reclamation Facility**

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 bounded parties have executed this instrument under the 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 of Partnership)

ATTEST:

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

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

Witness:

\_\_\_\_\_

Countersigned:

\_\_\_\_\_

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

\_\_\_\_\_  
Name and Address-(Surety Agent)

\_\_\_\_\_

\_\_\_\_\_  
Surety Company Name and N.C.  
Regional or Branch Office Address

CONTRACTOR:

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

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

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

**(CORPORATE SEAL)**

SURETY COMPANY:

\_\_\_\_\_

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

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

**(SURETY CORPORATE SEAL)**



**PAYMENT BOND**

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

Name of Principal: \_\_\_\_\_  
(Contractor)

Name of Surety: \_\_\_\_\_

Name of Contracting  
Body: Fayetteville Public Works Commission, N.C.

**Amount of Bond:** \_\_\_\_\_

**PROJECT: Replace Standby Power Generator at the Cross Creek Water Reclamation Facility**

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 bounded parties have executed this instrument under the 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:

CONTRACTOR:

\_\_\_\_\_  
(Proprietorship of Partnership)

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

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

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

ATTEST:

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

**(CORPORATE SEAL)**

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

SURETY COMPANY

**FAYETTEVILLE PUBLIC WORKS COMMISSION  
FAYETTEVILLE, NORTH CAROLINA**

**NOTICE TO PROCEED**

**TO:** Contractor

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

**PROJECT: REPLACE STANDBY POWER AT THE CROSS  
CREEK WATER RECLAMATION FACILITY**

You are hereby notified to commence work in accordance with the Contract dated \_\_\_\_\_ on \_\_\_\_\_,  
20\_\_ and you are to complete the WORK within **360** consecutive calendar days thereafter. The date of final completion therefore  
is \_\_\_\_\_.

FAYETTEVILLE PUBLIC WORKS COMMISSION

BY: \_\_\_\_\_  
Trent K. Ensley  
Procurement Manager

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE TO PROCEED

is hereby acknowledged this the \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_.

CONTRACTOR

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

TITLE: \_\_\_\_\_