



INVITATION FOR BID

PWC2223065

**Replacement Generator Step-up (GSU) Transformer
Oil Coolers for Butler-Warner Generation Plant**

**Date of Issue: July 11, 2023
Date of Opening: August 14, 2023
2:00 p.m.**

Direct all inquiries concerning this IFB to:

**Victoria McAllister
Procurement Advisor
victoria.mcallister@faypwc.com
910-223-4333**

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**ADVERTISEMENT FOR BID
FAYETTEVILLE PUBLIC WORKS COMMISSION
REPLACEMENT GENERATOR STEP-UP (GSU) TRANSFORMER OIL COOLERS FOR
BUTLER-WARNER GENERATION PLANT**

**Cumberland County
North Carolina**

Pursuant to N.C.G.S 143-129, sealed Bids are solicited and will be received at the Fayetteville Public Works Commission, Administration Building, Conference Room 107, 955 Old Wilmington Road, Fayetteville, NC 28301, until **2:00 p.m., EST Monday, August 14, 2023**, at which time they will be publicly opened and read for the Replacement Generator Step-up (GSU) Transformer Oil Coolers for Butler-Warner Generation Plant .

Enclosed please find the Instructions to Bidders, Detailed Specifications, and Bid Pricing Forms. Bids shall be submitted on the forms provided herein, or exact copies thereof, and the Bidder shall return one copy of the entire Bid packet along with the completed Bid Pricing Form and any other information specified in the Bid documents.

Questions regarding this Bid must be submitted in writing to the attention of Victoria McAllister, at victoria.mcallister@faypwc.com no later than **5:00 p.m. EST, Wednesday, August 2, 2023**, in order to be considered for a response.

Bids must be enclosed in a sealed envelope addressed to **Victoria McAllister**, Procurement Advisor, Fayetteville Public Works Commission, 955 Old Wilmington Road, Fayetteville, North Carolina 28301. The outside of the envelope must be marked **SEALED BID: Replacement Generator Step-Up (GSU) Transformer Oil Coolers for Butler-Warner Generation Plant** and shall indicate the name, address of the Bidder. Bids shall be submitted on the printed forms, or exact copies thereof, contained in the Bid.

The Fayetteville Public Works Commission reserves the right to reject any or all Bids for any reason determined by PWC to be in its best interest, or to award the Bid to the lowest responsible Bidder or Bidders, taking into consideration quality, performance, and the time specified in the Bids for the performance of the contract.

FAYETTEVILLE PUBLIC WORKS COMMISSION
Candice S. Kirtz
Director of Supply Chain

**INSTRUCTIONS TO BIDDERS
FAYETTEVILLE PUBLIC WORKS COMMISSION
REPLACEMENT GENERATOR STEP-UP (GSU) TRANSFORMER OIL COOLERS FOR
BUTLER-WARNER GENERATION PLANT**

OBJECTIVE OF THE REQUEST

It is the intent of this Bid invitation to obtain pricing for replacement generator step-up transformer oil cooling systems listed within the detailed specifications section of this invitation for Bid (IFB). You are requested to submit your Bid on the enclosed Bid Pricing Form.

IFB SCHEDULE

The following table shows the schedule of events to prepare your organization’s response. The key events and deadlines for this process are as follows:

Action	Responsibility	Date/Time
Mandatory Pre-Bid Meeting	PWC	July 28, 2023 at 9:00 A.M.. EST
Submit Written Questions	Bidders	August 2, 2023 by 5:00 P.M. EST
Provide Response to Questions	PWC	August 7, 2023 by 5:00 P.M. EST
Submit IFB	Bidders	August 14, 2023 by 2:00 P.M. EST.
Award Contract	PWC	TBD
Contract Start Date	PWC & Bidder	TBD

MANDATORY PRE-BID MEETING

In order to submit a bid/proposal, it shall be a “requirement” for any Bidder to visit the site and attend the pre-bid meeting in order to design the system so that installation cost will be minimal. This site visit will allow the Bidders to familiarize themselves with the transformers and the existing cooling equipment that will be replaced.

A **MANDATORY** pre-bid meeting will be held at 9:00 a.m., EST insert Friday, July 28, 2023, in the Butler-Warner Generation Plant Administration Bldg. Conference Room 4851 located at, 2274 Custer Avenue, Fayetteville, NC 28312. Representatives of the responsible department will be available to answer questions. Any formal bid submitted by a Bidder that fails to attend this meeting will be considered an unresponsive bid.

Questions will be fielded at the pre-bid meeting and all prospective bidders are required to attend the meeting. Individual telephone inquiries are prohibited. The PWC assumes no responsibility to fully inform absentees of clarifications not issued by addendum.

QUESTIONS

Written questions shall be e-mailed to victoria.mcallister@faypwc.com by the date and time specified in the IFB schedule. Firms will enter “IFB PWC PWC2223065 – Questions” as the subject of the email.

Questions received prior to the submission deadline date, the Procurement Advisor’s response,

and any additional information deemed necessary by PWC will be posted in the form of an addendum to the PWC website and shall become an Addendum to this IFB. No information, instruction, or advice provided orally or informally by any PWC personnel, whether made in response to a question or otherwise concerning this IFB, shall be considered authoritative or binding. Firms shall rely only on written material contained in an Addendum to this IFB.

Inquiries should be submitted no later than the date and time noted in the IFB schedule. Questions answered verbally will be followed up by written addenda as deemed necessary; oral interpretations shall have no effect.

SUBMISSION INSTRUCTIONS

- 1) Bids should be complete and carefully worded and should convey all the information requested in the IFB. Bids should be prepared simply and economically, providing a straightforward, concise description of Bidder's capabilities to satisfy the requirements of the IFB. Emphasis should be on completeness and clarity of content. If the bid includes any comment over and above the specific information requested in the IFB, Bidder should include this information as a separate appendix to its Bid. Bids that include clarifications or modifications to any of the IFB's contractual requirements, or a Bidder's standard terms and conditions, may be deemed non-responsive and not considered for award at PWC's discretion. Unsolicited bid samples or descriptive literature will not be examined or tested, will not be used to determine responsiveness, and will not be deemed to vary any of the provisions of the IFB. Failure to comply with these requirements shall constitute sufficient cause to reject a Bid without further consideration. PWC reserves the right to request additional information from Bidder's to aid in the evaluation process. This information may include, but shall not be limited to, sketches, descriptive literature, complete specifications covering the goods and ancillary services offered, financial statements, reference lists showing companies currently utilizing the proposed equipment, and the like. PWC reserves the right to accept or reject any bid and to annul the bidding process and reject all bids at any time prior to award of a Contract, without thereby incurring any liability to the affected Bidder or Bidders or any obligation to inform the affected Bidder or Bidders the reasons for PWC's action.
- 2) Bids may be withdrawn by the Bidder only in writing and if receipt of such withdrawal is acknowledged by PWC prior to the time for the opening of Bids identified in the Advertisement for Bidders (or such later date included in an Addendum). Written withdrawal requests shall be submitted on the Bidder's letterhead and signed by an official of the Bidder duly authorized to make such request. Any withdrawal request made after Bid opening shall be allowed only if the price Bid was based upon a mistake that constituted a substantial error, provided the Bid was submitted in good faith, and then only pursuant to the terms of N.C.G.S. § 143-129.1.
- 3) Bids shall be submitted in a sealed opaque envelope providing the Bid title, date, and time of opening on the front of the envelope no later than **2:00 p.m., EST Monday, August 14, 2023**. The Bids will be publicly opened and read aloud **at the Fayetteville Public Works Commission, Administration Building, Conference Room 107, 955 Old Wilmington Road, Fayetteville, NC 28301**. Late Bids will not be considered and will be returned to the Bidder unopened.
- 4) Bids will be examined promptly after opening and an award will be made at the earliest possible date. Bids must be held firm for PWC for a period of ninety (90) days after the Bid

opening date. A purchase order will be issued to the awarded Bidder.

- 5) Bidders shall submit Bids only on the Bid Pricing Forms provided herein, or exact copies thereof (See ATTACHMENT B – Bid Pricing Form). Failure to provide full and complete Bid Pricing Forms may result in a Bid being deemed non-responsive.
- 6) All Bids must be signed by an authorized official of the Bidder. Bids may be rejected for any omission, alteration of form, additions not called for, conditional Bid, or any irregularities of any kind.
- 7) Do not submit alternate Bids unless specifically called for on the Bid Pricing Forms.

QUANTITIES AND PRICING

- 1) Quantities listed are estimates ONLY based on historical usage. PWC does not guarantee a minimum or maximum quantity to be purchased.
- 2) All Bidders are advised to include all costs incurred by the Bidder in delivering the GSU transformer oil cooling systems to the PWC 2274 Custer Avenue, Fayetteville, NC 28312 in their bid submittal. The invoice submitted for payment shall not reflect any other costs (fuel surcharge, toll, etc.).
- 3) Bidder may propose price adjustments at stated intervals based upon an established, measurable market indicator (index) that accurately reflects the prevailing market conditions relevant to the goods or services being provided, but only if the escalation/de-escalation terms are specifically stated in the original Bid. When proposing an index, Bidder must (i) establish the base selling price subject to escalation/de-escalation; (ii) select an appropriate index or indexes; (iii) clearly identify the selected index and cite the appropriate source; (iv) outline the method of calculation; and (v) state the frequency of price adjustment.

EVALUATION AND AWARD

- 1) An award of a Contract is subject to the approval by the Board of Commissioners of PWC and the Fayetteville, North Carolina City Council. PWC reserves the right to inspect, at a reasonable time, the equipment, item, plant, or other facilities of a prospective Bidder prior to Contract award, and during the Contract term, as PWC deems necessary to determine 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.
- 2) PWC reserves the right to request additional information from bidders to aid in the evaluation process. This information may include but is not limited to, financial statements, a reference list of contracts of similar size, etc.
- 3) PWC reserves the right to make a single award for all items or may award separate contracts to multiple Bidders for various items to the lowest responsive, responsible Bidder or Bidders, taking into consideration product quality, delivery time to PWC, and conformity with the specifications in these Bid documents. PWC may also consider, among other things, the Bidder's past performance conduct on other contracts, and other information as PWC deems necessary to assist in the evaluation of any Bid.

- 4) PWC personnel will place orders via email, on an as needed basis throughout the life of the contract. Bidder shall confirm receipt of each order by e-mail stating the product ordered, quantity ordered, and the expected delivery date.
- 5) Contract will be awarded for a period of one (1) year. Contract may be extended for additional one-year period upon the agreement of both parties.

DELIVERY AND PAYMENT

- 1) Delivery to be made F.O.B. Public Works Commission 2274 Custer Avenue, Fayetteville, NC 28312.
- 2) Deliveries shall be made between the hours of 9:00 a.m. and 3:00 p.m., Monday through Friday, within the time frame specified on the Bid Pricing Form.
- 3) Payment for equipment, material, supplies, etc. purchased pursuant to this bid shall be made by Public Works Commission approximately thirty days after the same has been delivered, inspected, approved and the invoice received in the PWC Accounts Payable Office, P.O. Box 1089, Fayetteville, North Carolina 28302.

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ATTACHMENT A: DETAILED SPECIFICATIONS

GSU TRANSFORMER COOLER AND OIL PUMP TECHNICAL SPECIFICATION

1.0 BACKGROUND

The Fayetteville Public Works Commission (FPWC), requests quotations to replace the transformer oil cooling systems on its Generator Step Up (GSU) transformers located at the Butler-Warner Generation Plant. The project is for aftermarket cooling replacements on existing/original transformers, where replacement equipment will have identical physical fit up without undo field modifications (fabrication, welding), and will provide equivalent or greater thermal performance as compared to the original cooling system.

The labor and other necessary materials, plans and equipment to perform the installation and transformer oil processing will be bid separately.

2.0 EXPERIENCE

2.1 The project requires the Bidder to provide cooling equipment (coolers, pumps, any other specified components) to replace existing Westinghouse coolers and Trane coolers on the existing GSU transformers. Cooling will be specifically pre-designed to replace existing cooling equipment without significant field modifications (welding, fabricating, etc.). It is desired that the new cooling equipment be designed and manufactured to physically “plug & play” in place of the existing equipment, and to thermally perform of equal or greater cooling capacity.

2.2 Bidders shall provide upon request a list of completed projects from other electric utilities where they have successfully replaced the similar model of Westinghouse and Trane coolers, from a physical fit up and thermal performance standpoint.

2.3 The transformer coolers and pumps proposed shall incorporate designs that have 20 or more years of proven reliability in the electric utility transformer industry.

2.4 In order to submit a bid/proposal, it shall be a “requirement” for any Bidder to visit the site and attend the pre-bid meeting in order to design the system so that installation cost will be minimal. This site visit will allow the Bidders to familiarize themselves with the transformers and the existing cooling equipment that will be replaced.

3.0 COOLING CAPACITY

3.1 KW heat dissipation must meet or exceed the OEM original design criteria. Cooler supplier must be able to confirm that this requirement has been met. Correct cooler sizing is critical for the transformer to maintain its peak loading capacity.

3.2 The cooler must be designed such that oil flow rate through the transformer meets the OEM design criteria. No increase in oil flow rate will be allowed to meet the required cooling capacity. Cooler supplier must be able to confirm that this requirement has been met.

3.3 The transformer Top Oil Temperature rise shall be less than or equal to the temperature rise originally tested and/or specified by the OEM.

3.4 Coolers and pumps should be supplied by the same supplier to ensure proper performance coordination of the cooler-pump system. If cooler supplier is not the same as the pump supplier, cooler supplier must prove their design coordination of the cooler-pump system. Also, cooler supplier should request a performance test from the pump supplier at the design pressure drop of the cooler to ensure overall system performance.

4.0 HARDWARE

All hardware supplied on the cooler shall be Stainless Steel. This includes fan cabinets to core connection hardware, hinges and bolts on swing open fan panels, and any other hardware connections.

5.0 COOLER CORE REQUIREMENTS:

5.1 The cooler must either be a single oil pass design or if multi-pass there shall be vent & drain provision in each pass.

5.2 All tube to tubesheet joints shall be expanded using the roller expanding. A steel ferrule must be used inside tube joints.

5.3 The extended cooling surface shall be constructed using aluminum plates, with Extended Life anticorrosive protection. The Plates shall have a minimum thickness of 0.25 mm. Copper tubes shall be expanded into the aluminum plates to form an integrated design cooling surface for maximum heat dissipation. Maximum number of plates per inch is 11.

5.4 The core shall be designed such that the headers accommodate differential thermal expansion between the tube bundle and core side casings. The top core header connection shall be capable of supporting the weight of the complete cooler in a vertical orientation with the bottom end of the cooling core unsupported. However, except for replacement of an existing cooler, the transformer cooler shall be supported from the side casings for installation and operation purposes.

5.5 The header box shall be constructed of 1/4" (minimum) thick steel, A36 or better. The tubesheets shall be (minimum) 5/8" thick 316L stainless steel. The header box shall be welded to the tubesheet using an ASME Section IX or equivalent certified procedures and welders. If the cooler is a replacement cooler then the oil connections shall be sized, located and oriented to match the original connections.

5.6 Each header (Top & Bottom) shall include a 3/4" NPT connection complete with a brass plug, for venting, draining and instrumentation.

5.7 The cores shall be designed to withstand 15 PSIG positive pressure or full vacuum and shall be tested, cleaned and prepared for shipment as per 6.0.

5.8 Cores shall be cleanable by use of a hinge mechanism to create access to the front of the cooler so that in the field using high pressure water or air providing that the cleaning jet is directed perpendicular to the tubes and parallel to the fins.

6.0 FAN/ PLENUM REQUIREMENTS

6.1 All fan motors (3 Phase 480 V) shall have a maximum speed of 1200 rpm.

6.2 Air flow from the fans shall be horizontal, in a direction away from the transformer tank.

6.3 The fan cabinet or panels shall be hot-dipped galvanized after cutting, drilling, etc., and before assembly onto the cooler core.

6.4 All fans shall be balanced statically and subjected to a run test in the final assembled position to ensure no rubbing, excess vibration exists or amperage overload.

6.5 All fan motors shall have a type TEAO or TEFC cast iron frame and a minimum 1.15 SF. The motors shall be designed with a minimum of a Class F insulation and Class B Rise (max rise <60oC), with rated Ambient operating temp 65oC. Sealed bearings with grease suitable to –30 o C. The motors shall be built for outdoor weatherproof duty (Standard IP55) with the condensate drain holes in the appropriate locations. Motors shall be Severe Duty Motors to allow for superior corrosion protection. Each motor shall be given a high potential voltage test for shorts prior to commissioning. The owner (FPWC) reserves the right to review salt spray testing results of motor design to confirm acceptable corrosion protection. Off the shelf motors without internal corrosion protection are not acceptable.

6.6 All fans shall be protected with an OSHA approved hot dip galvanized fan guard. The fan guards shall be bolted to the cooler in such a way as to ensure easy removal.

6.7 The motor power cables shall terminate in an NEMA 4 enclosure at the bottom of the cabinet and each power lead shall have an individual terminal connection.

6.8 The fan plenum shall be constructed such that no water can be trapped on the interior or between the cabinet and core.

6.9 Fan mounting panels shall be sized for each individual fan. Panels shall be hinged on one side to allow and capable of being opened for easy access to the front of the cooler core and/or the motor for cleaning and maintenance. Hinges shall be stainless steel.

7.0 COOLER TESTING, CLEANING AND PREPARATION FOR SHIPMENT:

7.1 All cooling cores shall be pressure tested at a minimum of 35 PSIG for 15 minutes minimum, using appropriate leak detection methods.

7.2 The cores shall be filled with clean, water free Transformer mineral oil and flushed in both directions using a minimum tube velocity of 6 ft/s. The final particle count for the flushing shall meet an ISO Cleanliness level of 12-10-7 Results must be kept on record at the Bidder's factory and made available to the Owner (FPWC) if required. A cleanliness certificate stating that this procedure has been completed shall be included with each shipment.

7.3 Transformer Oil Cooler must be drained using a tilt table for a minimum of 60 minutes.

7.4 The cores shall be purged of ambient air, filled with dry air or nitrogen (-60°C dew point) and pressurized to a minimum 5 PSIG for shipment. Air tight covers shall be provided on the oil connections. A tire valve shall be supplied on the core to allow verification of the level of pressurization with a standard tire pressure gage.

7.5 Completely crated and wrapped in CorTec VpC-126® Blue 6mm moisture absorbing material for freight duration.

7.6 Owner (FPWC) reserves the right to witness cooler testing and/or review the test plan for completeness.

8.0 EXTERIOR FINISH

Unless otherwise specified, all carbon steel cabinets, fan bell mouths, fan guards and motor mounting components shall be hot-dip galvanized after drilling punching, bending, etc.

9.0 DOCUMENTATION:

9.1 A certified Outline drawing of the cooler shall be supplied a maximum of 6 weeks after the receipt of an order. E-mail transmittal of drawings is preferred.

9.2 Test certificates shall be provided for all above-mentioned procedures.

9.3 A certificate of cooler cleanliness shall be provided upon shipment.

10.0 MOUNTING

These mounting specifications pertain to standard vertical tube mounted coolers.

10.1 The coolers shall be mounted with a minimum of 3ft (1 meter) clearance for air flow between the cooler and the transformer tank wall.

10.2 The coolers shall be mounted with a minimum of 10ft (3 meter) clearance for air flow between the cooler and any surrounding wall.

10.3 The cooler shall be mounted to the transformer tank wall using braces extending from the tank wall to slotted holes on the back of the cooler side casings. Two braces per side shall be used.

10.4 Any Anti-sway bars connected to the bottom of the cooler shall not bear any cooler weight, so that the cooler core can freely expand and contract with thermal variations.

TRANSFORMER COOLING OIL PUMP & VALVES SPECIFICATIONS

1.0 GENERAL

1.1 All transformer oil pumps shall be manufactured by Cardinal Pumps and Exchangers, a subsidiary of Unifin International LP, no exceptions allowed.

1.2 All pumps shall be equipped with the Harley™ design bronze sleeve and thrust bearing system manufactured by Cardinal.

1.3 All pumps to be mounted in the same position as original pumps (below coolers). Pumps mounted below the cooler must ensure a positive NPSHA (Net Positive Suction Head Available) at the pump suction.

2.0 OIL FLOW RATE

Oil flow rates shall not exceed the designed oil flow rate of the existing cooler-pump system. No increase in oil flow rate to achieve cooling capacity of the new cooling system is allowed. This is to ensure prevention of the possibility of streaming electrification in the windings.

3.0 SEALING SYSTEM

All gaskets shall be of a confined gasket groove design and shall be constructed of Nitrile or Viton 60 - 70 durometer elastomer material.

4.0 ELECTRICAL

4.1 Pumps shall have a Cardinal 3 pin. male power connector located at the 12:00 o'clock position on the motor.

4.2 Temperature rise of the motor shall not be in excess of 10°C above the temperature of the cooling oil passing through the pump.

4.3 Motors shall have a minimum of Class F insulation and a 1.15 service factor.

5.0 MECHANICAL

5.1 Pump housings (casing and motor enclosure) shall be manufactured using heavy-duty Class 30/40 cast iron of sufficient thickness to withstand the pressures and vibration of operation on an EHV transformer.

5.2 Pump design shall be coordinated with the OFAF cooler design to accomplish the oil flow rates and top oil temperature rise specified by the transformer OEM.

5.3 The lower connection between the OFAF cooler and the inlet piping can be bolted ANSI 150# flanges or a flexible coupling to allow for oil pipe thermal variations.

5.4 Pump piping shall have no bends or elbows between the pump inlet or discharge unless the bend/elbow is more than 3 oil pipe diameters away from the pump.

5.5 Inlet and outlet cooling oil flanges on the transformer tank wall must have parallel faces and be square to the centerline of the piping. The piping system shall impose no bending moments on the pump housing and shall not require excess torque on mounting bolts to bring gaskets to metal-to-metal closure.

5.6 Rotating Shafts must be center ground and the complete rotor assembly, including impeller, shall be dynamically balanced prior to assembly of the pump.

6.0 COOLING LOOP ISOLATION VALVES

6.1 Each cooler/pump combination shall have a set of two, bolt-in, removable isolation valves, one each at the top and bottom transformer tank cooling oil outlet and inlet flanges.

6.2 Valves shall be Butterfly style manufactured by Cardinal Pumps and Exchangers with Viton gaskets and seals, aluminum discs and heavy-duty ground stainless steel shafts.

6.3 The valves shall be guaranteed and tested for 15 PSI pressure and full vacuum and shall seal off the piping for either case throughout its life.

6.4 All parts shall be of non-corrosive or suitably protected material to withstand outdoor exposure on external surfaces and hot transformer oil on internal surfaces.

6.5 Valves shall be capable of operation over a temperature range of -40OC to 135OC at a maximum pressure differential of 15 psi across the disc.

6.6 The operating handle shall identify the "OPEN" and "CLOSED" positions and the disc shall be fastened securely in these positions."

ATTACHMENT B: PRICING FORM

FURNISH AND DELIVER:

ITEM #	DESCRIPTION	TOTAL COST PER LINE
1	TRANSFORMER COOLERS	
	Manufacturer:	
	Model:	
	Recommended Quantity:	
2	OIL PUMPS	
	Manufacturer:	
	Model:	
	Recommended Quantity:	

TOTAL EXTENDED COST: \$ _____

ATTACHMENT C: CERTIFICATION OF PRIMARY PARTICIPANT REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

The Primary Participant, _____ (major third party contractor), certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(If the primary participant is unable to certify to any of the statements in this certification, the participant shall attach an explanation to this certification.)

THE PRIMARY PARTICIPANT _____ CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET. SEQ. ARE APPLICABLE THERETO.

Signature

Title

Printed Name

Date



GENERAL CONDITIONS FOR
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.

- (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) Hazardous Environmental Condition—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract Documents, does not establish a Hazardous Environmental Condition.
- (v) Laws and Regulations; Laws or Regulations—Any and all applicable laws, statutes, rules,

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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.

- (w) 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.
- (x) Non-Compliance Notice—A written notice issued by PWC to Contractor indicating a violation of any term, provision, or requirement of the Contract Documents.
- (y) 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.
- (z) 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.
- (aa) 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.
- (bb) 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.
- (cc) 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.
- (dd) PWC—Fayetteville Public Works Commission. PWC may also be referred to in the Contract Documents as "Owner."
- (ee) 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.
- (ff) 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.
- (gg) 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.

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- (hh) 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.
- (ii) 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.
- (jj) 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.
- (kk) 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.
- (ll) 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.
- (mm) Successful Bidder—The Bidder whose Bid PWC accepts, and to which PWC provides a Notice of Award.
- (nn) Supplementary Conditions—Any part of the Agreement that amends or supplements these General Conditions.
- (oo) 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.
- (pp) 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.
- (qq) 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.

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- (rr) Unit Price Work—Work to be paid for on the basis of unit prices.
- (ss) 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.
- (tt) 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

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- 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.

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;
 - (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.
- (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

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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 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

- (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

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.

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- (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.
- (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:

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- 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 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

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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.
- (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.

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- (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 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.

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- (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 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

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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.
- (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.
- (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 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.⁸

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.

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- (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:
 - 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

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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.
- (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

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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.

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

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- (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 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

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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;
 - (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

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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 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 any Hazardous Environmental Condition 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.

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- (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 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, 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.

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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.

- (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 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:
 - (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

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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, 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.

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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 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

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- (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.
- (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.
 - (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 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 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.

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- (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 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

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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.

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:
 - (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.

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- (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 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

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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 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

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- 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.
 - (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.
- (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

- (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.

SALE OF GOODS AGREEMENT

This Sale of Goods 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 _____ [insert seller’s full legal name] (“Seller”), a _____ [identify the legal entity and State in which formation was accomplished] (each of PWC and Seller is a “Party” and both are collectively the “Parties”) as of the date of execution last written below (the “Effective Date”). In consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, The Parties agree as follows:

1. Sale of Goods. Seller shall sell to PWC and PWC shall purchase from Seller the following [Identify the goods specifically] (the “Goods”). PWC may issue a purchase order for the Goods that specifies any additional applicable terms and conditions set forth for the purchase (a “Purchase Order”), but such Purchase Order is subject to the terms of this Agreement. In the event of a conflict between the provisions of this Agreement and the provisions of any Contract Documents, attachment, exhibit or Purchase Order made pursuant to this Agreement, the terms of this Agreement shall govern.

2. Contract Documents. “Contract Documents” means, collectively, the following documents that were either made available to Seller 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 Prospective Bidders
- c. Definitions
- d. Instructions to Bidders
- e. General Conditions
- f. Materialman’s Proposal
- g. Bid Bond
- h. Technical Specifications
- i. Purchase Order(s)
- j. Addenda

3. Delivery of Goods. Seller shall deliver the Goods [EITHER: “on or before _____” OR “as specified in the Contract Documents or an applicable Purchase Order issued by PWC” OR “as otherwise agreed in writing by the Parties”] (the “Delivery Date”). Timely delivery of the Goods is of the essence. If Seller fails to deliver the Goods on or before the Delivery Date, PWC may, without any liability to Seller, terminate this Agreement immediately by providing written notice to Seller. Unless otherwise specified in an applicable Purchase Order or the Contract Documents, excluding this Agreement, all Goods shall be delivered to PWC’s Warehouse at 955 Old Wilmington Road, Fayetteville, North Carolina 28301 (the “Delivery Point”) during PWC’s normal business hours. Delivery shall be made FOB Delivery Point.

4. Title and Risk of Loss. Title of the Goods passes to PWC upon delivery of the Goods to the Delivery Point. Seller bears all risk of loss or damage to the Goods until delivery of the Goods to the Delivery Point.

5. Packaging. Seller shall properly pack, mark, and ship the Goods as instructed by PWC and otherwise in accordance with applicable law and industry standards and shall provide PWC with all shipment documentation showing the quantity of pieces in shipment, the number of cartons or containers in shipment, Seller's name, the airway bill or bill of lading number, and the state of origin.

6. Inspection and Rejection of Nonconforming Goods. PWC has the right to inspect the Goods on or after the Delivery Date. PWC, at its sole option, may inspect all or a sample of the Goods, and may reject all or any portion of the Goods if it determines the Goods are nonconforming or defective. If PWC rejects any portion of the Goods, PWC has the right, effective upon written notice to Seller, to: (a) terminate this Agreement in its entirety and require Seller to remove the Goods in a commercially reasonable time period or pay the full cost and expense to have the rejected Goods returned to Seller; or (b) reject the Goods and require replacement of the rejected Goods at Seller's sole expense. If PWC requires replacement of the Goods, Seller shall, at its sole expense and in the lesser of ninety (90) days or the number of days between any applicable Purchase Order of PWC and the Delivery Date, replace the nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective goods and the delivery of replacement Goods. Any inspection or other action by PWC under this section shall not reduce or otherwise affect Seller's obligations under this Agreement, including Seller's warranties, and PWC shall have the right to conduct further inspections after Seller has carried out its remedial actions.

7. Price. PWC shall purchase the Goods from Seller in the total amount of \$_____ ("Price"). The Price includes all packaging, transportation costs to the Delivery Location, insurance, fees, and applicable taxes, including, but not limited to, all sales, use, or excise taxes. No increase in the Price is effective, whether due to increased material, labor, transportation costs or otherwise, without the prior written consent of PWC.

8. Billing and Payment. Seller shall invoice PWC within thirty (30) days after the completion of the delivery of the Goods. PWC shall pay the undisputed portion of the invoice within forty-five (45) calendar days after PWC's receipt of the invoice. All payments from PWC to Seller shall be transferred electronically to Seller's designated financial institution, and Seller shall, prior to delivery of its invoice to PWC, supply the name of Seller's financial institution, routing number, and account number on the form available from PWC and provide to PWC a completed and signed IRS Form W-9. Seller has the right to impose a late payment charge of one percent (1%) per month for amounts unpaid by PWC by the date due.

Provider shall comply with all of the following requirements so that PWC may recover the full amount of sales and use tax under North Carolina law permitted under the law:

- a. Furnish PWC documentary evidence showing the material used, sales tax paid, and County paid (County of sale). The documentary evidence shall include Provider's certified statement showing total purchases of materials from each separate vendor and total sales taxes charged to PWC and paid by Provider. The documentary evidence shall also include Provider's certified statement as to the amount paid by PWC for sales tax on the Goods. A certified form is required even if no sales tax was paid for the pay request period. Materials used from Provider's warehouse stock shall be shown in a

- certified statement at warehouse stock prices and amount of County of Use Tax charged to PWC and paid by Provider;
- b. Provider shall furnish to PWC invoices or copies of invoices for all materials purchased for said work within pay request period, and such invoices shall state the amount of North Carolina Sales Tax, if any, paid for the Goods. Provider shall also furnish to PWC invoices identifying the amount paid for the sales and use tax on Services that are subject to such taxation under North Carolina law; and
 - c. Provider shall not include any tax paid on supplies, tools, and equipment that Provider uses to perform its obligations under this Agreement.

9. Warranties. Seller warrants to PWC that for a period of twenty-four (24) months from the Delivery Date, all Goods will: (a) be free from any defects in workmanship, material and design; (b) conform to applicable specifications, drawings, designs, samples and other requirements set forth in the Contract Documents or as specified by PWC and agreed to by Seller; (c) be fit for their intended purpose and operate as intended; (d) be free and clear of all liens, security interests, or other encumbrances; and (e) not infringe or misappropriate any third party's patent or other intellectual property rights. These warranties survive any delivery, inspection, acceptance or payment of or for the Goods by PWC. These warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of PWC's discovery of the noncompliance of the Goods with the foregoing warranties. If PWC gives Seller notice of noncompliance with this Section 9, Seller shall, at its own cost and expense, within thirty (30) days replace or repair the defective or nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective or nonconforming goods to Seller and the delivery of repaired or replacement Goods to PWC.

10. Termination. Notwithstanding any other or additional remedies that may be provided under this Agreement, PWC may terminate this Agreement with immediate effect upon written notice to the Seller, either before or after the acceptance of the Goods, if: (a) Seller repudiates, or threatens to repudiate, any of its obligations under this Agreement; (b) Seller is in breach of, or threatens to breach, any representation, warranty, or covenant of Seller under this Agreement and either the breach cannot be cured or, if the breach can be cured, it is not cured by Seller within a commercially reasonable period of time under the circumstances, in no case exceeding seven (7) days following Seller's receipt of Notice of such breach; (c) Seller fails to, or threatens to fail to, timely deliver Goods conforming to the requirements of, and otherwise in accordance with, the terms and conditions of this Agreement; or (d) Seller becomes insolvent, files a petition for bankruptcy, or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors. PWC shall be obligated to pay Seller only for work performed and reasonable expenses incurred until delivery of the notice of termination.

11. Insurance. During the term of this Agreement and for a period of three (3) years after the date of this Agreement, Seller shall, at its own expense, maintain and carry insurance in full force and effect that includes, but is not limited to, commercial general liability (including product liability) with limits no less than \$1,000,000 for each occurrence and \$3,000,000 in the aggregate and umbrella liability in a sum no less than \$5,000,000, 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 delivering any Goods, Seller shall deliver to PWC

certificates of insurance confirming each such coverage, and Seller 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 insurance policy. Seller 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 Seller fail to provide and maintain certificates as set forth herein, PWC shall have the right, but not 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 Seller, or to seek reimbursement for said payments from Seller. Any such sums paid by PWC shall be due and payable immediately by Seller upon notice from PWC. The insurance provisions of this Agreement shall not be construed as a limitation on Seller's responsibilities and liabilities pursuant to the terms and conditions of this Agreement.

12. Indemnification. Seller shall indemnify, defend, and hold harmless PWC and its Commissioners, officers, employees, agents, and representatives (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 arising out of negligent or willful acts, violations of law, infringement of any patent, trademark, trade secret, copyright, or other intellectual property right of a third party, or omissions or breach of the obligations set forth in this Agreement by Seller or any of its employees, agents, representatives, and subcontractors. Seller's obligation to indemnify, defend, and hold harmless the Indemnitees shall survive the termination of this Agreement and shall include the duty to pay for the reasonable attorney's fees and costs associated with defending the Indemnitee(s) by the legal counsel of each Indemnitee's choice.

13. Notices. Any notice which either Party is required or desires to give the other 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 hereinbelow, 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 the 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 therefor is signed, or refusal to accept the mailing by the addressee is noted thereon by the postal authorities.

To PWC:

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

To Seller:

[INSERT MAILING ADDRESS]

14. Compliance. Seller 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. Seller further acknowledges that all employers, as defined by Article 2, Chapter 64 of the North Carolina General Statutes, must use E-Verify and after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify in accordance with NCGS §64-26(a). Seller hereby pledges, attests, and warrants through execution of this Agreement that Seller 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 Seller to provide services for PWC shall comply with all E-Verify requirements. Failure to comply with the above requirements shall be considered a breach of this Agreement. Seller hereby further acknowledges that the execution and delivery of this Agreement constitutes Seller's certification to PWC and to the North Carolina State Treasurer that, as of the Effective Date, Seller 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. Seller represents and warrants to Commission that Seller, 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. Seller 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. Seller 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.

15. Cumulative Remedies. All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law or in equity.

16. Miscellaneous Provisions. Seller is and shall remain an independent contractor. Nothing contained in this Agreement shall be deemed or construed to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between the Parties. No breach or non-performance of any term of this Agreement shall be deemed to be waived by either Party unless said breach or non-performance is waived in writing and signed by the Parties. No waiver of any breach or non-performance under this Agreement shall be deemed to constitute a waiver of any subsequent breach or non-performance, and for any such breach or non-performance each Party shall be entitled to such remedies as provided by law. No consent or waiver by a Party shall be effective unless it is in writing and then only to the extent specifically stated. The invalidity, illegality, or un-enforceability of any portion or provision of this Agreement shall in no way affect the validity, legality, and/or enforceability of

any other portion or provision of this Agreement. Any invalid, illegal, or unenforceable provision of this Agreement shall be deemed severed from this Agreement, and the balance of the Agreement shall be construed and enforced the same as if the Agreement had not contained any portion or provision which was invalid, illegal, or unenforceable; provided, however, severability shall not prevent this entire Agreement from being void in the event any portion or provision of this Agreement that is of the essence of this Agreement shall be void. This is the entire agreement of the Parties on the subject matter hereof, and all prior negotiations, representations, proposals, letters, agreements, understandings, or other communications between the Parties, whether written or oral, are hereby merged into the Agreement and superseded by this Agreement. This Agreement shall not be modified unless such modifications are evidenced in writing, signed by both Parties. Nothing herein shall be construed to give any right or benefits hereunder to anyone other than the Parties. This Agreement shall be governed by the laws of the State of North Carolina without the application of the laws of any other state. The exclusive venue for all mediations and litigation and any other legal proceedings regarding this Agreement shall be the State and Federal Courts serving Cumberland County, North Carolina, and Seller consents to personal jurisdiction in such courts. Seller irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court serving Cumberland County or that any such suit, action or proceeding brought in any such court serving Cumberland County has been brought in an inconvenient forum. 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. The titles of the paragraphs 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.

17. Conflicts. Except with PWC's knowledge and prior written consent, the Seller shall not engage in any activity or accept any employment, interest or contribution that would reasonably appear to compromise the Seller's professional judgment with respect to the Goods. The Seller shall disclose to PWC any business or personal relationship with any Commissioner, officer, director, manager, or supervisor of PWC.

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

Fayetteville Public Works Commission

[INSERT SELLER'S 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:

Legal Dept.

SAMPLE