



**CITY OF BEAUFORT**  
1911 BOUNDARY STREET  
BEAUFORT MUNICIPAL COMPLEX  
BEAUFORT, SOUTH CAROLINA 29902  
(843) 525-7070

**CITY COUNCIL SPECIAL REGULAR MEETING AGENDA**  
**March 12, 2019**

**NOTE: IF YOU HAVE SPECIAL NEEDS DUE TO A PHYSICAL CHALLENGE,  
PLEASE CALL IVETTE BURGESS 525-7070 FOR ADDITIONAL  
INFORMATION**

**STATEMENT OF MEDIA NOTIFICATION**

"In accordance with South Carolina Code of Laws, 1976, Section 30-4-80(d), as amended, all local media was duly notified of the time, date, place and agenda of this meeting."

**SPECIAL REGULAR MEETING - Council Chambers, 2nd Floor - 5:00 PM**

**I. CALL TO ORDER**

A. Billy Keyserling, Mayor

**II. INVOCATION AND PLEDGE OF ALLEGIANCE**

A. Mike McFee, Mayor Pro Tem

**III. PROCLAMATIONS/COMMENDATIONS/RECOGNITIONS**

A. Proclamation Celebrating June Stevenson's 100th Birthday

**IV. NEW BUSINESS**

- A. Authorization to allow City Manager to execute the Engineering Contract for Waterfront Park Piling repairs
- B. Approve FY 2019 Budget Amendment #2 - 1st Reading
- C. Authorization to allow City Manager to execute contract pending Department of Commerce approval

**V. REPORTS**

- City Manager's Report
- Mayor Report
- Reports by Council Members

**VI. ADJOURN**



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## CITY OF BEAUFORT

### DEPARTMENT REQUEST FOR CITY COUNCIL AGENDA ITEM

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**TO:** CITY COUNCIL **DATE:** 3/11/2019  
**FROM:** City Clerk, Ivette Burgess  
**AGENDA ITEM**  
**TITLE:** Proclamation Celebrating June Stevenson's 100th Birthday  
**MEETING**  
**DATE:** 3/12/2019  
**DEPARTMENT:** City Clerk

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*BACKGROUND INFORMATION:*

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*PLACED ON AGENDA FOR:*

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*REMARKS:*

**ATTACHMENTS:**

Description	Type	Upload Date
Proclamation	Backup Material	3/11/2019



## PROCLAMATION

**WHEREAS**, June Stevenson was born June Marie Reichenbach on March 6, 1919 in Detroit, Michigan. She is the mother of three adult children, grandmother to five grandchildren and great-grandmother to five boys and five girls.

**WHEREAS**, June Reichenbach was raised in Detroit, Michigan and received her education in the Detroit school system. After high school she attended Art School and went on to be a model with the J.L. Hudson Department Store in Detroit.

**WHEREAS**, June met her husband, Donn Chown and they were married in May of 1942. At that time Donn was in the Army-Air Corps and stationed in Boston, Massachusetts. After the War they moved back to Detroit where Donn was in radio broadcasting and June started raising their children.

**WHEREAS**, the Chown family moved to Schenectady, New York and lived there for five years. During that time June was involved with the First Presbyterian Church in Schenectady and visited antique shops with the intention of refurbishing items that would be used as furniture and decorations in the home.

**WHEREAS**, in 1961 the family moved to Virginia in preparation of Donn joining the Foreign Service. Within two years Donn, along with family, was assigned to the American Embassy in Jakarta, Indonesia. In 1965 the family was transferred to Tokyo, Japan and lived there for four years. While in Japan, June volunteered extensively at the U.S. military hospitals in the Tokyo area. She spent many hours visiting with the wounded from Vietnam and Laos. June also had many responsibilities at the American Embassy being a diplomat's wife.

**WHEREAS**, while in Japan June met Martin Stevenson, who would become her second husband. They were married in the summer of 1971. Martin was the head of the Maritime Administration at the Embassy in Tokyo, so they returned to Japan for Martin to complete his assignment.

**WHEREAS**, after retirement Martin and June lived on Chesapeake Bay for a short time. A few years later the cold weather was just too much for them and they decided to head south. That's when Beaufort became home for them over 40 years ago.

**WHEREAS**, June enjoys painting, sewing, and participating in book clubs. Her first love though, are the charcoal drawings she does of dogs and cats. She gives the Glory to God for giving her this talent and ability which enables her to share this gift with others.

**NOW, THEREFORE**, the City Council of the City of Beaufort, South Carolina, hereby proclaims March 6, 2019 as

**JUNE MARIE STEVENSON DAY**  
June Stevenson Celebrates Her 100<sup>th</sup> Birthday

**IN WITNESS THEREOF**, I hereunto set my hand and caused the Seal of the City of Beaufort to be affixed this 12<sup>th</sup> day of March 2019.

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BILLY KEYSERLING, MAYOR

ATTEST:

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IVETTE BURGESS, CITY CLERK



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## CITY OF BEAUFORT

### DEPARTMENT REQUEST FOR CITY COUNCIL AGENDA ITEM

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**TO:** CITY COUNCIL **DATE:** 3/6/2019  
**FROM:** Kathy Todd  
**AGENDA ITEM** Authorization to allow City Manager to execute the Engineering Contract for Waterfront  
**TITLE:** Park Piling repairs  
**MEETING** 3/12/2019  
**DATE:**  
**DEPARTMENT:** Finance

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#### *BACKGROUND INFORMATION:*

McSweeney Engineering Inc is the recommended Engineer for the Waterfront Park piling repair project. Request the City Council authorize the City Manager to execute the attached contract.

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***PLACED ON AGENDA FOR:*** Action

#### ***REMARKS:***

#### **ATTACHMENTS:**

Description	Type	Upload Date
Contract for Engineering Services	Cover Memo	3/6/2019

William Prokop  
CITY MANAGER  
843-525-7070  
FAX 843-525-7013



COUNCIL MEMBERS:  
Billy Keyserling, Mayor  
Mike McFee, Mayor Pro Tem  
Philip Cromer  
Stephen Murray  
Nan Sutton

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*Standard Agreement Between  
City of Beaufort and McSweeney Engineers.  
where the basis of payment is a STIPULATED SUM*

***This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.***

**AGREEMENT** made as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year **2019**

**BETWEEN** the Owner:

**CITY OF BEAUFORT  
1911 BOUNDARY STREET  
BEAUFORT, SOUTH CAROLINA 29902**

and the Consultant

**MCSWEENEY ENGINEERS  
495C MEETING STREET  
CHARLESTON, SC 29403**

The Project is:

**ENGINEERING SERVICES – WATERFRONT PARK PILINGS**

The Engineer is:

**Not Applicable**

**The Owner and McSweeney Engineers. agree as follows:**

**ARTICLE 1 - THE DOCUMENTS**

The contract Documents consist of this Agreement, (**City of Beaufort and McSweeney Engineers**) Conditions of the Contract (General, Supplementary and other Conditions), the Request for Qualifications (RFQ #2019-104) and the Proposal Submitted by McSweeney Engineers. in response to this RFQ, Drawings, Specifications, addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement

William Prokop  
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between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Document, other than Modifications appears in Article 8.

**ARTICLE 2 - THE WORK OF THIS AGREEMENT-**

**McSweeney Engineers** shall fully execute the Work described in the Agreement, except to the extent specifically indicated in the Agreement to be the responsibility of others.

**ARTICLE 3 - DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

**3.1** The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below, or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

**NOTICE TO PROCEED WILL BE ISSUED WITHIN (1) DAY OF SIGNED AGREEMENT.**

If, prior to the commencement of the Work, the Owner requires time to file mortgages, mechanic's liens and other security interests, the Owner's time requirement shall be as follows:

**SEVEN (7) DAYS**

**3.2 McSweeney Engineers:** Time shall be measured from the date of commencement.

**3.3 McSweeney Engineers** shall achieve Substantial Completion of the entire Work not later than **NINETY (90) days** from the date of commencement. Completion of the Bidding and Construction Administration Services will be dependent on the City of Beaufort and Contractors schedules.

**ARTICLE 4 - CONTRACT SUM**

**4.1** The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be:

**(\$16,392.00) Sixteen thousand three hundred and Ninety-Two dollars and no cents**

**Plus (\$2,850.00) per site visit for Construction Verification**

subject to additions and deductions as provided in the Agreement.

**ANY ADDITIONS ABOVE THE ORIGINAL DOLLAR AMOUNT WILL BE THE RESPONSIBILITY OF THE OWNER.**

**4.2** The Contract Sum is based upon the following alternates, if any, which are described in the Agreement and are hereby accepted by the Owner:

**NO ALTERNATES REQUIRED IN THIS AGREEMENT**

William Prokop  
CITY MANAGER  
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FAX 843-525-7013



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- 4.3 Unit prices, if any, are as follows: **\$16,392.00 LUMP SUM**  
**\$2,850.00 Per Visit (Construction Verification)**

**ARTICLE 5 - PAYMENTS**

**5.1 Progress Payments**

**5.1.1** Based upon Applications for Payment submitted to the City by the Consultant and Certificates for Payment issued by the County, shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Agreement

**5.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

**5.1.3** Provided that an Application for Payment is received by the City not later than the **Fifth (5th)** day of a month, the Owner shall make payment to the Contractor not later than the **Twenty (20<sup>th</sup>) day** of the **same** month. If an Application for Payment is received by the City after the application date fixed above, payment shall be made by the Owner not later than fifteen (15) days after the City receives the Application for Payment.

**5.1.4 LABOR REQUIREMENTS**

**Not Applicable**

**5.1.5** Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

**5.1.6** Subject to other provisions of the Agreement, the amount of each progress payment shall be computed as follows:

1. Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of percent (0%). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided.
2. Subtract the aggregate of previous payments made by the Owner; and
3. Subtract amounts, if any, for which the Consultant has withheld or nullified a Certificate for Payment.

**5.1.7** The progress payment amount determined in Subparagraph 5.1.6 shall be further modified under the following circumstances:

1. Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims: and
2. Add, if final completion of the work is thereafter materially delayed through no fault of the Architect, any additional amounts payable.

William Prokop  
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**5.2 FINAL PAYMENT**

**5.2.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to **McSweeney Engineers** when:

1. **McSweeney Engineers** has fully performed the Agreement except for the City's responsibility to correct Work, and to satisfy other requirements, if any, which extend beyond final payment, and
2. A final Certificate for Payment has been issued by the Engineer.

**5.2.2** The Owner's final payment to **McSweeney Engineers** shall be made no later than (5) five days after the acceptance and completion of work, by the City.

**ARTICLE 6 - TERMINATION OR SUSPENSION**

**6.1** The Agreement may be terminated by the Owner or **McSweeney Engineers** prior to work commencing.

**6.2** The work may be suspended by the Owner.

**ARTICLE 7 - MISCELLANEOUS PROVISIONS**

**7.1** The Owner's representative is:

**MATT STCLAIR, DIRECTOR OF PUBLIC PROJECTS**  
**1911 BOUNDARY ST**  
**BEAUFORT, SOUTH CAROLINA 29902**

**7.2** **McSweeney Engineers** representative is

**DAVID MCSWEENEY**  
**MCSWEENEY ENGINEERS**  
**495C MEETING STREET**  
**CHARLESTON, SC 29403**

**7.3** Neither the Owner's nor the **McSweeney Engineers** representative shall be changed without ten days written notice to the other party.

**7.4** Other Provisions:

**UTILITY CONTACTS**

<b>Gray Wilson – SCE&amp;G</b>	<b>843-525-7775</b>
<b>Kerry Bunton – SCE&amp;G</b>	<b>843-525-7742</b>
<b>David Stiles – SPRINT</b>	<b>843-525-7932</b>
<b>Frank Denmark – HARGRAY</b>	<b>843-815-1682</b>



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**ARTICLE 8 - ENUMERATION OF CONTRACT DOCUMENTS**

**8.1** The Agreement, except for Modifications issued after execution of this Agreement, are enumerated as follows:

**8.1.1** The Agreement is this executed Standard Form of Agreement Between the City of Beaufort and (Owner) and McSweeney Engineers. (Consultant)

**8.1.2** The General Conditions are the General Conditions of the Agreement for Engineering Services.

**8.1.3** The Supplementary and other Conditions of the Contract are those contained in the Project Manual and are as follows:

**Not Applicable**

**8.1.4** The Specifications are those contained in the Project Manual dated as in Subparagraph 8.1.3, and are as follows:

**SEE SCOPE OF WORK CONTAINED IN THE RFQ 2019-104**

**8.1.5** The Surveyor's record drawings, survey, and photos are to be part of this contract and due to the City upon contract completion.

**8.1.6** The Addenda, if any, are as follows:

**NONE RECORDED**

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 8.

**8.1.7** Other documents, if any, forming part of the Contract Documents are as follows:

**THE REQUEST FOR QUALIFICATIONS -RFQ# 2019-104, AND THE PROPOSAL SUBMITTED IN RESPONSE TO THE RFQ ARE ATTACHED HERETO AND BY THIS REFERENCE INCORPORATED HEREIN.**

William Prokop  
CITY MANAGER  
843-525-7070  
FAX 843-525-7013



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This Agreement is entered into as of the day and year first written above and is executed in at least three original copies, of which one is to be delivered to the Public Works Department, one to the Surveyor for use in the administration of the Agreement, and the remainder to the Owner.

\_\_\_\_\_  
**CITY OF BEAUFORT**  
*(Signature)*

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

\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
**MCSWEENEY ENGINEERS**  
**(AUTHORIZED REPRESENTATIVE)**  
*(Signature)*

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

\_\_\_\_\_  
*(Printed name and title)*

CITY OF BEAUFORT  
STATE OF SOUTH CAROLINA  
REQUEST FOR QUALIFICATIONS  
RFQ NO. 2019-104



CITY OF BEAUFORT  
ENGINEERING SERVICES  
DUE: FRIDAY JAN 4th, 2019

# **CITY OF BEAUFORT, SC**

## **REQUEST FOR QUALIFICATIONS**

### **RFQ NO. 2019-104**

**SEALED PROPOSALS** will be received in the Finance Department, 2nd Floor, City Hall, 1911 Boundary Street, Beaufort, South Carolina until **2:00 P.M. ET Friday, January 4<sup>th</sup>, 2019**. All qualified contractors are invited to submit proposals to the City of Beaufort for the following:

#### **City of Beaufort ENGINEERING SERVICES**

**SUBMIT:** One (1) unbound original and three (3) bound copies of all requested documentation and one (1) original Cost Proposal must be received on or before **2:00 P.M. ET January 4<sup>th</sup>, 2019**. **The Cost Proposal must be submitted in a separate sealed envelope which specifies, on its face, the name of the firm and the RFQ number.**

**ADDRESS TO:** City of Beaufort, City Hall, 2nd Floor Finance Department, Attention: **Paul McGee**

**MAILING ADDRESS:** 1911 Boundary St., Beaufort, South Carolina 29902

**OFFICE ADDRESS:** 1911 Boundary St., Beaufort, South Carolina 29902

**EMAIL ADDRESS:** [pmcgee@cityofbeaufort.org](mailto:pmcgee@cityofbeaufort.org)

**PHONE NUMBER:** 843-525-7071

**FAX NUMBER:** 843-986-5606

**MARK OUTSIDE ENVELOPE:** "RFQ NO. 2019-104 ENGINEERING SERVICES"

#### **DEADLINE ENFORCED**

PROPOSALS DELIVERED AFTER THE TIME AND DATE SET FOR RECEIPT OF PROPOSALS SHALL NOT BE ACCEPTED AND WILL BE RETURNED UNOPENED TO THE OFFEROR. IT IS THE OFFEROR'S RESPONSIBILITY TO ENSURE TIMELY DELIVERY OF THEIR PROPOSALS. WEATHER, FLIGHT DELAYS, CARRIER ERRORS AND OTHER ACTS OF OTHERWISE EXCUSABLE NEGLIGENCE ARE RISKS ALLOCATED TO OFFERORS AND WILL NOT BE EXEMPTED FROM DEADLINE REQUIREMENTS. E-MAIL, TELEPHONE, OR FACSIMILE PROPOSALS WILL NOT BE ACCEPTED.

Any offer submitted as a result of this RFP shall be binding on the offeror for **NINETY (90)** calendar days following the specified opening date. Any proposal for which the offeror specifies a shorter acceptance period may be rejected.

### **Proprietary and/or Confidential Information**

Your proposal package is a public document under the South Carolina Freedom of Information Act (FOIA), except as to information that may be treated as confidential as an exception to disclosure under the FOIA. If you cannot agree to this standard, please do not submit your qualification.

All information that is to be treated as confidential and/or proprietary must be **CLEARLY** identified, and each page containing confidential and/or proprietary information, in whole or in part, must be stamped and/or denoted as **CONFIDENTIAL**, in bold, in a font of at least 12-point type, in the upper right-hand corner of the page. *All information not so denoted and identified shall be subject to disclosure by the City.*

This Request for Qualification is being issued by the City of Beaufort. Direct all questions or request for clarification of this RFQ by email, mail, or fax to contact information listed above.

Offerors are specifically directed not to contact any other City personnel for meetings, conferences, or technical discussions related to this request unless otherwise stated in this RFP. Failure to adhere to this policy may be grounds for rejection of your proposal.

Offerors ARE CAUTIONED that any statement made by City staff persons that materially change any portion of this RFQ shall not be relied upon unless they are subsequently ratified by a formal written amendment to this RFQ. Any revisions to this RFQ will be issued and distributed as an addendum. All addenda, additional communications, responses to questions, etc. pertaining to the Request for Qualifications may be accessed on the City of Beaufort website under Quick Links – “Bid Opportunities” at [www.cityofbeaufort.org](http://www.cityofbeaufort.org).

All Offerors should consult this website for updates before submitting bids.

**THE DEADLINE FOR QUESTIONS IS: 4:00 P.M., DEC 27th, 2018. ANSWERS TO SUBMITTED QUESTIONS WILL BE POSTED ON THE CITY WEBSITE BY 4:00 PM ON DEC 28TH, 2018.**

If the Offeror discovers any ambiguity, conflict, discrepancy, omission or other error in the RFP, Offeror shall immediately notify the City of such error in writing and request modification or clarification of the document. The Offeror is responsible for clarifying any ambiguity, conflict, discrepancy; omission or other error in the RFQ or it shall be deemed waived.

The City of Beaufort reserves the right to reject any or all proposals, or any parts thereof, waive informalities, negotiate terms and conditions, and to select an Offeror that best meets the needs of the City of Beaufort and its employees.

### **Compliance with the South Carolina Illegal Immigration Reform Act**

Any Contractor entering into a service contract with the City of Beaufort must certify to the City of Beaufort that the Contractor intends to verify any new employees’ status, and require any sub-consultants performing services under the service contract to verify their new employees’ status, per the terms of the South Carolina Illegal Immigration Reform Act, and as set out in Title 41, Chapter 8 of the Code of Laws of South Carolina, 1976.

## **POLICY CONCERNING MINORITY AND WOMAN OWNED BUSINESS ENTERPRISES**

### **Intent**

Businesses owned and operated by women and minority persons, in general, have been historically restricted from full participation in the nation's free enterprise system to a degree disproportionate to other businesses.

The City believes it is in the community's best interest to assist minority and woman owned businesses to develop fully, in furtherance of City's policies and programs which are designed to promote balanced economic and community growth.

The City, therefore, wishes to ensure that minority and woman owned businesses (M/WBEs) are afforded the opportunity to fully participate in the City's overall procurement process and will not be discriminated against on the grounds of race, color, sex, or national origin in consideration for an award.

### **Goal for Participation**

The City adopts the State of South Carolina's goal for participation of M/WBEs: ten percent (10%) of annual controllable procurement expenditures which are defined as agreements between the City and a Vendor to provide or procure labor, materials, equipment, supplies and services to, for or on behalf of the City. However, a specific expectation has not been set for this RFQ.

### **Required Forms**

Contractors submitting proposals are required to include completed forms that are found at the end of the General Terms & Conditions. The City's General Terms & Conditions, a required component of all competitive procurement proposals, may be accessed on the City's website under Quick Links – Bid Opportunities – [www.cityofbeaufort.org](http://www.cityofbeaufort.org). All proposers are to certify that they have read the General Terms & Conditions and will adhere to them as a component of the contract documents.

Contractors should also be aware that, should a contract be awarded, the City will require reports of the utilization of any minority business enterprises to be filed along with requests for payment. The City reserves the right to audit accuracy of the utilization reports that are filed.

The City of Beaufort reserves the right to reject any or all bids; to waive any informality or irregularity not affected by law; to evaluate, in its absolute discretion, the bids submitted; to award the contract according to the bid which best serves the interests of the City; or to not award the contract if the City determines that it is not in its best interest to do so.

**Proposals that are not signed will not be accepted as complete and shall not be considered. Proposals must be signed in ink (not typed) in the appropriate space(s) by an authorized officer or employee of the offeror.**

The words "Bidder", "Offeror", "Proposer", "Vendor", "Operator", "Contractor", and "Company" are used interchangeably throughout this RFQ, and are used in place of the person, vendor, or corporation submitting a bid.

**REQUEST FOR QUALIFICATIONS  
ENGINEERING SERVICES FOR THE REPAIRING OF PILINGS  
AT WATERFRONT PARK**

**1. INVITATION**

The City of Beaufort is soliciting submissions of Statements of Qualifications from firms interested in providing Professional Engineering Services related to the repairing of pilings for the Waterfront Park.

**2. HISTORY**

Henry C. Chambers Waterfront Park is the City of Beaufort's most prominent park and is located on the Beaufort River. The park was originally constructed in 1974. The waterfront portion of the park consists of an approximately 1300 ft long concrete Relieving Platform. The Relieving Platform consists of 140 prestressed concrete pile bents (570 piles) supporting precast concrete caps and concrete deck with approximately 6 ft of earthen fill. A precast concrete fascia panel is located on the outboard portion of the platform and extends to Mean Low Water giving the appearance of continuous seawall. Due to this arrangement, access is only available to divers using surface-supplied air and penetration diving techniques.

In 2014 a comprehensive above water and underwater inspection of the seawall and Relieving Platform was conducted. At that time, deterioration or distress was observed on a multitude of piles supporting the structure. Several piles were broken or exhibited severe loss of section.

In 2016 the structure was reevaluated by conducting a Level II and III underwater investigation. During the reevaluation, several piles were cleaned of marine growth to assess the underlying condition. In addition, concrete cores were taken and analyzed for a wide array of deterioration mechanisms. This investigation revealed a high chloride ion content of the prestressed piles, exposed prestressing strands, and an increase in deterioration.

The result of these evaluations has led to the conclusion that significant repairs are necessary in order to prolong the life of the structure.

The activity that is the subject of this RFQ is financed in part with funds from the Land and Water Conservation Fund

**3. SCOPE OF WORK**

The primary goal of this project is to preserve the existing and remaining structural capacity of the Relieving Platform. This will be accomplished by updating the previous underwater inspection data, determining cost effective methods to prolong the life of the structure, designing and then implementing these repairs.

The scope of for the Engineering Services is as follows:

- **TASK 1 - Structural Condition Survey**

Consultant shall conduct an underwater structural investigation of all accessible structural elements of the Relieving Platform in order to update the 2014 Inspection Report. Diving operations shall be conducted by an OSHA-compliant dive team led by a South Carolina registered Professional Engineer. Diving operations shall be conducted

using surface-supplied air. The use of SCUBA shall not be permitted. A minimum of 50 percent of all diving inspections shall be conducted with the Professional Engineer of Record utilized as the primary diver. Following the structural condition survey, the consultant shall provide a report clearly quantifying and prioritizing structural components needing repair. **(Consultant should provide Rate/Lump Sum for this Task in the Cost Proposal as described in paragraph 4)**

#### **TASK 2 - Engineering Design Development**

Using the information obtained from Task 1, Consultant shall develop a repair plan that provides the most cost-effective method of preserving the structural capacity of the Relieving Platform. Repair strategies may include, but are not limited to; pile encapsulation, spall repair, and cathodic protection. Consultant shall generate repair plans and specifications for the project. Repair plans shall be signed and sealed by the Engineer of Record listed in TASK 1. **(Consultant should provide Rate/Lump Sum for this Task in the Cost Proposal as described in paragraph 4)**

#### **TASK 3 - Bid Administration**

When the City has approved the design plans and specifications, Consultant shall assist the City in bid administration. This work may include but is not limited to: assisting the City develop the bid package, attending pre-bid meetings, publishing addenda, tabulating bids, and answering Requests for Information. **(Consultant should provide Rate/Lump Sum for this Task in the Cost Proposal as described in paragraph 4)**

#### **TASK 4 - Construction Management**

Throughout the course of the project Consultant's Engineer of Record shall act as liaison between City and Contractor. Consultant shall review and approve Contractor's pay applications and schedule. Consultant shall answer RFI's, develop and approve field changes, if applicable and continually update the City on construction progress. **(Consultant should provide Rate/Lump Sum for this Task in the Cost Proposal as described in paragraph 4)**

#### **TASK 5 - Construction Verification**

Consultant shall provide underwater construction inspection and verification throughout the process in order to ensure that repairs are being performed in accordance with the plans and specifications. One site visit shall be conducted every week during construction. Diving operations shall be conducted by an OSHA-compliant dive team using surface-supplied air. SCUBA shall not be permitted. A minimum of 75 percent of construction inspections shall be conducted with the Professional Engineer of Record as identified in Tasks 1 and 2 utilized as the primary diver. Consultant shall provide the City with a construction inspection log following each site visit. Construction logs shall consist of photographic and/or video documentation of the construction progress, action items, corrective action, or other pertinent details. **(Consultant shall provide a UNIT COST PER SITE VISIT for an OSHA-compliant dive team for this Task in the Cost Proposal as described in paragraph 4)**



#### 4. EVALUATION OF THE STATEMENTS OF QUALIFICATIONS

The evaluation of each firm's qualifications will be accomplished by an evaluation team, to be designated by the City, which will determine the firm's qualifications most beneficial to the City, taking into consideration the evaluation factors set forth in the RFQ.

The City reserves the right to reject any submittal that does not comply with all the submittal requirements based on the evaluations of the Statements of Qualifications.

The following general criteria will be used in evaluating and rating Statements of Qualifications. The entire team will be evaluated. The right is reserved hereunder to modify the criteria and to add or delete criteria. **(A Cost Proposal must be submitted in a separate sealed envelope which specifies, on its face, the name of the firm and the RFQ number. The Cost Proposal will only be used by the evaluation team if two or more proposers are equal in all facets of the Statement of Qualifications rating and evaluation.)**

##### A. PROJECT TEAM

The selected firm will provide documentation of the most relevant professional experience involving projects similar to the Waterfront Park Pilings project.

1. The selected firm will also provide documentation that its professional(s) has/have professional qualifications that meet or are comparable with the needs and requirements of the City.
2. Demonstrated success of comparable undertakings related to the following:
  - Overall design quality provides improvements that respect the waterfronts historic fabric and integrate sustainable design concepts.
  - Managing projects of similar scale and complexity.
3. Prior experience of design team members working in a collaborative relationship with clients.

##### B. PROJECT EXPERIENCE

1. Major project experience involving the repairing of:
  - a. Environmentally responsible or sustainable designed pilings.
  - b. Other projects (built or un-built) that may demonstrate design capability.

#### 5. SUBMITTAL REQUIREMENTS

- A. COVER LETTER: An officer of the firm submitting the Statement of Qualifications and the designated project lead shall sign the cover letter. In case of joint venture, an officer of each joint venture partner shall sign the cover letter as well as the designated project lead.

##### B. TABLE OF CONTENTS

## C. STATEMENT OF QUALIFICATIONS

1. **PROJECT TEAM:** Provide a general introduction on the makeup of the project team, including each team member's area of expertise and note any past experience of the team members working together on other projects. The project team should include the disciplines of engineering, and any other consulting disciplines deemed necessary by the Proposer by a single firm or by several firms. For each team member, include the name, address, and telephone number of the firm.
2. **PROJECT EXPERIENCE:** Relevant project experience of any project team member may be submitted. Up to four (4) examples of Engineering projects may be submitted.
  - Examples of constructed projects of related scope and complexity to community services, executed by any team member, that best reflects their overall design and technical capability.
  - Examples of projects executed by any design team member that demonstrates an innovated approach to environmentally responsible or sustainable design.

For each project, submit a one-page narrative description of the project. Color photos or graphics depicting the projects are encouraged. The narrative description shall include the Engineer of record, the member's role in the design of the project, the type of facility, location and client name, total gross square feet, total construction cost, and a brief statement indicating the relevance of this project to the Waterfront Park Pilings project.

3. **REFERENCES:** Provide at least three (3) owner/user references for the firm. For each reference, list the person's name, address and current telephone number, email address, and nature of the reference or relationship.

It is the City's intent to contract with one proposer to provide the services as detailed herein. Award of any proposal may be made without discussion with Proposers after responses are received. The Proposers submitting sealed proposals will be evaluated by an evaluation committee. The committee will evaluate each component separately. After careful evaluation, the committee will rank the Proposers and make their recommendation to the City Manager. The City reserves the right to accept or reject any and all bids that is in the best interest of the City.

The City may choose to interview one or more contractor(s) responding to this RFQ. The City reserves the right to request and obtain, from one or more contractor(s), supplementary information as may be necessary for the City to analyze the proposal pursuant to the evaluation criteria. The City reserves the right to accept or reject any and all proposals that is in the best interest of the City.

CITY OF BEAUFORT  
SOUTH CAROLINA  
RFQ SIGNATURE PAGE  
RFQ NO. 2019-104

PROPOSER'S NAME: \_\_\_\_\_

The undersigned, having become familiar with the existing conditions and the Proposal Scope of Services hereby proposed, agrees to complete the work as described in accordance with the Request for Qualifications and Contract Documents.

**Proposer** warrants that no gratuities, in the form of gifts, entertainment, or otherwise, were offered or given by the **Proposer**, to any officer or employee of the City with a view toward securing the contract or securing favorable treatment with respect to any determination concerning the performance of the contract.

This offer is genuine and not made in interest of or on behalf of any undisclosed person, vendor or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; **Proposer** has not directly induced or solicited any other **Proposer** to submit false or sham bid; **Proposer** has not solicited or sought by collusion to obtain for itself any advantage over any other **Proposer** or other **Owner**.

**The words "Bidder", "Offeror", "Proposer", "Vendor", and "Company" are used interchangeably throughout this solicitation, and are used in place of the person, vendor, or corporation submitting a solicitation.**

Proposer has examined copies of all documents and of the following addenda (if applicable):

Addendum No.	Date
_____	_____
_____	_____
_____	_____

Address: Post Office Box: \_\_\_\_\_ Zip: \_\_\_\_\_  
Street: \_\_\_\_\_ Zip: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_  
Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

\*Signature: \_\_\_\_\_ Title: \_\_\_\_\_

**Proposal will not be accepted unless signed in ink (not typed) in the appropriate space by an authorized officer or employee of the bidder.**

Printed Name: \_\_\_\_\_ Date: \_\_\_\_\_

## **CITY OF BEAUFORT GENERAL TERMS AND CONDITIONS**

### **PUBLIC RECORD**

After an award is made, copies of the proposals will be available for public inspection, under the supervision of the City's Purchasing Division from 8:00 a.m. to 5:00 p.m., Monday through Friday, at 1911 Boundary Street, 2nd Floor, City Hall, Beaufort, South Carolina 29902.

### **PROPRIETARY INFORMATION**

The Proposers are asked for any restriction on the use of data contained in their responses and told that proprietary information will be handled in accordance with applicable laws, regulations and policies of the City of Beaufort, South Carolina. All proprietary information shall be labeled as such in the proposal.

### **BACKGROUND CHECK**

The City reserves the right to conduct a background inquiry of each proposer which may include the collection of appropriate criminal history information, contractual business associates and practices, employment histories and reputation in the business community. By submitting a proposal to the City, the proposer consents to such an inquiry and agrees to make available to the City such books and records as the City deems necessary to conduct the inquiry.

### **REQUIREMENTS**

The successful vendor shall comply with all instructions and shall perform services in a manner to commensurate with the highest professional standards by qualified and experienced personnel.

### **JURISDICTION**

This agreement shall be governed by the laws of the state of South Carolina.

### **ASSIGNMENT**

The successful vendor shall not assign, transfer, convey, sublet, or otherwise dispose of any or all of its rights, title, or interest therein, without prior written consent of the City.

### **ACCEPTANCE OF PROPOSAL CONTENT**

Before submitting a proposal, each proposer shall make all investigations and examinations necessary to ascertain all site conditions and requirements affecting the performance of the contract and to verify any representations made by the City upon which the offer will rely. If the proposer receives an award as a result of its proposal, failure to have made such investigations and examinations will in no way relieve the proposer from its obligation to comply in every detail with all provisions and requirements of the contract documents, nor will a plea of ignorance of such conditions and requirements be accepted as a basis for any claim whatsoever by the proposer for additional compensation.

### **COMPETITIVE NEGOTIATION SOLICITATION**

Negotiations shall be conducted, beginning with the proposer ranked first. If a contract satisfactory and advantageous to the City can be negotiated at a price considered fair and reasonable, the award shall be made to that proposer. Otherwise, negotiations with the proposer ranked firsts shall be formally terminated and negotiations with the proposer ranked second shall be conducted. The City reserves the right to cease contract negotiations if it is determined that the lowest responsible bidder cannot perform services specified in their response.

#### FORCE MAJEURE

The successful vendor shall not be held responsible for failure to perform the duties and responsibilities imposed by the contract due to legal strikes, fires, riots, rebellions, and acts of God beyond the control of the consultant, unless otherwise specified in the contract.

#### FAILURE TO ENFORCE

Failure by the City at any time to enforce the provisions of the contract shall not be construed as a waiver of any provisions. The failure to enforce shall not affect the validity of the contract or any part or the right of the City to enforce any provision at any time in accordance with its terms.

#### FAILURE TO DELIVER

Awarded Company cannot enter into another professional services contract within the City of Beaufort without the express written approval from City Council. The contract may be terminated by the City in whole or in part whenever the City determines, in its sole discretion that the Awarded Company has entered into another professional services contract within the City of Beaufort without the express written approval from City Council.

#### CONFLICT OF INTEREST

In the event of failure of the successful vendor to deliver services in accordance with the contract terms and conditions, the City, after due oral or written notice, may procure the services from other sources and hold the successful vendor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that the City may have.

#### EMPLOYMENT DISCRIMINATION

During the performance of the contract, the successful vendor agrees not to discriminate against any employee or applicant for employment because of race, religion, color, sex, age, handicap, or national origin; however, some conditions may be a bona fide occupational qualification reasonably necessary for the normal operations of the successful vendor. The successful vendor agrees to post in conspicuous places, visible to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

#### DETERMINATION OF RESPONSIBILITY

The City may make such investigation as it deems necessary to determine the ability of a proposer to furnish the required services, and the proposer will furnish to the City requested information and data for this purpose. The City reserves the right to reject any proposer if the evidence submitted by or investigation of the proposer fails to satisfy the City that such proposer is properly qualified to carry out the obligations of a Contract, and to deliver the services contemplated herein. Proposer will fully inform themselves as to conditions, requirements, and scope and manner of services before submitting their proposal. Failure to do so will be at the proposer's own risk.

#### INDEMNIFICATION

The successful vendor covenants to save, defend, keep harmless, and indemnify the City and all of its officers, departments, agencies, agents, and employees from and against all claims, loss, damage, injury, fines, penalties, and costs, including court costs, attorney's fees, charges, liability, and exposure, however, caused, resulting from, arising out of, or in any way connected to the successful vendor's negligent performance or nonperformance of the terms of the contract.

## INSURANCE

The vendor shall not commence any work in connection with the contract until the vendor has obtained all of the following types of insurance, nor shall the vendor allow any subcontractor to commence work on a subcontract until all similar insurance required of the subcontractor has been so obtained.

Prior to the actual contract award vendor must supply certificates of insurance and certified copies of all policies and endorsements to the City Clerk. The City shall be exempt from, and in no way liable for, any sums of money which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the vendor or subcontractor providing such insurance.

The vendor agrees to indemnify, defend and hold harmless the City and its authorized agents, officers, volunteers and employees against any and all claims whatsoever arising from this agreement and any cost or expenses incurred by the City or vendor on account of any claim therefore. In order to accomplish the indemnification herein provided for, but without limiting vendor's liability, the vendor shall secure and maintain throughout the term of the contract the following types of insurance with at least the limits shown.

All coverage shall be primary and shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. Original certificates, signed by a person authorized to bind coverage on its behalf, shall be furnished to the City by the successful vendor.

Certificates of insurance must be included in the proposal.

- a) **Commercial General Liability:** The successful vendor shall maintain insurance for protection against all claims arising from injury to person or persons not in the employ of the successful vendor and against all claims resulting from damage to any property due to any act or omission of the successful vendor, his agents, or employees in the operation of the work or the execution of this contract.

Where the work to be performed involves excavation or other underground work or construction, the property damage insurance provided shall cover all claims due to destruction of subsurface property such as wire, conduits, pipes, etc., caused by the successful vendor's operation. The minimum shall be as follows:

Bodily Injury (Injury or Accidental Death) and Property Damage..... \$1,000,000 per occurrence

- b) **Fidelity – Blanket Employee Dishonesty**

The successful vendor shall maintain insurance for protection against all claims for the purpose of covering the Company, its agents or employees, in an amount not less than \$100,000 per employee.

- c) **Theft, Disappearance, and Destruction Coverage**

The successful vendor shall maintain insurance for protection against all claims for the purpose of protecting against loss of money and securities, inside the premises and outside the premises in the care of and custody of a messenger in an amount not less than..... \$500,000 per incident

- d) Comprehensive Automobile Liability: The successful vendor shall maintain Automobile Liability Insurance for protection against all claims arising from the use of vehicles, rented vehicles, or any other vehicle in the production of the work included in this contract. Such insurance shall cover the use of automobiles and trucks on and off the site of the project. The minimum amounts of Automobile Liability Insurance shall be as follows:

Bodily Injury (Injury or Accidental Death) and Property Damage..... \$1,000,000 Combined Single Limit

- e) South Carolina Workers' Compensation Insurance: The successful vendor shall maintain Workers' Compensation Insurance for all of his employees who are in any way connected with the performance under this agreement. Such insurance shall comply with all applicable state laws.

South Carolina Workers' Compensation - Statutory Limits

Employers Liability Insurance - \$500,000 - Each Accident

\$500,000 - Disease Each Employee

\$500,000 - Disease Policy Limit

- f) Professional Liability Insurance: If providing a professional service, the successful vendor shall maintain Professional Liability Insurance to cover errors, acts of omission by the vendor, its agents and representations in the performance of its obligations herein: .....\$1,000,000 per occurrence.

The successful vendor shall provide the City with a Certificate of Insurance showing proof of insurance acceptable to the City. Certificates containing wording that releases the insurance company from liability for non-notification of cancellation of the insurance policy are not acceptable.

The successful vendor and/or its insurers are responsible for payment of any liability arising out of Workers' Compensation, unemployment or employee benefits offered to its employees.

Insurance is to be placed with insurers with a current A.M. Best's rating of not less than A:VII, and licensed to operate in South Carolina by the South Carolina Department of Insurance, unless otherwise acceptable to the City.

Workers' Compensation policy is to be endorsed to include a waiver of subrogation in favor of the City, its officers, officials, employees, and agents.

The successful vendor shall maintain the Automobile Liability and General Liability insurance, naming the City, its officers, officials, employees and agents as Additional Insured as respects liability arising out of the activities performed in connection with this request for proposal. It shall be an affirmative obligation upon the successful vendor to advise the City at fax number 843-525-7013 or by e-mail within two days of the cancellation or substantive change of any insurance policy/coverage required above. Failure to do so shall be construed to be a breach of contract.

Should successful vendor cease to have insurance as required during any time, all work by the successful vendor pursuant to this agreement shall cease until insurance acceptable to the City is provided.

Deductibles, Co-Insurance Penalties, & Self-Insured Retention: The successful vendor shall agree to be fully and solely responsible for any costs or expenses as a result of a coverage deductible, co-insurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, co-insurance penalty, or self-insured retention.

Sub-consultant's Insurance: The successful vendor shall agree to cause each sub-consultant employed by the successful vendor to purchase and maintain insurance of the type specified herein, unless the successful vendor's insurance provides coverage on behalf of the sub-consultant. When requested by the City, the successful vendor shall agree to obtain and furnish copies of certificates of insurance evidencing coverage for each sub-consultant.

#### CITY BUSINESS LICENSE

The successful vendor must obtain all business license(s) required by the Beaufort City Code and ordinances. A Business License is not required to submit a statement of proposals. However, any vendor that receives an award under this RFQ shall be required to obtain a City Business License before work can begin. All subcontractors that are involved in the project must obtain a City of Beaufort business license. Anyone who is not classified and paid as a W-2 employee for the successful bidder must obtain a City of Beaufort business license. For further information on the provisions of The City Business License Regulations and their applicability to this contract, contact the Beaufort City Business License Department at (843) 525-7025.

#### TERMINATION FOR CONVENIENCE OR FOR CAUSE

The performance of work under the contract may be terminated by the City in whole or in part whenever the City determines that termination is in the City's best interest. Any such termination shall be affected by the delivery to the successful vendor of a written notice of termination at least ninety (90) days before the date of termination, specifying the extent to which performance of the work under the contract is terminated and the date upon which such termination becomes effective.

The performance of work under the contract may be terminated by the City in whole or in part whenever the City determines, in its sole discretion that the successful vendor is not performing as set out in the contract. Any such termination shall be affected by the delivery to the successful vendor of a written notice of termination at least seven (7) days before the date of termination, specifying the extent to which performance of the work under the contract is terminated and the date upon which such termination becomes effective.

After receipt of a notice of termination, except as otherwise directed, the successful vendor shall stop work on the date of receipt of the notice of termination or other date specified in the notice; place no further order or subcontracts for materials, services, or facilities except as necessary for completion of such portion of the work not terminated; terminate all vendors and subcontracts; and settle all outstanding liabilities and claims.

#### COMPLIANCE WITH LAWS

The successful vendor shall, in the performance of work under this contract, fully comply with all applicable Federal, State, County, or City Laws, Rules, Regulations, or Ordinances and shall hold the City harmless from any liability resulting from failure of such compliance.



#### RIGHTS RESERVED BY CITY

This RFQ is not a tender and does not commit the City in any way to select a Proposer, or to proceed to negotiations for a Contract, or to award any Contract. The right is reserved by the City to reject any or all proposals; to waive any informality or irregularity not affected by law; to evaluate, in its absolute discretion, the proposals submitted; and to award the contract based on the established criteria and according to the proposal which best serves the interest of the City.

#### NON-COLLUSION AFFIDAVIT

As part of the Respondent's proposal, the proposer shall include the attached Non-Collusion Affidavit duly signed by a principal of the vendor certifying that it is not a party to any collusive action or any action that may be in violation of the Sherman Antitrust Act. Any or all proposals shall be rejected if there is any reason for believing that collusion exists among the Proposers. The City may or may not, at its discretion, accept future proposals for the same work from participants in such collusion.

#### ETHICS IN PUBLIC CONTRACTING

To comply with the provision of Section 8-13-100 et seq., Code of Laws of South Carolina, the proposer shall certify in writing and include with its proposal that its offer was made without fraud; that it has not offered or received any kickbacks or inducements from any other proposer, supplier, manufacturer, or sub-consultant in connection with the offer; and that it has not conferred on any public employee, public member, or public official having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money services, or anything of more than nominal value.

The proposer shall certify further that no relationship exists between itself and the City, another person, or organization that interferes with fair competition or constitutes a conflict of interest with respect to a contract with the City.

#### MINORITY/DISADVANTAGED SMALL BUSINESS PARTICIPATION

It is the policy of the City of Beaufort to undertake every effort to increase opportunity for utilization of small, disadvantaged, and minority businesses in all aspects of procurement to the maximum extent feasible. In connection with the performance of this contract, the successful vendor agrees to use their best effort to carry out this policy and insure that small, disadvantaged, and minority businesses shall have the maximum practicable opportunity to compete for subcontract work under this contract consistent with efficient performance of this contract. To this end, every proposer with the City is required to complete the S/WO/M BUSINESS ENTERPRISE FORM.

#### NON-RESIDENT TAXPAYER REGISTRATION AFFIDAVIT

Nonresident Proposers receiving income from business conducted in South Carolina are required to pay taxes to the state on that income. To facilitate this requirement, a nonresident proposer must register with the South Carolina Secretary of State or the South Carolina Department of Revenue. In compliance with South Carolina Code Section 12-8-540 and 12-8-550, a proposer located outside of South Carolina that receives a contract from the City, must furnish to the City Form 1-312 (Rev.5/8/15), Nonresident Taxpayer Registration Affidavit Income Tax Withholding, properly executed and signed. The form can be found online at:

<http://www.sctax.org/forms/withholding/i-312-form>

If your company is not presently registered with the appropriate state office, you may indicate the intent to do so should your company be awarded a contract. Questions concerning this form may be directed to the South Carolina Department of Revenue.

NON-APPROPRIATION

Any contract entered into by the City resulting from this RFQ shall be subject to cancellation without damages or further obligation when funds are not appropriate or otherwise made available to support continuation of performance in a subsequent fiscal period or appropriated year.

**ETHICS IN PUBLIC CONTRACTING AFFIDAVIT**

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

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

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

1. He/She is \_\_\_\_\_ (title) for/of \_\_\_\_\_ (company/business), the Proposer that has submitted the attached Statement of Proposals;
2. He/She is legally qualified and capable of signing this affidavit and is authorized to do so by Proposer;
3. He/She is fully informed regarding the preparation and contents of the attached Statement of Proposal and of all pertinent circumstances respecting such Proposal;
4. Such Proposal is genuine and is made without fraud;
5. Neither the said Proposer, nor any of its officers, partners, owners, agents, representatives, employees, or parties in interest has offered or received any kickbacks or inducements from any offeror, suppliers, manufacturer, or subCompany in connection with the offer, and they have not conferred on any public employee, public member, or public official having official responsibility for this procurement or transaction, any payment, loan, subscription, advance, deposit of money, services, or anything of value as defined in Section 8-13-100 of the South Carolina Code of Laws; and
6. Furthermore, neither the Proposer, nor any of its officers, partners, owners, agents, representatives, employees or parties in interest has any relationship with the City, another person, or organization that interferes with fair competition or that constitutes a conflict of interest with respect to a contract with the City.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
COMPANY/BUSINESS

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

\_\_\_\_\_  
PRINTED NAME

SWORN to before me this \_\_\_\_\_  
day of \_\_\_\_\_, 20\_\_\_\_

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

Notary Public for \_\_\_\_\_ (state)  
My commission expires: \_\_\_\_\_  
By: \_\_\_\_\_  
(signature)

**NONCOLLUSION AFFIDAVIT OF PRIME PROPOSER**

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

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

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

1. He/She is \_\_\_\_\_ of \_\_\_\_\_, the Proposer that has submitted the attached proposal;
2. He/She is fully informed respecting the preparation and contents of the attached proposal and of all pertinent circumstances respecting such proposal;
3. Such Proposal is genuine and is not a collusive or sham proposal;
4. Neither the said Proposer nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived, or agreed, directly or indirectly with any other Proposer, company or person to submit a collusive or sham Proposal in connection with the Contract for which the attached Proposal has been submitted or to refrain from proposing in connection with such Contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other proposer, company or person to fix the price or prices in the attached Proposal or of any other proposer, or to secure through any other proposal, or to fix any overhead, profit or cost element of the bid price or the bid price of any other proposer, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the City of Beaufort, SC or any person interested in the proposed contract.

\_\_\_\_\_  
(signed)

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

SWORN to before me this \_\_\_\_\_  
day of \_\_\_\_\_, 20\_\_\_\_

Notary Public for \_\_\_\_\_(state)

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

By: \_\_\_\_\_  
(signature)

SMALL/WOMAN-OWNED/MINORITY BUSINESS ENTERPRISE FORM	
YOUR COMPANY'S CURRENT STATUS	SUPPLIER BUSINESS CLASSIFICATIONS
<p>Is this a small business?</p> <p>Yes      No</p>	<p>A small business is a business which is independently owned and operated, not dominant in its field of operation, and can qualify under criteria concerning number of employees, average annual receipts, or other criteria as outlined by the Small Business Administration. (See CFR Title 13, Part 121, as amended)</p>
<p>Is this a woman-owned business?</p> <p>Yes    No</p>	<p>A woman-owned business is a business which is at least 51% owned by a woman or women who also control and operate the business.</p>
<p>Is this a minority-owned business?</p> <p>Yes      No</p> <p>If Yes, please indicate minority group:          ___Asian American    ___Black American          ___Hispanic American    ___Native American</p>	<p>A minority-owned business is a business which is at least 51% owned, controlled and operated by socially and economically disadvantaged individuals. The following groups are among those presumed to be socially and economically disadvantaged: Asian Americans, Black Americans, Hispanic Americans, and Native Americans.</p>
<p>Is this a disabled-owned business?</p> <p>Yes      No</p>	<p>A disabled-owned business is a business which is at least 51% owned, controlled and operated by an individual or individuals who are disabled.</p>
<p>Is this a veteran-owned business?</p> <p>Yes      No</p>	<p>A veteran-owned business a business which is at least 51% owned, controlled and operated by an individual or individuals who are U.S. veterans.</p>
<p>Is this a disabled veteran-owned business?</p> <p>Yes      No</p>	<p>A disabled veteran-owned business is a business which is at least 51% owned, controlled and operated by an individual or individuals who are U.S. veterans and disabled.</p>
<p>Are the individuals who own, control and operate this business U.S. citizens?      Yes    No</p>	
<p>Is this business a non-profit organization?      Yes    No</p>	
<p>Is this business incorporated?      Yes    No</p>	



January 4, 2019

Mr. Paul McGee  
City of Beaufort, City Hall  
1911 Boundary St.  
Beaufort, SC  
29902

RE: RFQ NO. 2019-104

Dear Mr. McGee,

McSweeney Engineers is pleased to present you with this proposal to provide Professional Engineering Services related to the repair of piles supporting the Henry C. Chambers Waterfront Park Relieving Platform. We fully understand that this is a design-bid-build project delivery and requires comprehensive underwater structural engineering services in addition to providing all bid administration and construction management throughout the project. We believe that the qualifications and experience held by McSweeney Engineers and shown in the attached submittal are specifically aligned with the selection criteria and goals of the City of Beaufort.

Our staff has extensive experience in structural inspection, analysis, permitting, and design of waterfront structures throughout South Carolina. McSweeney Engineers, LLC has successfully provided these services to the City of Beaufort on multiple occasions since our incorporation in 2011. It is likely that no other consultant has the breadth and depth of knowledge that we have regarding waterfront infrastructure owned by the City.

We understand that the project is being partially funded by the Land & Water Conservation Fund Grant Program. McSweeney Engineers has read the 2018 Sponsor Fiscal Briefing and Reference Guide provided with the RFQ. We believe that our experience with grant programs will allow us to assist the City in maximizing reimbursable costs associated with the project.

We look forward to continuing providing quality engineering services to the City of Beaufort. If you have any questions or require additional information, please contact me at 843-974-5621. We greatly appreciate your consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read 'David B. McSweeney', is written over a long horizontal line.

David B. McSweeney, P.E., LEED AP

495C MEETING STREET, SC 29403  
(843) 974-5621

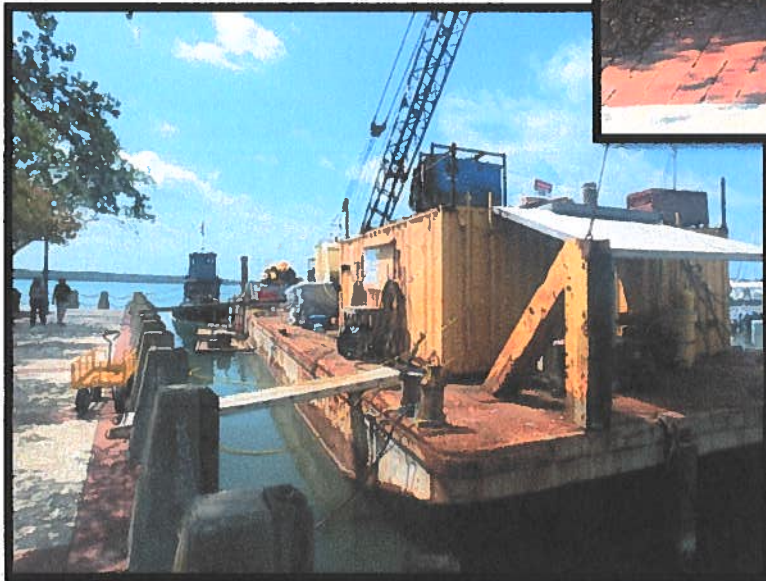
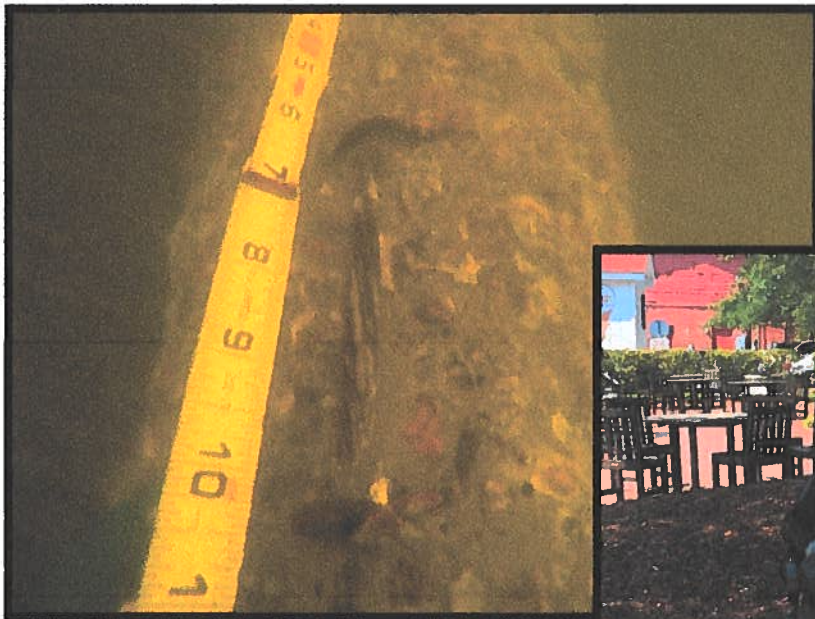
[www.mcsweeneyengineers.com](http://www.mcsweeneyengineers.com)





## RFQ NO. 2019-104: ENGINEERING SERVICES

### STATEMENT OF QUALIFICATIONS



*McSweeney*

**McSweeney Engineers**

495C Meeting St. Charleston, SC 29401

(843) 974-5621

[www.mcsweeneyengineers.com](http://www.mcsweeneyengineers.com)



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495C Meeting St. Charleston, SC 29403  
(843) 974-5621





## A. STATEMENT OF QUALIFICATIONS

McSweeney Engineers, LLC is a multi-disciplined engineering firm based in Charleston, South Carolina. We offer organizational simplicity and unparalleled personal service to our clients with low-overhead, reasonable cost, and high value. McSweeney Engineers provides this level of service throughout all projects and it is our goal to continue providing quality engineering and construction management services to the City of Beaufort.

Key members of our staff have over 10 years of experience working with the City of Beaufort and we have always viewed ourselves as an extension of City staff. In this role, it has meant a great deal to us personally and as a company to be involved with high profile City projects. Some of these projects include:

- Downtown Day Dock
- Downtown Marina Due Diligence Assessment
- Reliving Platform Pile Encapsulation
- Downtown Marina Operations and Maintenance Manual
- Downtown Marina Transient Dock Replacement
- Downtown Marina H-Dock Replacement
- Underwater Assessment, Inspection, and Testing (multiple projects)



Our role in these projects ranged from environmental permitting, structural inspection, design, bidding assistance and construction management services for the City. In addition, we have assisted the City in obtaining nearly \$350,000 in Tier 1 and 2 Boating Infrastructure Grants. Regarding the City of Beaufort's Waterfront, no other consulting firm has a breadth of understanding comparable to McSweeney Engineers. For these reasons, we fully believe that our services and capabilities are specifically aligned with the goals of the City of Beaufort.

## WORKLOAD, AVAILABILITY AND SCHEDULE

As a small business we are able to provide a sustainable balance of workload to staffing in order to ensure that we are able to consistently meet project goals, deadlines, and budgets. This is evidenced by the fact that approximately 85 percent of our work is repeat business from satisfied clientele. Once awarded the project, our personnel will be fully dedicated to meeting the City of Beaufort's expectations regarding project timeline and deadlines. It should be noted that construction bids for the 2018 Reliving Platform Pile Repair Project were due on February 23, 2018. This schedule allowed for completion of the work prior to the busy summer schedule at Waterfront Park. McSweeney Engineers is prepared to provide a construction bid package to the City for a comparable timeline in 2019.

## PROJECT UNDERSTANDING

McSweeney Engineers has read, fully understands, and will comply with Request for Qualifications 2019-104. Tasks 1 through 5 in the RFQ are very similar to tasks conducted previously by our staff. McSweeney Engineers has direct knowledge of the site location, public visibility, historic fabric, and other challenges with the project. We are aware of the multitude of public activities and events held at the park, especially during warmer months, and will work with the City of Beaufort to ensure an efficient and timely project delivery.



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## B. PROJECT TEAM



McSweeney Engineers, LLC will be directly responsible for providing all engineering services listed in Tasks 1 through 5 as specified in the RFQ. McSweeney Engineers employees are commercially trained professional engineer-divers. We own and maintain state-of-the-art commercial diving equipment and vessels in addition to all of the required safety equipment in order to perform the underwater work required as part of this project.

All members of our staff are trained in accordance with OSHA diving standards 929-CFR 1910.410 on the use of tools, equipment, techniques, diving operations and emergency procedures as they pertain to their assigned tasks while working underwater. These qualifications and our extensive engineering experience at Waterfront Park, both above and underwater, make our firm uniquely qualified to lead this project.

### KEY STAFF

Our individual staff resumes are quite lengthy and cover a wide range of projects; however, we will be happy to provide these resumes if requested by the City. We have provided brief resumes of our key staff below. These staff members will be directly working on this project and were also directly responsible for providing engineering services related to the 2018 Reliving Platform Pile Encapsulation Project for the City of Beaufort.

#### David McSweeney, P.E. LEED AP-Principal and CEO

SC PE License # 28237

##### Project Role: Engineer-Diver, QA/QC

Mr. McSweeney is a Civil/Structural Engineer with more than 16 years of experience in the analysis, design, and inspection of structures throughout the US, Latin America, and Europe. He is an experienced project manager with extensive experience performing structural engineering services for private, state, local, military, and federal entities. He is experienced in all facets of project development from planning and inspection to the structural design and construction management phases.



Mr. McSweeney was the resident engineer for the City of Beaufort for the \$6.8 million renovation project at Henry C. Chambers Waterfront Park and has been involved in many other structural and underwater engineering projects for the City of Beaufort.

#### William Barna, P.E. - Senior Structural Engineer

SC PE License # 25057

##### Project Role: Lead Engineer-Diver and Project Manager

Mr. Barna is a Civil/Structural Engineer with more than 18 years of experience in the analysis, design, and inspection of structures throughout the Continental US, Alaska, and abroad. Mr. Barna is regarded as an expert in waterfront and underwater structural engineering. He has been directly responsible for the permitting, design, bidding administration, and construction management for a multitude of projects throughout his career. He is also a certified commercial diver and diving supervisor as recognized by the Association of Diving Contractors International. He is a commercial



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diving instructor for the US Army Corps of Engineers where he developed and teaches *Module 8 – Structural Inspection* for USACE Personnel. He has been involved in over 1000 structural investigations both above and underwater.

His latest co-authored publication is the International Code Council's "Inspection, Testing, and Monitoring of Buildings and Bridges" ISBN: 978-1-60983-198-1.

Mr. Barna was the engineer-of-record for the Beaufort Day Dock Project and the 2018 Relieving Platform Pile Encapsulation Project.

## C. PROJECT EXPERIENCE

McSweeney Engineers has extensive experience providing comprehensive engineering and construction management services to the City of Beaufort. We understand the City procurement process and are familiar with the City's front end specifications and contract requirements. The projects listed in the following pages represent a small portion of the work that we have conducted with the City.

### 2014 Structural Investigation of Henry C. Chambers Waterfront Park and Adjacent Facilities

In 2014 McSweeney Engineers performed the underwater and above water structural inspection of all downtown waterfront infrastructure owned by the City of Beaufort. The Scope of Work included the 2,000 ft concrete sheet pile bulkhead, the 1,200 ft concrete Relieving Platform, 570 prestressed concrete piles, all Downtown Marina mooring piles and floating structures, as well as the Dinghy Dock and boat ramp. Due to the geometry of the project site, penetration diving was necessary to obtain access to the piles supporting the Relieving Platform; therefore, surface supplied air diving with two-way communication was used. During the inspection, all accessible structural components were evaluated and documented using underwater high-definition video. Following the inspection a detailed report with an evaluation of all structural components was delivered to the City.



To our knowledge, the 2014 inspection was the first comprehensive underwater and above water structural evaluation conducted solely by South Carolina registered Professional Engineers. The scope of work for the underwater investigation included a Level I "swim-by" (visual and tactile) inspection of all inspected facilities, as well as a Level II (cleaning and close-up visual) inspection of 10 percent of the substructure components. In addition, a topside inspection was also performed. The inspection focused on the identification of structural defects; however, issues which could pose a potential safety hazard to patrons of the facility and the condition of utilities and appurtenances were also noted.

Overall, the Relieving Platform Substructure was rated *Fair to Poor*. The pile caps were typically in good condition and exhibited minor defects in isolated areas. The prestressed concrete piling supporting the structure exhibited the most significant and widespread



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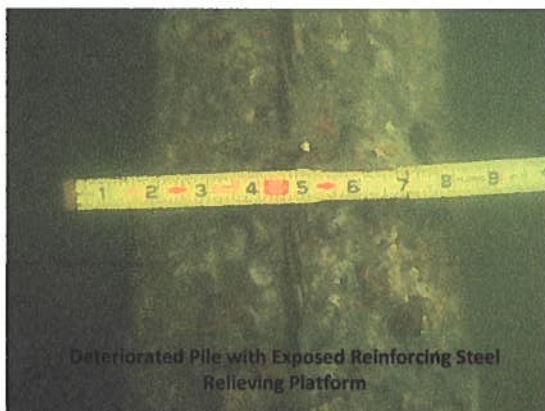
defects encountered during the inspection. Significant spalling was noted on 117 of the 570 piles. Approximately 42 of these piles exhibited spalling on all four pile corners. Heavy spalling with significant loss of cross sectional area was noted on 11 additional piles. In addition, five piles were completely broken or exhibited 100 percent loss of section. The 2014 inspection was the impetus for additional projects conducted at the Relieving Platform including RFQ 2019-104.

### 2016 Relieving Platform Pile Testing and Analysis

The 2016 investigation was a follow-up to the previous underwater inspection conducted by McSweeney Engineers in 2014. The purpose of the 2016 investigation was multifaceted in that it addressed existing deterioration and distress of the structures previously reported in 2014 as well as additional damage that may have been caused by the October 2015 1000-year flooding event.



McSweeney Engineers, on behalf of the City of Beaufort, assembled and led a multi-disciplined team of engineers, marine contractors, commercial divers and scientists to accomplish the work. The scope of the 2016 investigation included a Level I "swim-by" (visual and tactile) inspection of selected substructure elements. Level II cleaning of selected concrete piles, caps and seawall elements was performed using a high pressure water blaster. This enabled the removal of heavy marine growth from the piling for a more detailed assessment. A Level III evaluation, which included taking concrete cores from four prestressed concrete piles was also conducted. The concrete cores were then delivered to a laboratory and tested in order to understand modes of deterioration, determine approximate service life, and develop potential repair strategies to the piles supporting the Relieving Platform.



The results of the 2016 investigation revealed an increase in deterioration on the piling supporting the Relieving Platform when compared to the 2014 investigation. The high-pressure water blaster not only removed the marine growth from the piling, but also removed outer layers of soft and deteriorated concrete. Therefore, it was readily apparent that the deterioration of the concrete piling was significant. In many cases, the removal of this outer layer of highly deteriorated concrete exposed steel prestressing strands or reinforcing bar. The exposed steel exhibited deterioration ranging from light to heavy corrosion and loss of section. The most significant change since the

previous inspection was the presence of two additional broken piles.

Concrete cores were taken using a hydraulic powered underwater concrete drill, sent to a laboratory, and tested petrographically using stereomicroscopic methods and also for compressive strength. The testing revealed that although the compressive strength of the concrete was within specification, the concrete appeared to contain a high volume of cement paste and six times the level of chloride necessary to initiate corrosion of the reinforcing steel. Based on these findings, coupled with the results of the 2014 inspection, and the fact that widespread structural failure had not occurred, McSweeney Engineers suggested that the City



Concrete Core Samples



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establish a maintenance and repair program in order to preserve the existing structural capacity of the piling supporting the Relieving Platform.

### 2018 Relieving Platform Pile Encapsulation Project

The culmination of four years of inspection, testing, evaluation and design led to the 2018 Relieving Platform Pile Encapsulation Project. The project consisted of installing FRP pile encasements on the worst-case pilings. McSweeney Engineers provided the permitting, design, bid administration, and construction management services for the project.

At the start of the design process it was our hope to repair a minimum of 50 out of the 117 previously identified distressed piles. Due to budgetary constraints, the number of repair pilings was reduced to 14. In order to provide the best value to the City of Beaufort the design provided for two bidding options: epoxy grout or cementitious grout.



Prior to letting the project for bid, McSweeney Engineers assisted the City in solicitation of bids, attendance of a pre-bid meetings, publishing addenda, and responding to contractor Requests for Information (RFIs). Cape Romain Contractors, Inc. from Charleston, SC was deemed the most responsible bidder and was awarded the contract for piling repair. During construction, McSweeney Engineers provided construction management and construction inspection services. This entailed reviewing shop drawings, manufacturer data, and the contractor's construction schedule. Weekly site

visits consisting of above water and underwater construction inspection and documentation were conducted throughout the course of the project.

Another important item to note is that in addition to repairing the 14 most distressed piles, we were also able to see what contractor means and methods worked best within the confines of the project site. Most importantly we were able to ascertain possible cost and time savings strategies would benefit to the City moving forward.



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### Broad River Fishing Pier (2015 – 2018)

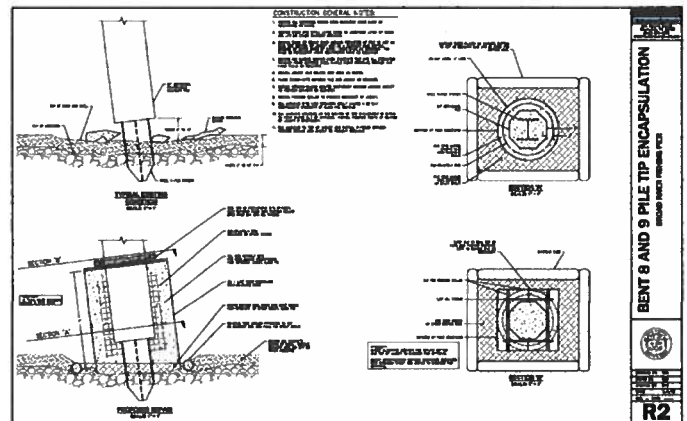
Another good illustration of our diverse structural engineering capabilities is demonstrated by our current design-build project with Beaufort County at the Broad River Fishing Pier.

The Broad River Fishing Pier was formerly the SCDOT 170 Bridge crossing the Broad River. When the new bridge was constructed Beaufort County obtained ownership of the structure. The advanced age of the structure and the harsh marine environment caused significant deterioration of load carrying members. Beaufort County procured a design-build team to assess the structural deterioration, load rate the structure, and develop suitable repair options. McSweeney Engineers is the lead structural engineering firm on this team.



This multi-year project began with a full structural inspection, both above and underwater. Due to the unknown structural integrity of the pier, the above water inspection was accomplished using an articulated man lift positioned on a barge. From the barge we were able to take detailed measurements of the pile caps and pre-stressed concrete beams supporting the structure. Specialized concrete corings of the pile caps and beams were taken and tested petrographically for compressive strength and chloride ion content.

Following the above water inspection we performed a comprehensive underwater inspection using our commercially trained professional engineers-divers. During the underwater inspection marine growth was removed from selected concrete piles in order to assess the underlying surfaces. High-definition video was used to document our below water findings.



At the conclusion of the inspection, it was apparent that the load carrying capacity of the structure was reduced from that of the original design but was safe for its current use as a recreational fishing pier. Therefore, a comprehensive repair plan for preserving the remaining structural capacity of the pier was developed. While monitoring the structure both above and below the waterline over several years, and after significant storm events, the repair plan was refined and updated.

In 2018 the repair plan was implemented and consisted of pile encapsulation of 16 prestressed concrete piles and repair of approximately 40 prestressed concrete I-girders supporting the structure. McSweeney Engineers provided all design, construction management, and underwater construction inspection throughout the course of the project.



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## D. REFERENCES

The brief list below provides references for the projects listed herein or for projects with a similar scope.

### City of Beaufort

Services Provided: Multiple Waterfront and Underwater Engineering Projects and Pile Rehabilitation

Reference: Mr. William Prokop - City Manager

Contact: 843-525-7071, [wprokop@cityofbeaufort.org](mailto:wprokop@cityofbeaufort.org)

1911 Boundary St., Beaufort, SC 29909

### Beaufort County

Services Provided: Waterfront Structural and Underwater Engineering Services and Pile Rehabilitation

Reference: Mr. Rob McFee, P.E. - Director of Engineering

Contact: 843-255-2700, [rmcfee@bcgov.net](mailto:rmcfee@bcgov.net)

2266 Boundary St., Beaufort, SC 29909

### Kiawah Island Community Association

Services Provided: Waterfront Structural and Underwater Engineering Services, Structural Design, Structural Rehabilitation

Reference: Mr. Will Connor, P.E. - Director of Engineering

Contact: 843-768-9194, [william.connor@kica.us](mailto:william.connor@kica.us)

23 Beachwalker Dr. Kiawah Island, SC 29455

### Kinder Morgan Terminals

Services Provided: Waterfront Structural and Underwater Engineering Services, Piling Evaluation, Structural Design and Structural Rehabilitation

Reference: Mr. Jeff Green, P.E. - Facilities Manager

Contact: 912-944-3838, [jeffrey.Green@kindermorgan.com](mailto:jeffrey.Green@kindermorgan.com)

1001 Louisiana St, Suite 1000 Houston, TX 77002

## E. ADDITIONAL INFORMATION

### INSURANCE AND CERTIFICATIONS

McSweeney Engineers maintains all required liability, errors and omissions, and workers compensation insurance. We also carry United States Longshoremen and Harbor Workers (USL&H) and Jones Act Maritime Insurance. This insurance is required for working over and on the water, respectively. Our insurance and safety records are monitored by a third-party verification process called ISNETWorld. Certificates of Insurance are available upon request.

Our engineer-divers have been trained in accordance with OSHA Standards and as such actively maintain diving certificates, as well as, First Aid, CPR, and Emergency Oxygen Administration. In addition, McSweeney Engineers developed our in-house Manual of Safe Diving Practices and diver safety training program. We are happy to provide copies of these documents as requested.



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## CONCLUSION

McSweeney Engineers is grateful for the opportunity to provide our summary of qualifications to the City of Beaufort and are very excited at the prospect to put our experience to work for you. We know that you will find every member of our team enthusiastic about our profession and highly competent both from a technical as well as practical perspective.

We hope that you will find this summary of qualifications satisfactory. If you have any questions or need additional information, please do not hesitate to contact me.

Best Regards,

A handwritten signature in black ink, reading "David B. McSweeney".

David B. McSweeney, P.E. LEED AP  
**McSweeney Engineers, LLC**



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CITY OF BEAUFORT  
SOUTH CAROLINA  
RFQ SIGNATURE PAGE  
RFQ NO. 2019-104

PROPOSER'S NAME: McSWEENEY ENGINEERS, LLC

The undersigned, having become familiar with the existing conditions and the Proposal Scope of Services hereby proposed, agrees to complete the work as described in accordance with the Request for Qualifications and Contract Documents.

**Proposer** warrants that no gratuities, in the form of gifts, entertainment, or otherwise, were offered or given by the **Proposer**, to any officer or employee of the City with a view toward securing the contract or securing favorable treatment with respect to any determination concerning the performance of the contract.

This offer is genuine and not made in interest of or on behalf of any undisclosed person, vendor or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; **Proposer** has not directly induced or solicited any other **Proposer** to submit false or sham bid; **Proposer** has not solicited or sought by collusion to obtain for itself any advantage over any other **Proposer** or other **Owner**.

The words "Bidder", "Offeror", "Proposer", "Vendor", and "Company" are used interchangeably throughout this solicitation, and are used in place of the person, vendor, or corporation submitting a solicitation.

Proposer has examined copies of all documents and of the following addenda (if applicable):

Addendum No.	Date
_____	_____
_____	_____
_____	_____

Address: Post Office Box: \_\_\_\_\_ Zip: \_\_\_\_\_  
Street: 495 C MEETING ST. Zip: 29403  
City: CHARLESTON State: SC  
Telephone: (843) 974-5621 Fax: \_\_\_\_\_  
Email: dave@mcsweeneyengineers.com

\*Signature:  Title: PRINCIPAL/CEO

**Proposal will not be accepted unless signed in ink (not typed) in the appropriate space by an authorized officer or employee of the bidder.**

Printed Name: DAVID B. McSWEENEY, P.E. Date: 1/3/19

NONCOLLUSION AFFIDAVIT OF PRIME PROPOSER

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

DAVID B. MCSWEENEY, being first duly sworn, deposes and says that:

1. He/She is DAVID B. MCSWEENEY of MCSWEENEY ENGINEERS, LLC the Proposer that has submitted the attached proposal;
2. He/She is fully informed respecting the preparation and contents of the attached proposal and of all pertinent circumstances respecting such proposal;
3. Such Proposal is genuine and is not a collusive or sham proposal;
4. Neither the said Proposer nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived, or agreed, directly or indirectly with any other Proposer, company or person to submit a collusive or sham Proposal in connection with the Contract for which the attached Proposal has been submitted or to refrain from proposing in connection with such Contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other proposer, company or person to fix the price or prices in the attached Proposal or of any other proposer, or to secure through any other proposal, or to fix any overhead, profit or cost element of the bid price or the bid price of any other proposer, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the City of Beaufort, SC or any person interested in the proposed contract.

[Signature]  
(signed)  
PRINCIPAL / CEO  
(title)

SWORN to before me this 2nd  
day of January, 2019

Notary Public for S. Carolina (state)

My commission expires: 9.16.25

By: Mary Elizabeth Bennett  
(signature)



ETHICS IN PUBLIC CONTRACTING AFFIDAVIT

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

DAVID B. McSWEENEY, being first duly sworn, deposes and says that:

1. He/She is PRINCIPAL/CEO (title) for/of McSWEENEY ENGINEERS, LLC (company/business), the Proposer that has submitted the attached Statement of Proposals;
2. He/She is legally qualified and capable of signing this affidavit and is authorized to do so by Proposer;
3. He/She is fully informed regarding the preparation and contents of the attached Statement of Proposal and of all pertinent circumstances respecting such Proposal;
4. Such Proposal is genuine and is made without fraud;
5. Neither the said Proposer, nor any of its officers, partners, owners, agents, representatives, employees, or parties in interest has offered or received any kickbacks or inducements from any offeror, suppliers, manufacturer, or subCompany in connection with the offer, and they have not conferred on any public employee, public member, or public official having official responsibility for this procurement or transaction, any payment, loan, subscription, advance, deposit of money, services, or anything of value as defined in Section 8-13-100 of the South Carolina Code of Laws; and
6. Furthermore, neither the Proposer, nor any of its officers, partners, owners, agents, representatives, employees or parties in interest has any relationship with the City, another person, or organization that interferes with fair competition or that constitutes a conflict of interest with respect to a contract with the City.

1/2/19  
DATE

McSWEENEY ENGINEERS, LLC  
COMPANY/BUSINESS

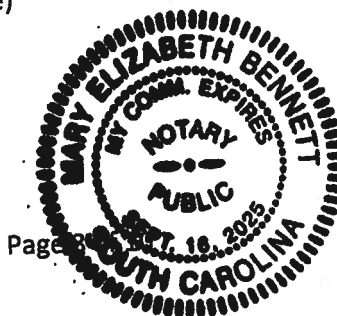
BY: [Signature]  
SIGNATURE

DAVID B. McSWEENEY, P.E.  
PRINTED NAME

SWORN to before me this 2nd  
day of January, 2019

ITS: PRINCIPAL/CEO  
TITLE

Notary Public for S. Carolina (state)  
My commission expires: 9.16.25  
By: Mary Elizabeth Bennett  
(signature)



# **SMALL/WOMAN-OWNED/MINORITY BUSINESS ENTERPRISE FORM**

YOUR COMPANY'S CURRENT STATUS	SUPPLIER BUSINESS CLASSIFICATIONS
<p>Is this a small business?</p> <p><input checked="" type="radio"/> Yes      No</p>	<p>A small business is a business which is independently owned and operated, not dominant in its field of operation, and can qualify under criteria concerning number of employees, average annual receipts, or other criteria as outlined by the Small Business Administration. (See CFR Title 13, Part 121, as amended)</p>
<p>Is this a woman-owned business?</p> <p>Yes      <input checked="" type="radio"/> No</p>	<p>A woman-owned business is a business which is at least 51% owned by a woman or women who also control and operate the business.</p>
<p>Is this a minority-owned business?</p> <p>Yes      <input checked="" type="radio"/> No</p> <p>If Yes, please indicate minority group:  <input type="checkbox"/> Asian American    <input type="checkbox"/> Black American  <input type="checkbox"/> Hispanic American    <input type="checkbox"/> Native American</p>	<p>A minority-owned business is a business which is at least 51% owned, controlled and operated by socially and economically disadvantaged individuals. The following groups are among those presumed to be socially and economically disadvantaged: Asian Americans, Black Americans, Hispanic Americans, and Native Americans.</p>
<p>Is this a disabled-owned business?</p> <p>Yes      <input checked="" type="radio"/> No</p>	<p>A disabled-owned business is a business which is at least 51% owned, controlled and operated by an individual or individuals who are disabled.</p>
<p>Is this a veteran-owned business?</p> <p>Yes      <input checked="" type="radio"/> No</p>	<p>A veteran-owned business is a business which is at least 51% owned, controlled and operated by an individual or individuals who are U.S. veterans.</p>
<p>Is this a disabled veteran-owned business?</p> <p>Yes      <input checked="" type="radio"/> No</p>	<p>A disabled veteran-owned business is a business which is at least 51% owned, controlled and operated by an individual or individuals who are U.S. veterans and disabled.</p>
<p>Are the individuals who own, control and operate this business U.S. citizens?</p>	<p><input checked="" type="radio"/> Yes      No</p>
<p>Is this business a non-profit organization?</p>	<p>Yes      <input checked="" type="radio"/> No</p>
<p>Is this business incorporated?</p>	<p><input checked="" type="radio"/> Yes      No</p>



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## CITY OF BEAUFORT

### DEPARTMENT REQUEST FOR CITY COUNCIL AGENDA ITEM

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**TO:** CITY COUNCIL **DATE:** 3/6/2019  
**FROM:** Kathy Todd  
**AGENDA ITEM**  
**TITLE:** Approve FY 2019 Budget Amendment #2 - 1st Reading  
**MEETING**  
**DATE:** 3/12/2019  
**DEPARTMENT:** Finance

---

#### *BACKGROUND INFORMATION:*

The City received a \$500,000 CDBG grant for the Greenlawn Streetscape Project. At the time of the award, the estimated budget for the project was \$1.7M. Council authorized \$1.2M of TIF II funds to complete the resources needed for the project.

The City has gone out to bid on the project and two bids were received. Preferred Materials bid \$2,148,996 and QE Enterprises bid \$2,515,499.54. The engineer of record, ICE, has recommended that the City accept the bid from PMI. This however requires the approval of additional TIF II funds to cover the revised budget of the project totalling \$2,759,864. This revised budget does not include the cost of the duct bank to underground the utilities. The City is awaiting the cost of the duct bank estimates from SCE&G. A portion of those costs will be covered by SCE&G, a portion will be covered by the release of restricted fund balance for SCE&G non standard service work and the remaining portion will require another future budget approval from TIF II.

---

#### *PLACED ON AGENDA FOR: Action*

#### **REMARKS:**

Request that the City authorize the budget amendment to release an additional \$1,059,365 of TIF II funds for this project and to transfer those funds to the Capital Projects fund dedicated to the Greenlawn Streetscape project.

#### **ATTACHMENTS:**

Description	Type	Upload Date
Revised Project Budget - Greenlawn	Cover Memo	3/6/2019

**Revised Project Budget for Greenlawn Streetscape Project**  
**March 12, 2019**

<b>Uses</b>	
<hr/>	
Engineering	
Ward Edwards	\$ 17,027.50
ICE - Design	114,950.59
ICE - CEI	111,040.62
Construction RFP	
CDBG - North	889,106.70
Non CDBG - South	1,259,889.30
Total Construction	<hr/> 2,148,996.00
Contingency	322,349.40
Grant Administration	45,000.00
	<hr/> \$ 2,759,364.11
	<hr/>
<b>Sources</b>	
<hr/>	
CDBG	\$ 500,000.00
TIF II, budgeted	1,200,000.00
	<hr/> \$ 1,700,000.00
	<hr/>
Shortfall (Uses > Sources)	<hr/> \$ 1,059,364.11
	<hr/>



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## CITY OF BEAUFORT

### DEPARTMENT REQUEST FOR CITY COUNCIL AGENDA ITEM

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**TO:** CITY COUNCIL **DATE:** 3/6/2019  
**FROM:** Kathy Todd  
**AGENDA ITEM TITLE:** Authorization to allow City Manager to execute contract pending Department of Commerce approval  
**MEETING DATE:** 3/12/2019  
**DEPARTMENT:** Finance

---

#### *BACKGROUND INFORMATION:*

The City issued the RFP for the Greenlawn Streetscape project. Two bids were received as noted during the budget amendment agenda item. The recommended contractor is Preferred Materials, Inc. A copy of the Draft contract is attached. The Draft copy has also been provided to the SC Department of Commerce, who is the funding agency on the \$500K CDBG Grant for this project. The SC Department of Commerce approval is required prior to moving forward with this project. Since the copy of the contract was a part of the RFP document that the SC Department of Commerce previously approved, the City anticipates the Draft contract being approved without modification.

---

#### *PLACED ON AGENDA FOR: Action*

#### **REMARKS:**

Request that the City Council authorize the City Manager to execute the contract with Preferred Materials pending SC Department approval. If for some reason the SC Department of Commerce does not approve the draft contract, then the City Manager will bring before City Council a revised contract at a later date.

#### **ATTACHMENTS:**

Description	Type	Upload Date
Draft Contract for Preferred Materials, Inc	Cover Memo	3/6/2019

## Section 2 – Contract Documents

### STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT, SOUTH CAROLINA

#### CITY OF BEAUFORT CONTRACT for GREENLAWN DRIVE - STREETSCAPE

**THIS AGREEMENT** made by and between City of Beaufort in Beaufort County, SC hereinafter called “**OWNER**” a contractor doing business as an individual, a partnership, or corporation of the County of **Beaufort** and state of **South Carolina**, hereinafter called “**CONTRACTOR**”.

This **AGREEMENT** is made and executed in four (4) original copies on this the \_\_\_\_\_ day of \_\_\_\_\_, 2019 and between the City of Beaufort, South Carolina and \_\_\_\_\_ Preferred Materials, Inc. \_\_\_\_\_ for the term specified herein.

**WITNESSETH:** that for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the Owner and Contractor hereby agrees to commence and complete the construction described as follows: **Furnishing of all materials, labor and equipment for the complete construction of:**

#### Greenlawn Drive - Streetscape

hereinafter called the “**Project**”, for the sum of **Two Million One Hundred Forty-Eight Thousand Nine Hundred Ninety-Six Dollars and no/100. (\$2,148,996.00)** as stated in the General Conditions, Supplemental Conditions, General Provisions, Special Provisions and Technical Specifications of the Contract, and at his/her/its/their own proper cost and expense to furnish all materials, supplies, machinery, equipment, tools superintendence, labor, insurance, bonds, and other accessories and services necessary to complete the said project in accordance with the conditions and prices stated in the proposal, the General Conditions, Special Provisions and Detailed Specifications of the Contract, the Plans, which include all explanatory matter thereof, as prepared by the City of Beaufort here entitled the “**Engineers**”, the specifications and contract documents as enumerated in Section 105.03 of the General Conditions, all of which are made a part hereof and collectively constitute the Contract.

The Contractor further proposes and agrees hereby to promptly commence the work with adequate force and equipment within ten (10) calendar days from receipt of Notice to Proceed, or as may be specified by Special Provision, and to complete the work within **210** consecutive calendar days from the Notice to Proceed date or the date work begins, whichever comes first.

#### **Article 1. CONTRACT TIME AND DAMAGES**

- 1.1 Contract Time.** The Work required under the Contract Documents shall be completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions within **210** consecutive calendar days from the date when the Contract Time commences to run as provided in Paragraph 2.03 of the General Conditions. This Contract Time is hereby made of the essence.
- 1.2 Damages.** If the **CONTRACTOR** fails to have the work completed and ready for final payment on or before the Contract time specified in Article 1.1 of the Contract Documents (above), plus any extensions thereof allowed in accordance with Article 12.02 of the General Conditions, **OWNER** shall receive from **CONTRACTOR** a sum of money calculated according to Article 3.3 of the Contract Documents.

#### **SECTION 2 – CONTRACT DOCUMENTS (Cont’d)**



Said damages for delay or failure to achieve substantial completion are to be determined in accordance with Section 108 "Prosecution and Progress" as found in the South Carolina Department of Transportation, Standard Specifications for Highway Construction, Edition of 2007, and latest supplements and listed in Section 108.09 as, for original contract amounts with values of \$ 500,000.00 to \$ 1,000,000.00, then liquidated damages shall be \$ 600.00 per calendar day and for original contract amounts with values of \$ 1,000,000.00 to \$ 2,000,000.00, then liquidated damages shall be \$ 800.00 per calendar day

The above sum is agreed upon to include intangible losses suffered by **OWNER** for matters such as public health and welfare, and the like. It is mutually agreed between the parties that this sum of money shall not preclude the **OWNER** from instituting an action for actual damages above and beyond the sum set forth above.

If monies due or to become due to the **CONTRACTOR** exceed the sum as set forth above, said sum shall be deducted from monies due, or to become due to the **CONTRACTOR**. In case the sum as set forth above shall exceed the amount of all monies due or to become due, then **CONTRACTOR** or his surety shall pay the balance to the **OWNER**.

## **Article 2. CONTRACT PRICE**

- 2.1** **OWNER** shall pay **CONTRACTOR** for performance of the Work as Bid with any alternates authorized herein in accordance with the Contract Documents in current funds at the prices set forth in the Bid Form which is attached hereto made a part hereof; and in accordance with any amendments made to the Contract Documents subsequent to execution of this Agreement in accordance with Paragraph 3.04 of the General Conditions.
- 2.2** The Contract Price as shown in the Schedule of Items, Section 1.8 (Schedule of Values) of the Bid Form is

**Two Million One Hundred Forty-Eight Thousand Nine Hundred Ninety-Six Dollars and no/100 (\$2,148,996.00)**

## **Article 3. PAYMENT PROCEDURES**

**CONTRACTOR** shall submit applications for payment in accordance with Article 14.02.A of the General Conditions. Applications for payment will be processed by **ENGINEER** as provided in the Article 14.02.B of the General Conditions of the Contract.

- 3.1 Progress Payments:** **Owner** shall make progress payments on account of the Contract Price on the basis of Contractor's Monthly Payment Applications for payment as submitted in accordance with paragraph 14.02.A.1 of the General Conditions.
- A. Applications for Payment shall be submitted on the 1<sup>st</sup> working day of each month for the duration of the Contract (The 1<sup>st</sup> working day shall be defined as the first Monday of the month if or when the first calendar day of the month falls on a weekend)
  - B. Each progress payment shall represent the completed work of the contract for the period in question with a value as identified from the established schedule of values as provided for in Paragraph 14.01 of the General Conditions (and in the case of Unit Price Work based on the number of units completed)
  - C. Prior to Substantial Completion, progress payments shall be made in an amount equal to the percentage indicated below in the qualifying section of Section 3.2 (Retainage) but, in each case, less the aggregate of payments previously made and less such amounts as Engineer shall determine or Owner may withhold, in accordance with Paragraph 14.07.D of the General Conditions and; or including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions.

## SECTION 2 – CONTRACT DOCUMENTS (Cont'd)

- D. Upon the completion, submittal and acceptance that ninety percent (90%) of the Work of the Contract (as determined from the schedule of values) has been attained, the progress payments may be amended to reflect the value of retainage as indicated, below, in Section 3.2.A or 3.2.B

- 3.2 Retainage:** Retainage on monthly payment applications, beginning with the Contractor's initial monthly payment application for Work of the Contract in place and/or stored materials shall be ten percent (10%) of the value of the work submitted for payment in accordance with the schedule of values, or
- A. If when 90 percent of Work of the Contract, by value, has been completed and accepted for payment (with the balance being retainage), then if the character and progress of the Work have been satisfactory to Owner and Engineer, Owner, on recommendation of Engineer, may determine that as long as the character and progress of the Work remain satisfactory to them, then retainage henceforth for monthly progress payments shall be reduced to five percent (5%) as determined by the schedule of values provided for in Paragraph 14.01 of the General Conditions; and
  - B. If when the condition whereby ninety percent (90%) of value of materials and/or equipment stored, but not yet incorporated into the Work of the Contract, occurs (with the balance being retainage), then if the character and progress of the Work have been satisfactory to Owner and Engineer, Owner, on recommendation of Engineer, may determine that as long as the character and progress of the Work remain satisfactory to them, then retainage henceforth for monthly progress payments for material or equipment stored may be reduced to five percent (5%) of the value as determined by the schedule of values provided for in Paragraph 14.01 of the General Conditions.
  - C. Upon Substantial Completion, with substantial completion being defined as per Section 101.3.76 of the SCDOT - 2007 Standard Specifications for Highway Construction, Owner shall pay an amount sufficient to increase total payments to Contractor to a value of ninety-five percent (95%) of the Work completed as based on the quantities and values in the schedule of values, less such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions and less 100 percent (100%) of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.
- 3.2 Final Payment:** Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, **OWNER** shall pay the remainder of the Contract Price as recommended by **ENGINEER** as provided in said Paragraph 14.07.C
- 3.3 Liquidated Damages:** If the Contractor fails to substantially complete the work of the Contract by the specified completion date, then the Contractor is liable for liquidated damages for each calendar day past the contract specified completion date. The daily liquidated damages rate shall be as specified in Section 108.9 of the SCDOT- 2007 Standard Specifications for Highway Construction; or most current edition in place at the award of the Contract. (See Article 1.2-Damages of this section of Contract for detailed description of values for liquidated damages.)

### **Article 4 CONTRACTOR'S REPRESENTATIONS**

In order to induce **OWNER** to enter into this Agreement **CONTRACTOR** makes the following representation:

- 4.1 CONTRACTOR** has familiarized himself with the nature and extent of the Contract Documents, Work, local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.

## SECTION 2 – CONTRACT DOCUMENTS (Cont'd)

- 4.2 CONTRACTOR** has studied carefully all reports of exploration and test of subsurface conditions and drawings of physical conditions which are identified in the Supplementary Conditions as provided in Paragraph 4.02 of the General Conditions, and accepts the determination set forth in Paragraph SC - 4.2.A & SC – 4.2.B of the Supplementary Conditions of the extent of the technical data contained in such reports and drawings upon which **CONTRACTOR** is entitled to reply.
- 4.3 CONTRACTOR** has obtained and carefully studied (**or assumes responsibility for obtaining and carefully studying**) all such examinations, investigations, explorations, tests, reports and studies (in addition to or to supplement those referred to in Paragraph 4.02 above) which pertain to the subsurface or physical conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the Work as **CONTRACTOR** considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract time and in accordance with the other terms and conditions for the Contract Documents, including specifically the provisions of Paragraph 4.02 of the General Conditions; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by **CONTRACTOR** for such purposes.
- 4.4 CONTRACTOR** has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect to said Underground Facilities are or will be required by **CONTRACTOR** in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with other terms and conditions of the Contract Documents, including specifically the provisions of Paragraph 4.03 of the General Conditions (Differing subsurface or physical conditions).
- 4.5 CONTRACTOR** has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.
- 4.6 CONTRACTOR** has given **ENGINEER** written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by **ENGINEER** is acceptable to **CONTRACTOR**.

### Article 5. CONTRACT DOCUMENTS

- 5.1** The Contract Documents which comprise the entire Agreement between **OWNER** and **CONTRACTOR** concerning the Work consists of the following:

Addenda Numbers \_\_\_1\_\_\_ to \_\_\_6\_\_\_ inclusive

Advertisement for Bid

Bid Documents. Sec 1.0 through Sec 1.10, inclusive

Contract Documents

Sec 2.0 - Contract

Sec 2.1A - Notice of Intent to Award

Sec 2.1B - Notice of Award

Sec 2.1C - Notice to Proceed

Sec 2.1D - Change Order

Sec 2.1E - Certificate of Acknowledgement

Sec 2.1F - Certificate of Owner's Attorney

Sec 2.2 - Construction Performance Bond

Sec 2.3 - Labor & Material Payment Bond

**SECTION 2 – CONTRACT DOCUMENTS  
(Cont'd)**

- Sec 2.4 - Non-Collusion Affidavit of Sub-Contractor
- Sec 2.5 - Final Affidavit
- Sec 3.0- General Conditions
- Sec 4.0- Supplemental Conditions
- Sec 5.0- General Provisions
  - General Requirements, Part A & B - Schedule of Insurance Requirements
- Sec 6.0- Special Provisions
- Sec 6.1- Special Provisions-CDBG- Department of Commerce Contract
- Sec 6.2- General Special Provisions
- Sec 6.3- Special Provisions – Supplemental Specifications
- Drawings – 42 sheets-bound separately (as applicable)

**5.2** The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to Paragraphs 3.04 and 3.05 of the General Conditions.

**5.3** The documents listed (above) in Article 5.1 of the Contract are attached to this Agreement (except as expressly noted otherwise above).

There are no Contract Documents other than those listed above in this Article 5 of the Contract. The Contract Documents may only be amended, modified or supplemented as provided in Paragraphs 3.04 and 3.05 of the General Conditions.

**Article 6. MISCELLANEOUS**

**6.1** Terms used in this Agreement, which are defined in Article 1 of General Conditions will have the meanings indicated in the General Conditions.

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

**6.3 OWNER and CONTRACTOR** each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

**6.4** The **City of Beaufort (Owner)** agrees to pay the **CONTRACTOR** in current funds for the performance of the Contract subject to additions and deductions as provided in the General Conditions of the Contract, and to make payments on account thereof as provided in Sections 103.11 and 109 of the State of South Carolina Highway Division, Standard Specifications for Highway Construction, 2007 Edition, as modified in the General Conditions and Special Provisions.

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**SECTION 2 – CONTRACT DOCUMENTS**  
**(Cont'd)**

**IN WITNESS WHEREOF**, the parties to these presents have executed this Contract in **four (4)** counterparts, each of which shall be deemed an original.

Executed This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**CITY of BEAUFORT (Owner)**  
BEAUFORT COUNTY, SOUTH CAROLINA

**CONTRACTOR**

By: \_\_\_\_\_  
William A. Prokop  
(City Manager)

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

\_\_\_\_\_  
Name & Title, Typed or Printed

\_\_\_\_\_  
Name of Company Corp., etc.

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
City, State and Zip Code

\_\_\_\_\_  
Area Code/Telephone Number

**OWNER'S WITNESSES:**

**CONTRACTOR'S WITNESSES:**

1) \_\_\_\_\_

1) \_\_\_\_\_

2) \_\_\_\_\_

2) \_\_\_\_\_

**SECTION 2 – CONTRACT DOCUMENTS**  
**(Cont'd)**

**NOTICE OF INTENT TO AWARD**

Dated: \_\_\_\_\_ Bid No. \_\_\_\_\_

To: \_\_\_\_\_

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

Contract: \_\_\_\_\_

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

Owner's Project #: \_\_\_\_\_

You are hereby notified that your Bid dated \_\_\_\_\_ for the above Contract has been considered. You are the apparent Successful Bidder and it's the OWNER intent to enter into a contract with this bidder subject to contract reviews by the Department of Commerce, Grants Administration.

The Contract Price of your Contract is: \_\_\_\_\_ Dollars (\$ \_\_\_\_\_).

**Four (4)** copies of the proposed Contract Documents (except drawings) accompany this Notice of Intent to Award. \_\_\_\_\_ sets of Drawings will be delivered separately or otherwise made available to you immediately.

You must comply with the following conditions precedent within **14 days** of the date you receive the Notice of Award.

1. Deliver to the OWNER **four (4)** fully executed counterparts of the Contract Documents.
2. Deliver with the executed Contract Documents the Contract Security (Bonds) as specified in the Instructions to Bidders, Article 8, EJCDC General Conditions paragraph 5.01 and Supplementary Conditions paragraph SC-5.01

Failure to comply with these conditions within the time specified will entitle **OWNER** to consider your Bid in default, to annul this Notice of Award, and to declare your Bid Security forfeited.

Within ten days after you comply with the above conditions, **OWNER** will return to you **one (1)** fully executed counterpart of the Contract Documents.

By: \_\_\_\_\_ (Owner)

\_\_\_\_\_  
(AUTHORIZED SIGNATURE)

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

**SECTION 2 – CONTRACT DOCUMENTS**  
**(Cont'd)**

**NOTICE OF AWARD**

Dated: \_\_\_\_\_ **Bid No.** \_\_\_\_\_

To: \_\_\_\_\_

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

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

Owner: **City of Beaufort**

Title of Work: **Greenlawn Drive - Streetscape**

Location: **Greenlawn Drive between Boundary St and Greenlawn Circle (North)**

You are hereby notified that your Bid for the above work has been accepted, and you are awarded a contract, per enclosed copy of Resolution of Award of Contract.

Four copies of the proposed Contract Documents accompany this Notice of Award.

You must comply with the following conditions, precedent within **fourteen (14) days** of the date of this Notice of Award, this is by \_\_\_\_\_.

1. You must deliver to the **OWNER four (4)** fully executed counterparts of the Agreement, including the Contract Documents. The cover of the bound Contract Documents and the title sheet of the drawings must bear your authorized signature.
2. You must deliver with the executed Agreement, Construction Performance and Payment Bonds, as specified in the General Conditions (Paragraph 5.1) and Supplementary Conditions (Paragraph SC-5.1) in the form set forth in the Agreement.
3. Failure to comply with these conditions within the time specified will entitle **OWNER** to consider your bid abandoned, to annul this Notice of Award, and to declare your Bid Security forfeited.
4. Within **ten days (10)** after you comply with the conditions mentioned above, **OWNER** will return to you one (1) fully signed counterpart of the Agreement with the Contract Documents attached.

You are advised that, in accordance with Paragraph 2.7 of the General Conditions, you will be required, following the issuance of the Notice to Proceed, to deliver certificates of insurance prior to starting any work at the site.

**OWNER: City of Beaufort**

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

(Authorized Signature)

Title: City Manager

cc: Finance Manager

**SECTION 2 – CONTRACT DOCUMENTS**  
**(Cont'd)**

**NOTICE TO PROCEED**

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

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**PROJECT DESCRIPTION:**

**Greenlawn Drive - Streetscape**

You are hereby notified to commence WORK in accordance with the Agreement dated \_\_\_\_\_, 20 \_\_\_\_\_, and you are to complete the WORK within **210** consecutive calendar days thereafter. The date of completion of all WORK is therefore \_\_\_\_\_, 20 \_\_\_\_\_.

City of Beaufort

OWNER

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

\_\_\_\_\_

TITLE:

**ACCEPTANCE OF NOTICE**

Receipt of the above NOTICE TO PROCEED is hereby acknowledged by:

\_\_\_\_\_ this the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

BY \_\_\_\_\_

TITLE \_\_\_\_\_



**SECTION 2 – CONTRACT DOCUMENTS**  
(Cont'd)

**CHANGE ORDER**

Order No. \_\_\_\_\_

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

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

**NAME OF PROJECT:** Greenlawn Drive - Streetscape

**OWNER:** City of Beaufort

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

The following changes are hereby made to the **CONTRACT DOCUMENTS**:

**Justification:**

**CHANGE TO CONTRACT PRICE:**

Original CONTRACT PRICE: \$ \_\_\_\_\_

Current CONTRACT PRICE adjusted by previous CHANGE ORDER: \$ \_\_\_\_\_

The CONTRACT PRICE due to this CHANGE ORDER will be:

(increased)(decreased) by: \$ \_\_\_\_\_.

The new CONTRACT PRICE including this CHANGE ORDER will be: \$ \_\_\_\_\_.

**CHANGE TO CONTRACT TIME:**

The CURRENT CONTRACT TIME: \_\_\_\_\_ Days

The CONTRACT TIME will be (increased)(decreased) by \_\_\_\_\_ consecutive calendar days.

The date for completion of all **WORK** will be \_\_\_\_\_ (Date).

**SECTION 2 – CONTRACT DOCUMENTS  
(Cont'd)**

**CHANGE ORDER**

**APPROVALS REQUIRED**

To be effective this Order must be approved by the Federal Agency if it changes the scope or objective of the PROJECT, or if it will increase the budgeted amounts of Federal funds needed to complete the PROJECT, or as may otherwise be required by the SUPPLEMENTAL GENERAL CONDITIONS.

Requested by: \_\_\_\_\_

Recommended by: \_\_\_\_\_

Ordered by: \_\_\_\_\_

Accepted by: \_\_\_\_\_

Federal Agency Approval (where applicable) \_\_\_\_\_

(Balance of this page intentionally left blank)

**CERTIFICATE OF ACKNOWLEDGEMENT OF CONTRACTOR  
(IF A CORPORATION)  
for  
CONTRACT BONDS**

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

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_ before me personally came  
\_\_\_\_\_, to me known, who being me duly sworn, did  
depone and say as follows:

That he resides at \_\_\_\_\_, and is the:

\_\_\_\_\_ of \_\_\_\_\_,  
(Title of Officer) (Name of Corporation)

the Corporation described in and which executed the foregoing instrument that he knows the corporate seal of said Corporation; that the seal affixed to the foregoing instrument is such Corporate Seal and it was so affixed by order of the Board of Directors of said Corporation; and that by the like order he signed thereto his name and official designation.

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

\_\_\_\_\_  
(Name and Title)

\_\_\_\_\_  
Notary Public (Seal)

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

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**SECTION 2 – CONTRACT DOCUMENTS**  
**(Cont'd)**

**CERTIFICATE of POWERS of ATTORNEY**

I, the undersigned, \_\_\_\_\_, the duly authorized and  
acting legal representative of \_\_\_\_\_  
do hereby certify as follows:

I have examined the attached contract(s) and surety bonds and the manner of execution thereof, and I am of the opinion that each of the aforesaid agreements has been duly executed by the proper parties thereto acting through their duly authorized representatives; that said representatives have full power and authority to execute said agreements constitute valid and legally binding obligations upon the parties executing the same in accordance with terms, conditions, and provisions thereof.

\_\_\_\_\_  
(Signed)

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

(Balance of this page intentionally left blank)

**SECTION 2 – CONTRACT DOCUMENTS**  
**(Cont'd)**

**100% PERFORMANCE BOND**

**KNOW ALL ME BY THESE PRESENTS: THAT** \_\_\_\_\_, as Principal (hereinafter called **Contractor**), and \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_, as Surety (hereinafter called Surety), are held and firmly bound unto the City of Beaufort, South Carolina, as obligee, hereinafter called **Owner** in the amount of \_\_\_\_\_ for the payment whereof Contractor and Surety bind themselves, their dollars (\$\_\_\_\_\_) heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

**WHEREAS**, Contractor has by written agreement dated \_\_\_\_\_, 20\_\_\_\_, entered into a contract with Owner for: **Greenlawn Drive - Streetscape** in accordance with drawings and specifications prepared by Infrastructure, Consulting & Engineering for the Owner, City of Beaufort, which contract is by reference made a part hereof and is hereinafter referred to as the **Contract**.

**NOW, THEREFORE**, the condition of this obligation is such that, if Contractor shall promptly and faithfully perform said Contract, then this obligation shall be null and void, otherwise it will remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the Owner.

Whenever Contractor shall be, and declared by Owner to be in default under the contract, the Owner having performed Owner's obligation thereunder, the Surety may promptly remedy the default, or shall promptly

1. Complete the contract in accordance with its terms and conditions; or,
2. Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest bidder, or if the Owner elects, upon determination by the Owner and Surety jointly of the lowest responsible bidder, arrange for a Contract between such Bidder and the Owner, and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contract of Completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "Balance of the Contract Price", as used in this paragraph shall mean the total amount payable by Owner to contractor under the Contract and any amendments hereto, less the amount properly paid by Owner to Contractor.

**SECTION 2 – CONTRACT DOCUMENTS**  
**PERFORMANCE BOND**  
**(Cont'd)**

No action can be instituted on this bond after one year from the completion of the Contract and the acceptance by the Owner of the work thereunder.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ in the presence of:

\_\_\_\_\_  
Principal

By: \_\_\_\_\_ (Seal)

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Surety

By: \_\_\_\_\_ (Seal)

\_\_\_\_\_  
Witness

(Balance of this page intentionally left blank)

**SECTION 2 – CONTRACT DOCUMENTS  
(Cont'd)**

**100% LABOR AND MATERIAL PAYMENT BOND**

**KNOW ALL ME BY THESE PRESENTS:**

That \_\_\_\_\_, as Principal, hereinafter called Principal, and \_\_\_\_\_, of \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_, as Surety, hereinafter called Surety, are held and firmly bound unto City of Beaufort, South Carolina as oblige herein below defined, in the amount of \_\_\_\_\_ dollars (\$\_\_\_\_\_) for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

**WHEREAS**, Principal has by written agreement dated \_\_\_\_\_, 20\_\_\_\_, entered into a Contract with Owner for:

**Greenlawn Drive - Streetscape**

in accordance with drawings and specifications prepared by Beaufort County for the (Owner) City of Beaufort, which contract is reference made a part hereof, and is hereafter referred to as the **Contract**.

**NOW, THEREFORE**, the condition of this obligation is such that if the Principal shall promptly make payment to all claimants as is herein below defined for all labor and materials used or reasonable required for use in the performance of the Contract, this obligation shall be void; otherwise, it shall remain in full force and effect subject, however to the following conditions:

1. A claimant is defined as one having a direct contact with the principal or with a subcontractor of the Principal for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heating oil, gasoline, telephone service, rental of equipment, or repair of equipment directly applicable to the Contract.
2. The above-named Principal and Surety hereby jointly and severally agree with the Owner that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety **(90)** days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The Owner shall not be liable for the payment of any costs or expenses of any such suit.
3. No suit or action shall be commenced hereunder by any claimant.
  - A. Unless claimant, other than one having a direct Contract with the Principal, shall have given written notice to any two of the following: The Principal, the Owner, or the Surety above-named, within ninety **(90)** days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to

**SECTION 2 – CONTRACT DOCUMENTS  
LABOR AND MATERIAL PAYMENT BOND  
(Cont'd)**

whom the materials were furnished, or for whom the work for labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal, Owner, or Surety, at any place where an office is regularly maintained for the transaction of business or served in the state in which the aforesaid project is located, save that such service need not be made by a public officer.

- B. After one year from the completion of the Contract and the acceptance by Owner of the work thereunder, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation embodied in this bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.
- C. Other than in a state court of competent jurisdiction in and for the Owner or other political subdivision of the state in which the project, or any part thereof, is situated, or in the United States District Court for the district in which the project, or any part thereof, is situated and not elsewhere.
4. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder inclusive of the payment by Surety or mechanics' liens, which may be filed of record against improvement, whether or not claim for the amount of such lien be presented under and against this bond.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Witness

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

\_\_\_\_\_  
Witness

Surety: \_\_\_\_\_

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
South Carolina Representative

This bond is issued simultaneously with Performance Bond in favor of the Owner.



**SECTION 2 – CONTRACT DOCUMENTS**  
**(Cont'd)**

**NONCOLLUSION AFFIDAVIT OF SUBCONTRACTOR**

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

\_\_\_\_\_)

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

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

- (1) He is \_\_\_\_\_ (Owner, Partner, Officer, Representative, or Agent) of \_\_\_\_\_, hereinafter referred to as the "Subcontractor;
- (2) He is fully informed respecting the preparation and contents of the Subcontractor's Proposal submitted by the Subcontractor to \_\_\_\_\_, the Contractor for certain work in connection with the \_\_\_\_\_ Contract pertaining to the Project in the City of Beaufort, Beaufort County, South Carolina;
- (3) Such Subcontractor's Proposal is genuine and is not a collusive or sham Proposal;
- (4) Neither the Subcontractor nor any of its officers, partners, owners, agents, representatives, employees, or parties in interest, including this affiant has in any way colluded, conspired, connived, or agreed, directly or indirectly, with any other Bidder, firm or person to submit a collusive or sham Proposal in connection with such Contract or has in any manner, directly or indirectly, sought by unlawful agreement or connivance with any other Bidder, firm, or person to fix the price or prices in said Subcontractor's Proposal, or to secure through collusion, conspiracy, connivance, or unlawful agreement any advantage against City of Beaufort or any person interested in the proposed Contract, and,
- (5) The price or prices quoted in the Subcontractor's Proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

Signed \_\_\_\_\_

\_\_\_\_\_  
Title

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

\_\_\_\_\_  
\_\_\_\_\_  
Title (SEAL)

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

**SECTION 2 – CONTRACT DOCUMENTS**  
**(Cont'd)**

**FINAL AFFIDAVIT**

**TO CITY OF BEAUFORT, SOUTH CAROLINA:**

I, \_\_\_\_\_, hereby certify that all suppliers of materials, equipment and services, subcontractors, mechanics, and laborers employed by \_\_\_\_\_ or any of his subcontractors in connection with the construction of the **GREENLAWN DRIVE - Streetscape** project for the City of Beaufort have been paid and satisfied in full as of \_\_\_\_\_, 20\_\_\_\_, and that there are no outstanding obligations or claims of any kind for the payment of which City of Beaufort on the above named project might be liable, or subject to, in any lawful proceeding at law or in equity.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

Personally, appeared before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_, who under oath deposes and says that he is \_\_\_\_\_ of the firm of \_\_\_\_\_ and that he has read the above statement and that to the best of his knowledge and belief same is an exact true statement.

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

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

# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

**ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE**

and

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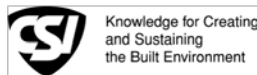
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National Society of Professional Engineers

1420 King Street, Alexandria, VA 22314

American Council of Engineering Companies

1015 15th Street, N.W., Washington, DC 20005

American Society of Civil Engineers

1801 Alexander Bell Drive, Reston, VA 20191-4400

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## GENERAL CONDITIONS

### ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

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#### 1.01

##### *Defined Terms*

A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1. *Addenda*--Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
2. *Agreement*--The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.
3. *Application for Payment*--The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
4. *Asbestos*--Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
5. *Bid*--The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
6. *Bidder*--The individual or entity who submits a Bid directly to Owner.
7. *Bidding Documents*--The Bidding Requirements and the proposed Contract Documents (including all Addenda).
8. *Bidding Requirements*--The Advertisement or Invitation to Bid, Instructions to Bidders, bid security of acceptable form, if any, and the Bid Form with any supplements.
9. *Change Order*--A document recommended by Engineer which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the

Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.

10. *Claim*--A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
11. *Contract*--The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.
12. *Contract Documents*-- Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor's submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
13. *Contract Price*--The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).
14. *Contract Times*--The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any, (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.
15. *Contractor*--The individual or entity with whom Owner has entered into the Agreement.
16. *Cost of the Work*--See Paragraph 11.01.A for definition.
17. *Drawings*--That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.
18. *Effective Date of the Agreement*--The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
19. *Engineer*--The individual or entity named as such in the Agreement.
20. *Field Order*--A written order issued by Engineer which requires minor changes in the Work but



- which does not involve a change in the Contract Price or the Contract Times.
21. *General Requirements*--Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.
  22. *Hazardous Environmental Condition*--The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.
  23. *Hazardous Waste*--The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
  24. *Laws and Regulations; Laws or Regulations*--Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
  25. *Liens*--Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
  26. *Milestone*--A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
  27. *Notice of Award*--The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.
  28. *Notice to Proceed*--A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.
  29. *Owner*--The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.
  30. *PCBs*--Polychlorinated biphenyls.
  31. *Petroleum*--Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
  32. *Progress Schedule*--A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times
  33. *Project*--The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
  34. *Project Manual*--The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.
  35. *Radioactive Material*--Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
  36. *Related Entity* -- An officer, director, partner, employee, agent, consultant, or subcontractor.
  37. *Resident Project Representative*--The authorized representative of Engineer who may be assigned to the Site or any part thereof.
  38. *Samples*--Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
  39. *Schedule of Submittals*--A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.
  40. *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.
  41. *Shop Drawings*--All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
  42. *Site*--Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.

43. *Specifications*--That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
44. *Subcontractor*--An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
45. *Substantial Completion*--The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
46. *Successful Bidder*--The Bidder submitting a responsive Bid to whom Owner makes an award.
47. *Supplementary Conditions*--That part of the Contract Documents which amends or supplements these General Conditions.
48. *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 any Subcontractor.
49. *Underground Facilities*--All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
50. *Unit Price Work*--Work to be paid for on the basis of unit prices.
51. *Work*--The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

52. *Work Change Directive*--A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

## 1.02 Terminology

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

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

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

### C. *Day*

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

### D. *Defective*

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:

- a. does not conform to the Contract Documents, or
- b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents, or
- c. has been damaged prior to Engineer’s - recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).

*E. Furnish, Install, Perform, Provide*

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, “provide” is implied.

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

ARTICLE 2 - PRELIMINARY MATTERS

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2.01 Delivery of Bonds and Evidence of Insurance

A. When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.

B. *Evidence of Insurance:* Before any Work at the Site is started, Contractor and Owner shall each

deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Contractor and Owner respectively are required to purchase and maintain in accordance with Article 5.

2.02 Copies of Documents

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

2.03 Commencement of Contract Times; Notice to Proceed

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

2.04 Starting the Work

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

2.05 Before Starting Construction

A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to Engineer for timely review:

1. a preliminary Progress Schedule; indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;
2. a preliminary Schedule of Submittals; and
3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

## 2.06 Preconstruction Conference

A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

## 2.07 Initial Acceptance of Schedules

A. At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.

1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work nor interfere with or relieve Contractor from Contractor's full responsibility therefor.

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

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

### 3.01 Intent

A. The Contract Documents are complementary; what is required by one is as binding as if required by all.

B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from

prevailing custom or trade usage as being required to produce the intended result will be provided whether or not specifically called for at no additional cost to Owner.

C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in Article 9.

### 3.02 Reference Standards

A. Standards, Specifications, Codes, Laws, and Regulations

1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard, specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, or Engineer, or any of, their Related Entities, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

### 3.03 Reporting and Resolving Discrepancies

A. Reporting Discrepancies

1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor may discover and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.

2. *Contractor's Review of Contract Documents During Performance of Work:* If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the

Contract Documents and any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.

3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor knew or reasonably should have known thereof.

#### B. Resolving Discrepancies

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

#### 3.04 Amending and Supplementing Contract Documents

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.

B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:

1. A Field Order;
2. Engineer's approval of a Shop Drawing or Sample; (Subject to the provisions of Paragraph 6.17.D.3); or
3. Engineer's written interpretation or clarification.

#### 3.05 Reuse of Documents

A. Contractor and any Subcontractor or Supplier or other individual or entity performing or furnishing all

of the Work under a direct or indirect contract with Contractor, shall not:

1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or Engineer's consultants, including electronic media editions; or
2. reuse any of such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaption by Engineer.

B. The prohibition of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

#### 3.06 Electronic Data

A. Copies of data furnished by Owner or Engineer to Contractor or Contractor to Owner or Engineer that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60day acceptance period will be corrected by the transferring party

C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

ARTICLE 4 - AVAILABILITY OF LANDS;  
SUBSURFACE AND PHYSICAL CONDITIONS;  
HAZARDOUS ENVIRONMENTAL  
CONDITIONS; REFERENCE POINTS

#### 4.01 *Availability of Lands*

Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

A. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.

B. *(Deleted)*

#### 4.02 *Subsurface and Physical Conditions*

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

1. those reports of explorations and tests of subsurface conditions at or contiguous to the Site that Engineer has used in preparing the Contract Documents; and
2. those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that Engineer has used in preparing the Contract Documents.

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

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

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

A. *Notice:* If Contractor believes that any subsurface or physical condition at or contiguous to the Site that is uncovered or revealed either:

1. is of such a nature as to establish that any "technical data" on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or
2. is of such a nature as to require a change in the Contract Documents; or
3. differs materially from that shown or indicated in the Contract Documents; or
4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents; then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

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

#### C. Possible Price and Times Adjustments

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
  - a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and

- b. with respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:
- a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or
  - b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or
  - c. Contractor failed to give the written notice as required by Paragraph 4.03.A.
3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, Owner and Engineer, and any of their Related Entities shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

#### 4.04 *Underground Facilities*

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

- 1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data; and
- 2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:

- a. reviewing and checking all such information and data, locating all Underground Facilities shown or indicated in the Contract Documents,
- b. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction, and
- c. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

#### B. *Not Shown or Indicated*

- 1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
- 2. If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

#### 4.05 *Reference Points*

A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall

protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

**4.06 Hazardous Environmental Condition at Site**

**A. Reports and Drawings:** Reference is made to the Supplementary Conditions for the identification of those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that have been utilized by the Engineer in the preparation of the Contract Documents.

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

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

**C.** Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.

**D.** If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor

shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any.

**E.** Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered to Contractor written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.

**F.** If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.

**G.** To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by



anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06. G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

H. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

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

## ARTICLE 5 - BONDS AND INSURANCE

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

A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.

B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an

agent must be accompanied by a certified copy of the agent's authority to act.

C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

### 5.02 *Licensed Sureties and Insurers*

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

### 5.03 *Certificates of Insurance*

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

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

### 5.04 *Contractor's Liability Insurance*

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

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;

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

B. The policies of insurance required by this Paragraph 5.04 shall:

1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, include as additional insured (subject to any customary exclusion regarding professional liability) Owner and Engineer, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, partners, employees, agents, consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;
2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;
3. include completed operations insurance;
4. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;
5. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in the Supplementary Conditions to

whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);

6. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and
7. with respect to completed operations insurance, and any insurance coverage written on a claim made basis, remain in effect for at least two years after final payment.
  - a. Contractor shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

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

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

#### 5.06 *Property Insurance*

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

1. include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;
2. be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, false work, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage,

theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, (other than caused by flood) and such other perils or causes of loss as may be specifically required by the Supplementary Conditions;

3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;
5. allow for partial utilization of the Work by Owner;
6. include testing and startup; and
7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other additional insured to whom a certificate of insurance has been issued.

B. Owner shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.

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

Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the

Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

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

#### 5.07 *Waiver of Rights*

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

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

1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and
2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial utilization pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.

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

#### *5.08 Receipt and Application of Insurance Proceeds*

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

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

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

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

#### *5.10 Partial Utilization, Acknowledgment of Property Insurer*

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

### **ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES**

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#### *6.01 Supervision and Superintendence*

A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall not be responsible for the negligence of Owner or Engineer in the design or

specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.

B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances. The superintendent will be Contractor's representative at the Site and shall have authority to act on behalf of Contractor. All communications given to or received from the superintendent shall be binding on Contractor.

#### 6.02 *Labor; Working Hours*

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

B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner's written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.

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

A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as

otherwise may be provided in the Contract Documents.

#### 6.04 *Progress Schedule*

A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 as it may be adjusted from time to time as provided below.

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

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

A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances described below.

1. *"Or-Equal" Items:* If in Engineer's sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an "or-equal" item, in which case review and approval of the proposed item may, in Engineer's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:
  - a. in the exercise of reasonable judgment Engineer determines that:
    - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
    - 2) it will reliably perform at least equally well the function and achieve the results imposed

- by the design concept of the completed Project as a functioning whole,
- 3) it has a proven record of performance and availability of responsive service; and
- b. Contractor certifies that, if approved and incorporated into the Work:
- 1) there will be no increase in cost to the Owner or increase in Contract Times, and
- 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.
2. Substitute Items
- a. If in Engineer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.
- b. Contractor shall submit sufficient information as provided below to allow Engineer to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.
- c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented in the General Requirements and as Engineer may decide is appropriate under the circumstances.
- d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
1. shall certify that the proposed substitute item will:
- a) perform adequately the functions and achieve the results called for by the general design,
- b) be similar in substance to that specified, and
- c) be suited to the same use as that specified;
2. will state:
- a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time;
- b) whether or not use of the proposed substitute item in the Work will require a

- change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and
- c) whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;
3. will identify:
- a) all variations of the proposed substitute item from that specified, and
- b) available engineering, sales, maintenance, repair, and replacement services;
4. and shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change,

**B. *Substitute Construction Methods or Procedures:***

If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05. A.2.

**C. *Engineer's Evaluation:*** Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by either a Change Order for a substitute or an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.

**D. *Special Guarantee:*** Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.

**E. *Engineer's Cost Reimbursement:*** Engineer will record Engineer's costs in evaluating a substitute

proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B Whether or not Engineer approves a substitute item so proposed or submitted by Contractor, Contractor shall reimburse Owner for the charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

*F. Contractor' Expense:*

Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

*6.06 Concerning Subcontractors, Suppliers, and Others*

A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.

B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.

C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or

entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:

1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity, nor
2. shall anything in the Contract Documents create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.

E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.

F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, and Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by

any Subcontractor or Supplier, Contractor will obtain the same.

**6.07 Patent Fees and Royalties**

A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of Owner or Engineer its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.

B. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

**6.08 Permits**

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

**6.09 Laws and Regulations**

A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.

B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or

Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor's primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.

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

**6.10 Taxes**

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

**6.11 Use of Site and Other Areas**

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

1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other



professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.

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

**C. *Cleaning:*** Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

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

#### **6.12 *Record Documents***

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

#### **6.13 *Safety and Protection***

A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

1. all persons on the Site or who may be affected by the Work;
2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and

3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

C. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or , or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).

D. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

#### **6.14 *Safety Representative***

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

#### **6.15 *Hazard Communication Programs***

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

#### 6.16 *Emergencies*

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

#### 6.17 *Shop Drawings and Samples*

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

##### 1. Shop Drawings

- a. Submit number of copies specified in the General Requirements.
- b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 6.17.D.

##### 2. *Samples*: Contractor shall also submit samples to Engineer for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals.

- a. Submit number of Samples specified in the Specifications.
- b. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 6.17.D.

B. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

##### C. Submittal Procedures

##### 1. Before submitting each Shop Drawing or Sample, Contractor shall have determined and verified:

- a. all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
- b. the suitability of all materials with respect to intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work;
- c. all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto; and
- d. shall also have reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents.

##### 2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval of that submittal.

##### 3. With each submittal, Contractor shall give Engineer specific written notice of any variations, that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawing's or Sample Submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

##### D. *Engineer's Review*

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and

expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17. C.1.

#### *E. Resubmittal Procedures*

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

#### *6.18 Continuing the Work*

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

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

A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its Related Entities shall be entitled to rely on representation of Contractor's warranty and guarantee.

B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
2. normal wear and tear under normal usage.

C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release

of Contractor's obligation to perform the Work in accordance with the Contract Documents:

1. observations by Engineer;
2. recommendation by Engineer or payment by Owner of any progress or final payment;
3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
4. use or occupancy of the Work or any part thereof by Owner;
5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;
6. any inspection, test, or approval by others; or
7. any correction of defective Work by Owner.

#### *6.20 Indemnification*

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

B. In any and all claims against Owner or Engineer or any of their respective consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers'

compensation acts, disability benefit acts, or other employee benefit acts.

C. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the liability of Engineer and Engineer's officers, directors, partners, employees, agents, consultants and subcontractors arising out of:

1. the preparation or approval of, or the failure to prepare or approve, maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

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

A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.

B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.

C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.

D. Pursuant to this Paragraph 6.21, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other

submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17. D.1.

E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

### ARTICLE 7 - OTHER WORK AT THE SITE

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#### 7.01 *Related Work at Site*

A. Owner may perform other work related to the Project at the Site with Owner's employees, or via other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:

1. written notice thereof will be given to Contractor prior to starting any such other work; and;
2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.

B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and shall properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.

C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute

an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

#### 7.02 *Coordination*

A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:

1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;
2. the specific matters to be covered by such authority and responsibility will be itemized; and
3. the extent of such authority and responsibilities will be provided.

B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

#### 7.03 *Legal Relationships*

A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.

B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's actions or inactions.

C. Contractor shall be liable to Owner and any other contractor for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's action or inactions.

### ARTICLE 8 - OWNER'S RESPONSIBILITIES

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#### 8.01 *Communications to Contractor*

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

#### 8.02 *Replacement of Engineer*

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

#### 8.03 *Furnish Data*

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

#### 8.04 *Pay When Due*

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

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

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

#### 8.06 *Insurance*

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

#### 8.07 *Change Orders*

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

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

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

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

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

#### 8.10 *Undisclosed Hazardous Environmental Condition*

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

#### 8.11 *Evidence of Financial Arrangements*

A. If and to the extent Owner has agreed to furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents, Owner's responsibility in respect thereof will be as set forth in the Supplementary Conditions.

## ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

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### 9.01 *Owner's Representative*

A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract Documents and will not be changed without written consent of Owner and Engineer.

### 9.02 *Visits to Site*

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

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

Regulations applicable to the performance of the Work.

### 9.03 *Project Representative*

A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants

will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

### 9.04 *Authorized Variations in Work*

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

### 9.05 *Rejecting Defective Work*

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

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

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

B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.

C. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.

D. In connection with Engineer's authority as to Applications for Payment, see Article 14.

### 9.07 *Determinations for Unit Price Work*

A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by

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

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

A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question

B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believe that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.

C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.

D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

**9.09 *Limitations on Engineer's Authority and Responsibilities***

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

B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's

means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with the Contract Documents.

E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to, the Resident Project Representative, if any, and assistants, if any.

**ARTICLE 10 - CHANGES IN THE WORK; CLAIMS**

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

A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Work Change Directive.

B. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

C. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

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

A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not

required by the Contract Documents as amended, modified, or supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.B.

#### 10.03 *Execution of Change Orders*

A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:

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

#### 10.04 *Notification to Surety*

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

#### 10.05 *Claims*

*Engineer's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.

*Notice:* Written notice stating the general nature of each Claim, shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to

substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).

A. *Engineer's Action:* Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:

1. deny the Claim in whole or in part,
2. approve the Claim, or
3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.

D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.

E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.

F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

### ARTICLE 11 - COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

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#### 11.01 *Cost of the Work*

A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in



Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in Paragraph 11.01.B.

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.
2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable.
4. Costs of special consultants (including but not limited to Engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:
  - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
  - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
  - c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
  - d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, imposed by Laws and Regulations.
  - e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
  - f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall

include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.

- g. The cost of utilities, fuel, and sanitary facilities at the Site.
- h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, expresses, and similar petty cash items in connection with the Work.
- i. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.

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

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

C. *(Deleted)*

D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will

establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

#### 11.02 Allowances

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

##### *Cash Allowances*

1. Contractor agrees that: the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

- a. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

C. Contingency Allowance *(not allowed)*

1. *(Deleted)*.

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

#### 11.03 Unit Price Work

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.

B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.

C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.

D. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:

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

## ARTICLE 12 - CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

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### 12.01 *Change of Contract Price*

A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:

1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or
2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or
3. *(Deleted)*

C. *Contractor's Fee*: The Contractor's fee for overhead and profit shall be determined as follows:

1. a mutually acceptable fixed fee; or
2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
  - a. *(deleted)*;
  - b. *(deleted)*;
  - c. *(deleted)*;

- d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;
- e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
- f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

### 12.02 *Change of Contract Times*

A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

### 12.03 *Delays*

A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.

B. If Owner, Engineer, or other contractors or utility owners performing the work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.

C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic,

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

D. Owner, Engineer and the Related Entities of each of them shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of Engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

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

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##### 13.01 *Notice of Defects*

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

##### 13.02 *Access to Work*

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

##### 13.03 *Tests and Inspections*

A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:

1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;
2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in said Paragraph 13.04.C; and
3. as otherwise specifically provided in the Contract Documents.

C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.

D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.

E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, it must, if requested by Engineer, be uncovered for observation.

F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

##### 13.04 *Uncovering Work*

A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.

B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection,

or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.

C. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.

D. If, the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

#### 13.05 *Owner May Stop the Work*

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

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

A. Promptly after receipt of notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

#### 13.07 *Correction Period*

A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

1. repair such defective land or areas; or
2. correct such defective Work; or
3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.

B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.

C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.

D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitation or repose.

**13.08 Acceptance of Defective Work**

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

**13.09 Owner May Correct Defective Work**

A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work or to remove and replace rejected Work as required by Engineer in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct or remedy any such deficiency.

B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner

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

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

D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

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**ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION**

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**14.01 Schedule of Values**

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

**14.02 Progress Payments**

**A. Applications for Payments**

1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably

stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.

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

#### *B. Review of Applications*

1. Engineer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.

2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations on the Site of the executed Work as an experienced and qualified design professional and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:

- a. the Work has progressed to the point indicated;
- b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and to any other qualifications stated in the recommendation); and
- c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.

3. By recommending any such payment Engineer will not thereby be deemed to have represented that:

- a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or
- b. that there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer: to supervise, direct, or control the Work, or

- a. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
- b. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
- c. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or
- d. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.

5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02. B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:

- a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
- b. the Contract Price has been reduced by Change Orders;

- c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or
- d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

*C. Payment Becomes Due*

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

*D. Reduction in Payment*

- 1. Owner may refuse to make payment of the full amount recommended by Engineer because:
  - a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;
  - b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
  - c. there are other items entitling Owner to a set-off against the amount recommended; or
  - d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.
- 2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor corrects to Owner's satisfaction the reasons for such action.
- 3. If it is subsequently determined that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02. C.1.

*14.03 Contractor's Warranty of Title*

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

*14.04 Substantial Completion*

A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.

B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.

C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will within 14 days after submission of the tentative certificate to Owner notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner's objections, Engineer considers the Work substantially complete, Engineer will within said 14 days execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.

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

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



#### 14.05 *Partial Utilization*

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

1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor will certify to Owner and Engineer that such part of the Work is substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

#### 14.06 *Final Inspection*

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

are necessary to complete such Work or remedy such deficiencies.

#### 14.07 *Final Payment*

##### A. Application for Payment

After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance certificates of inspection, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.

1. The final Application for Payment shall be accompanied (except as previously delivered) by:
  - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.7;
  - b. consent of the surety, if any, to final payment;
  - c. a list of all Claims against Owner that Contractor believes are unsettled; and
  - d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that:

- (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and
- (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner or Owner's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

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

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is

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

#### C. Payment Becomes Due

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

#### 14.08 *Final Completion Delayed*

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

#### 14.09 *Waiver of Claims*

A. The making and acceptance of final payment will constitute:

1. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified

therein, or from Contractor's continuing obligations under the Contract Documents; and

2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

## ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

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### 15.01 *Owner May Suspend Work*

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

### 15.02 *Owner May Terminate for Cause*

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

1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);
2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;
3. Contractor's disregard of the authority of Engineer; or
4. Contractor's violation in any substantial way of any provisions of the Contract Documents.

B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:

1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full

extent they could be used by Contractor (without liability to Contractor for trespass or conversion),

2. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and
3. complete the Work as Owner may deem expedient.

C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph Owner shall not be required to obtain the lowest price for the Work performed.

D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.

E. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.

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

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

A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):

1. completed and acceptable Work executed in accordance with the Contract Documents prior to

the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
3. all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and
4. reasonable expenses directly attributable to termination.

B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

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

A. If, through no act or fault of Contractor,

- (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or
- (ii) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.

B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.

## ARTICLE 16 - DISPUTE RESOLUTION

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### 16.01 *Methods and Procedures*

A. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.

B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.

C. If the Claim is not resolved by mediation, Engineer's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:

1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions, or
2. agrees with the other party to submit the Claim to another dispute resolution process, or
3. gives written notice to the other party of their intent to submit the Claim to a court of competent jurisdiction.

## ARTICLE 17 - MISCELLANEOUS

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### 17.01 *Giving Notice*

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:

1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or
2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

### 17.02 *Computation of Times*

A. When any period of time is referred to in the Contract Documents by days, it will be computed to

exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

**SECTION FOUR**

**SUPPLEMENTARY CONDITIONS**

**GREENLAWN DRIVE**

**STREETSCAPE**

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## SECTION 4 - SUPPLEMENTARY CONDITIONS

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## SECTION 4 - SUPPLEMENTARY CONDITIONS (Cont'd)

### Introductory Statement

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

### PART I

#### **AMENDMENTS AND SUPPLEMENTS TO GENERAL CONDITIONS**

##### **SC-1** Defined Terms

The terms used in these Supplementary Conditions which are defined in the General Conditions have the meanings assigned to them in the General Conditions.

**Add** the following terms to the definitions in Article 1 of the General Conditions:

**"Bidder"** - One who submits a Bid directly to Owner, as distinct from a sub-bidder, who submits a bid to a Bidder.

**"General Conditions"** - Refers to Standard General Conditions of the Construction Contract, as included in the Contract Documents.

**"General Requirements"** - Refers to the General Requirements of the Specifications which is the part of the Contract Documents which amends or supplements the General Conditions with regard to Specifications.

**"Successful Bidder"** - The lowest, qualified, responsible and responsive Bidder to whom Owner makes an award.

### PART II

#### **AMENDMENTS to EJCDC GENERAL CONDITIONS**

**SC-2** **AMENDMENTS** - The following Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract (EJCDC-2002 Edition) and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented remain in full force and effect.

**The TERMS** used in these Supplementary Conditions will have the meanings indicated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings indicated here within, which are applicable to both the singular and plural thereof.

**SC-2** **2.05 B-3** **Add** the following new paragraph to the General Conditions after paragraph 2.05 B-3:

**Paragraph B-4** - *"a schedule of anticipated shipping dates for materials and equipment. It is intended that equipment and materials be so scheduled as to arrive at the job site just prior to time for installation to prevent excessive material on hand for inventory and necessity for extensive storage facilities at the job site."*

**SECTION 4 - SUPPLEMENTARY CONDITIONS**  
**(Cont'd)**

**SC 2     4.02- A & B** - No reports of exploration and testing of subsurface conditions and or drawings of physical conditions related to subsurface conditions have been done or exist for the Greenlawn Drive – Streetscape project.

**SC 2     5.04 B-7** - Add the following new paragraph to the General Conditions after paragraph 5.04 B7:

**5.04 B-8:**     *Bonding surety shall be located in the state in which the work is being performed. The Contractor shall not commence work under this contract until he has obtained all the insurance required under this paragraph and such insurance has been accepted by the Owner, nor shall the Contractor allow any Subcontractor to commence work on his subcontract until the insurance required of the Subcontractor has been so obtained and accepted.*

- a. **Compensation and Employer's Liability Insurance:** *The Contractor shall take out and maintain during the life of the contract the statutory Worker's Compensation and Employer's Liability Insurance for all of his employees to be engaged in work on the project under the contract and, in case such work is sublet, the Contractor should require the Subcontractor similarly to provide Worker's Compensation and Employer's Liability Insurance for all the latter's employees to be engaged in such work.*
- b. **Bodily Injury Liability and Property Damage Liability Insurance:** *The Contractor shall take out and maintain during the life of the contract Bodily Injury Liability and Property Damage Liability Insurance to protect him and any subcontractor performing work covered by the contract from claims for damages or personal injury, including accidental death, as well as from claims for property damage, which may arise from operation under the contract, whether such operations be by himself or by a Subcontractor or by anyone directly or indirectly employed by either of them and the amount of such insurance should be not less than:*
  - (1) *Bodily Injury Liability Insurance, in an amount not less than \$1,000,000.00 for injuries, including wrongful death to any one person and subject to the same limit for each person in an amount not less than \$500,000.00 on account of one accident.*
  - (2) *Property Damage Insurance in an amount not less than \$500,000.00 for damages on account of any one accident, and in an amount not less than \$1,000,000.00 for damages on account of all accidents.*
- c. **Builder's Risk Insurance (Fire and Extended Coverage):** *The Contractor shall have adequate fire and standard extended coverage, with a company or companies acceptable to the Owner, in force on the project. The provisions with respect to Builder's Risk Insurance shall in no way relieve the Contractor of his obligation of completing the work covered by the Contract.*
- d. **Proof of Carriage of Insurance:** *The Contractor shall furnish the Owner with certificates showing the type, amount, class of operations, effective dates and date of expiration of policies. Such certificates shall contain substantially the following statement: "The insurance covered by this certification shall not be canceled or materially altered, except after 10 days written notice has been received by the Owner."*

**SC 2     6.08**     Add the following:

*The Contractor shall not proceed until all encroachment permits, curb cut permits, highway crossing permits, and railroad crossing permits have been secured. Contact Owner to ascertain status of permits.*



**SECTION 4 - SUPPLEMENTARY CONDITIONS**  
**(Cont'd)**

**SC 2     6.09 C**        Add a new paragraph after paragraph 6.09 C of the General Conditions which is to read as follows:

**6.09 D.**        *The Contractor shall comply with the Department of Labor Safety and Health Regulations for Construction promulgated under the Occupational Safety and Health Act of 1970 (PL 91-596) and under Section 107 of the Contract Work and Safety Standards Act (PL 91-54). The regulations are administered by the Department of Labor and the Contractor shall allow access to the project to personnel from that Department.*

*The Bidder's attention is directed to the fact that all applicable State laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the project shall apply to the contract throughout and they will be deemed to be included in the contract the same as though herein written in full.*

*The Contractor shall keep himself fully informed of all laws, ordinances and regulations of Federal, State, City and County, in any manner affecting those engaged or employed in the work, or the materials used in the work, or in any way affecting the conduct of the work, and of all orders and decrees of bodies or tribunals having any jurisdiction or authority over same. He shall at all times, observe and comply with all such existing and future laws, ordinances, and regulations."*

**SC 2     6.12 B**        **Add** a new paragraph after paragraph 6.12 A of the General Conditions which is to read as follows:

**6.12 B**        **Record Data Drawings:**

1. *The Contractor shall keep accurate, legible records of the locations, types, and sizes of sanitary sewage lines, service laterals, manholes, cleanouts, water lines, fittings, valves, hydrants, drainage pipes, drainage structures and other related work performed under this project. On a set of project prints provided by the Owner, the Contractor shall prepare a set of "record" drawings from the data stated above. The horizontal locations of all portions of items installed on this project shall be accurately tied down to features that are physical and visible, such as property corner markers and/or permanent type structures. Invert and frame elevations of all manholes, storm sewers and structures, sanitary sewers and lift stations shall be clearly indicated. These "record" drawings shall be kept clean and dry and maintained in a current state with the progress of the work. If at any time, a copy of this plan or portion of it is requested by the Owner, such copy shall be made available within 24 hours after the request is made.*
2. *Before final acceptance of the completed installation and before final payment by the owner, the Contractor shall deliver to the Engineer a completed set of "record" drawings accurately depicting the data described above. The horizontal and vertical locations as shown on the "record" drawings for the items installed on this project shall be certified by a licensed surveyor, registered in the State in which the project is located. "Record" Drawings shall be submitted on a marked up set of project construction prints and electronically in an AutoCAD compatible format. When completed, Engineer shall have the Contractor's licensed surveyor stamp and sign the original "record" drawings before making copies available to the Owner or other appropriate agencies.*

**SC 2     6.13 A-3** - Add the following:

*"Safely guard the Owner's property from damages or injury or loss in connection with this contract. Contractor shall at all times guard and protect his own work and all materials of every description both before and after being used in the work, and all work performed by him.*

**SECTION 4 - SUPPLEMENTARY CONDITIONS  
(Cont'd)**

*Contractor shall provide any enclosing or special protection from weather deemed necessary by Engineer without additional cost to the Owner. Partial payments under the contract will not relieve the Contractor from responsibility for protection of material, work, and property. "*

- SC 2     9.02 B** - Add a new paragraph after paragraph 9.02 B of the General Conditions which is to read as follows:

**9.02 C.** *If at any time before the commencement or during the progress of the work, tools, plant or equipment appear to the Engineer to be insufficient inefficient, or inappropriate to secure the quality of the work required or the proper rate of progress, the Engineer may order the Contractor to increase their efficiency, to improve their character, to augment their number, or to substitute new tools, plant or equipment as the case may be, and the Contractor must conform to such order; but a failure of the Engineer to demand such increase or efficiency, number, or improvements, shall not relieve the Contractor of his obligation to secure the quality of work and the rate of progress necessary to complete the work within the time required by his contract to the satisfaction of the Owner."*

- SC 2     9.06** - Add the following sentence at the end of paragraph 9.06 of the General Conditions:

*"Owner and Engineer have the right to reject defective materials. Defective materials shall not be used in the work."*

- SC 2     13.03 A** - Add the following sentences to paragraph 13.03 A of the General Conditions:

*"The Contractor will be required to maintain all work in a condition acceptable to the Engineer for a 30-day operating period after the same has been completed as a whole, and the Engineer has notified the Contractor in writing that the work has been finished to his satisfaction. The Contractor shall give the Project Engineer or Project Representative a minimum of 48 hour notice for all required observations and tests."*

**PART 3**

**AMENDMENTS - MODIFICATION OF STANDARD SPECIFICATIONS OF THE STATE OF SOUTH  
CAROLINA HIGHWAY DEPARTMENT**

**SC-3     SECTION 101- DEFINITIONS AND TERMS**

Section 101.3.4 - Award

Delete Reference to the Director (DOC) & substitute the following in its place:

*Manager, City of Beaufort Project Engineer*

Section 101.3.10 - Change Order

**Add** the following at the end of last paragraph:

*A Change Order shall be considered executable only after being approved & signed by the City of Beaufort Manager.*

Section 101.3.11 - Commission

Delete as written with reference to SCDOT and substitute the following:

*City Council of Beaufort County, or City*

## SECTION 4 - SUPPLEMENTARY CONDITIONS (Cont'd)

### Section 101.3.13 - Construction Estimate

Add the following at the end of the last sentence:

*The Construction Estimate shall be prepared by the Project Engineer with Quantities mutually agreed upon by the City and the Contractor.*

### Section 101.3.21 - County

Delete as written :

### Section 101.3.24 - Department

Delete references as written to SCDOT & substitute the following:

*City of Beaufort Public Works Department*

### Section 101.3.26 – Director

Delete references as written written to SCDOT and substitute the following:

*City of Beaufort Manager*

### Section 101.3.27 - Engineer

**Delete** as written with reference to SCDOT & substitute the following:

*City of Beaufort Project Engineer, acting directly or through his/her duly authorized representative, such representative acting within the scope of particular duties assigned to him/her and of the authority given him/her. Section 101.27*

**Add** the following after existing reference to the State Engineer:

*or City of Beaufort Project Engineer.*

### Section 101.3.50 - Proposal

Here and in all other referred instances as referenced to, shall also be known as the **Bid Documents**, Sections 1.0 - 1.10., inclusive of this Contract

Proposal Form – whenever and wherever referred to, shall be known as the Bid Documents, Sections 1.0 - 1.10., inclusive

### Section 101.83 - Work, The

Add the following sentence as a second paragraph *It shall also where applicable, have the definition, meaning and intent as implied in the Technical Specifications Subsection A – General, if applicable.*

## SC 3 **SECTION 102 - BIDDING REQUIREMENTS & CONDITIONS**

### Section 102.2-Proposal

Delete any reference to electronic bidding and add the following additional language after the last paragraph :

*No proposal will be considered unless accompanied by a Bid Bond on City's form, in the amount of 5% of the submitted bid, written by a company licensed for surety in the State of South Carolina and assigned a rating of "A" or better by the A.M. Best Company on its most recent Bests Insurance Report. The proposal bond shall be made payable to the City of Beaufort Finance Office.*

## SECTION 4 - SUPPLEMENTARY CONDITIONS (Cont'd)

### Section 102.5-Electronic Bidding

Delete any and all reference to electronic bidding and as a point of clarification include the following in its place:

Each proposal shall be submitted in a plain business sized envelope (9" x 12").

The envelope shall be marked correctly & clearly as to its contents indicating the following:

- i. Name & address of the Bidder,
- ii. project number (per Bid Documents),
- iii. addressed to the City of Beaufort City Manager's Office,
- iv. 1911 Boundary Street, Beaufort, SC 29901.

*When addressed as above, in order to be considered, all proposals sent by mail must be received by the City Manager's Office prior to the time specified in the **Invitation to Bid**. Proposals received after the time for opening of Bids will be returned to the Bidder unopened.*

### Section 102.11-Public Opening of Bids

**Delete** reference to electronic bids

## SC-3 **SECTION 103 - AWARD & EXECUTION OF CONTRACT**

### Section 103.1- Consideration of Proposals

Delete reference to "the Director" & substitute the following in its place:

*City of Beaufort Manager or City of Beaufort Council*

### Section 103.2-Award of Contract

Revise reference to "30 calendar days" to read:

*ninety (90) calendar days*.

### Section 103.3-Cancellation of Award

Delete this section in its entirety and refer to Bid Documents.

### Section 103.4-Return of Proposal Guaranty (Bid Security)

Delete in its entirety and refer to Section 7.4 of the **Instruction to Bidders**.

### Section 103.5-Bond Requirements

Delete reference in fourth paragraph to "The Department" in the statement ending: to the Department and substitute in its place:

*City of Beaufort.*

### Section 103.6-Execution of the Contract

Delete reference to "20 calendar days" and substitute in its place:

*Ten (10) business days.*

### Section 103.7-Failure to Execute the Contract

Delete reference to "20 calendar days" and substitute in its place:

*Timeline as specified in the Contract documents*

Delete reference to "The Department" and substitute in its place:

*City of Beaufort.*

## **SECTION 4 - SUPPLEMENTARY CONDITIONS (Cont'd)**

### Section 103.8-Contractor's Liability Insurance

Delete in entirety and see General Conditions and Section 5 General Provision-Insurance Requirements for insurance requirements.

### Section 103.9- Deferral and Cancellation of Contract

Delete in entirety and see General Conditions of Contract.

### Section 103.10-Mobilization

Delete in entirety and see General Conditions of the Contract.

### Section 103.11-Measurement and Payment-Mobilization

Delete in entirety and see General Conditions of Contract.

## **SC-3 SECTION 104 - SCOPE OF WORK**

### Section 104.1- Intent of Contract

Delete in entirety and see General Conditions of Contract

### Section 104.2- Alterations of Plans or Character of Work

Delete in entirety and see General Conditions of Contract

### Section 104.3- Value Engineering

Delete in entirety and see General Conditions of Contract

### Section 104.4

Delete in entirety and see General Conditions of Contract

### Section 104.5

Delete in entirety and see General Conditions of Contract

## **SC-3 SECTION 105 – CONTROL OF WORK**

### Section 105.4-Coordination of Plans, Specifications and Special Provisions

Delete the reference to "In the event of any discrepancy"; instead substitute the following:

*Plans shall be considered as an incorporated function of the Technical Specifications, if applicable.*

*In the event of any discrepancy, the hierarchy as established in SCDOT Standard Specifications for Highway Construction, section 105.4 after the first paragraph, shall stand.*

### Section 105.5- Cooperation by Contractors

Delete the following reference: District Engineering Administrator or Bridge Engineer - Construction or RCE as applicable & substitute the following:

*Engineer (City of Beaufort).*

### Section 105.8- Construction Stakes, Lines and Grades

Delete in entirety and substitute in it's place the following:

## SECTION 4 - SUPPLEMENTARY CONDITIONS (Cont'd)

### Section 105.8 Survey and Construction Stakeout Controls.

- (a) **Scope:** This section covers the field surveying, staking, and maintenance of the same as necessary to properly complete the construction as proposed. The Contractor shall furnish all labor, materials, equipment, etc. necessary to properly do the work.
- (b) **General:** Horizontal and vertical control points are identified on the Construction Drawings. The Contractor shall use these control points with Construction Drawings to construct the system accurately. The Contractor shall be responsible for all necessary surveying and construction stake out work and shall use a South Carolina Registered Land Surveyor to do this work. When requested, the Registered Land Surveyor shall certify to the Contractor, the Engineer, and the Owner that the project has been properly surveyed and staked out.  
When requested, during construction, the surveyor shall check and certify as to the accuracy of the construction.
- (c) **Alignment and Elevation Checks**
  - i. Alignment and elevations shall be checked frequently and stakes shall be maintained throughout the project as needed to complete the construction accurately. It is to be understood that the Contractor has the responsibility to check and maintain and errors greater than allowable shall be corrected at the Contractor's expense to the satisfaction of the Owner and the Engineer before any related construction can continue. Vertical elevations shall be constructed within  $\pm 0.03$  feet of proposed elevations. Grades shall be as specified, within limits allowed the Engineer. Horizontal dimensions of critical items shall be within  $\pm 0.1$  feet of those proposed. Locations of noncritical structures, roads, piping, etc. shall be within  $\pm 0.5$  feet of those proposed, unless otherwise allowed by the Owner or the Engineer. The Contractor shall submit copies of his actual field measurements to the Owner's representative on a daily basis.
  - ii. The Contractor shall make checks on the elevation of the ends of each pipe joint, all manhole inverts, etc., to verify that the systems are being constructed according to the Drawings. A laser may be used, but elevation checks with a surveyor's level and rod must also be made on sewer lines.
- (d) **Record Drawings:** The Contractor shall maintain a master set of record drawings that show all changes and deviations from the original drawings. The markups shall be made as the changes occur. Near the conclusion of the project, these master record drawings shall be completed and submitted to the Engineer.

### Section 105.9- Authority and duties of the RCE's Representative

Add the following:

*and as described in Exhibit SC-A of the Supplemental Conditions contained herein elsewhere.*

### Section 105.11-Removal of Unacceptable and Unauthorized Work

Delete the first sentence, from the third paragraph as written & substitute the following:

*Where horizontal baseline control & a benchmark are necessary, no work shall be done without this horizontal control or benchmark having been given by the engineer, unless approved in writing.*

**SECTION 4 - SUPPLEMENTARY CONDITIONS  
(Cont'd)**

**SC-3    SECTION 106 CONTROL OF MATERIAL**

Add a Section 106.12

That reads as follows:

*The contractor shall furnish the necessary equipment & operator from a licensed professional company for drilling test holes at locations & to depths designated by the engineer. The Contractor shall obtain the aforesaid samples of the drilled material and submit the samples to a responsible Geo-Technical company for appropriate tests & analysis. These tests shall be made in accordance with standard testing procedures & the test results will be furnished to the department by the contractor.*

**SC-3    SECTION 107 LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC**

Section 107.1- Laws to be Observed

First Paragraph - Delete the word "Department" & substitute the word:

*City of Beaufort.*

Section 107.2- Permits, Licenses, and Taxes

Add the following as a second paragraph:

*The City permits shall be required as applicable, but the fee shall be waived at the discretion of the applicable agency or department having jurisdiction.*

Add the following:

NOTE: The above statements apply to the City of Beaufort permit fees only, and not to any Beaufort County or town permit fees and/or licenses, when applicable.

Section 107.03- Patented Devices, Materials , and Processes

Delete from the first paragraph: "Department". Substitute the following:

City of Beaufort & any and/or City Officers, Agents, Employees.

**SC-3    SECTION 108 PROSECUTION AND PROGRESS**

Section 108.1- Subletting of Contract

Revise last sentence of first paragraph by deleting references to: "Engineer".

Substitute the following:

*City Manager*

Section 108.2- Preconstruction Conference

Add a fourth (new) paragraph stating:

*At the time of the pre-construction conference, the contractor shall submit a preliminary construction schedule in the computerized format consistent with the schedule requirements addressed in the special provisions. The computerized software to be used will be Microsoft Project, SureTrak/Primavera or approved equal. The final approved schedule shall be in place and activated prior to the first request for partial payment. Further, any and all other subsequent request for partial payment shall be accompanied by an up to date project completion schedule. Failure to comply with this request may result in a delay of payment.*

**SECTION 4 - SUPPLEMENTARY CONDITIONS**  
**(Cont'd)**

Section 108.4-Limitation of Operation

Add a second paragraph as follows:

The hours of Work shall be consistent with the hours of normal operation of the City of Beaufort Project Engineer. That is Monday thru Friday from 8:00 a.m. to 5:00 p.m. The City of Beaufort Project Engineer may agree to waive these time requirements upon written request from the contractor. The Contractor is made aware that the hours accumulated by the Engineer and/or his staff processing, working or otherwise attending to the Contract as it relates to over-time hours generated by the contractor's work hours or delinquencies, could be assessed to the contractor. The City of Beaufort pay scale would govern with county employees wage rates applicable. Reimbursement would be processed as a contract reduction via a supplemental agreement or change order.

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## SECTION 4 - SUPPLEMENTARY CONDITIONS (Cont'd)

### EXHIBIT SC-'A'

#### LISTING OF THE DUTIES, RESPONSIBILITIES, AND LIMITATIONS OF AUTHORITY OF THE RESIDENT PROJECT REPRESENTATIVE.

**ENGINEER** shall furnish a Resident Project Representative (RPR), assistants and other field staff to assist **ENGINEER** in observing performance of the Work of the Contractor.

Through more extensive on-site observations of the Work in progress and field checks of materials and equipment by the RPR and assistants, **ENGINEER** shall endeavor to provide further protection for **OWNER** against defects and deficiencies in the Work; but, the furnishing of such services will not make **ENGINEER** responsible for or give **ENGINEER** control over construction means, methods, techniques, sequences or procedures or for safety precautions or programs, or responsibility for **CONTRACTOR'S** failure to perform the Work in accordance with the Contract Documents.

The duties and responsibilities of the RPR are limited to those of **ENGINEER** in the construction Contract Documents, and are further limited and described as follows:

#### A. General

RPR is **ENGINEER'S** agent at the site, will act as directed by and under the supervision of **ENGINEER**, and will confer with engineer regarding RPR's actions. RPR's dealings in matters pertaining to the on-site work shall in general be with **ENGINEER** and **CONTRACTOR** keeping **OWNER** advised as necessary. RPR's dealing with subcontractors shall only be through or with the full knowledge and approval of **CONTRACTOR**. RPR shall generally communicate with knowledge and approval of **CONTRACTOR**. RPR shall generally communicate with **OWNER** with the knowledge of and under the direction of **ENGINEER**.

#### B. Duties and Responsibilities of RPR

1. Schedules: Review the progress schedule, schedule of Shop Drawing submittals and schedule of values prepared by **CONTRACTOR** and consult with **ENGINEER** concerning acceptability.
2. Conferences and meetings: Attend meetings with **CONTRACTOR**, such as preconstruction conferences, progress meetings, job conferences and other project related meetings, and prepare and circulate copies of minutes thereof.
3. Liaison:
  - a. Serve as **ENGINEER'S** liaison with **CONTRACTOR**, working principally through **CONTRACTOR'S** superintendent and assist in understanding the intent of the Contract Documents; and assist **ENGINEER** in serving, as **OWNER'S** a liaison with **CONTRACTOR** when **CONTRACTOR'S** operations affect **OWNER'S** on-site operation.
  - b. Assist in obtaining from **OWNER** additional details or information, when required for proper execution of the Work.
4. Shop Drawings and Samples:
  - a. Record date of receipt of Shop Drawing and samples.
  - b. Perform field testing of Materials delivered to the project site as part of the Work of the Contract
  - c. Receive samples which are furnished at the site by **CONTRACTOR AND NOTIFY ENGINEER** of availability of samples for examination.
  - d. Advise **ENGINEER** and **CONTRACTOR** of the commencement of any Work requiring a Shop Drawing or sample if the submittal has not been approved by **ENGINEER**.

## SECTION 4 - SUPPLEMENTARY CONDITIONS (Cont'd)

### 5. Review of Work, Rejection of Defective Work, Inspections and Tests:

- a. Conduct on-site observations of the Work in progress to assist **ENGINEER** in determining if the Work is in general proceeding in accordance with the Contract Documents.
- b. Report to **ENGINEER** whenever RPR believes that any Work is unsatisfactory, faulty or defective or does not conform to the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise **ENGINEER** of Work that RPR believes should be corrected or rejected or should be uncovered for observation, or required special testing, inspection or approval.
- c. Verify that tests, equipment and systems startups and operating and maintenance training are conducted in the presence of appropriate personnel, and that **CONTRACTOR** maintains adequate records thereof; and observe record and report to **ENGINEER** appropriate details relative to the test procedures and startups.
- d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to **ENGINEER**.

### 6. Interpretation of Contract Documents:

Report to **ENGINEER** when clarifications and interpretations of the Contract Documents are needed and transmit to **CONTRACTOR** clarifications and interpretations as issued by **ENGINEER**.

### 7. Modifications:

Consider and evaluate **CONTRACTOR'S** suggestions for modifications in Drawings or Specifications and Report with RPR's recommendations to **ENGINEER**. Transmit to **CONTRACTOR** decisions as issued by **ENGINEER**.

### 8. Records:

- a. Maintain at the job site orderly files for correspondence, reports of job conferences, Shop Drawings and samples, reproductions of original Contract Documents including all Work Directive Changes, Addenda, Change Orders, and Field Orders, additional Drawings issued subsequent to the execution of the Contract. **ENGINEER'S Clarifications** and interpretations of the contract Documents, progress reports, and other Project related documents.
- b. Keep a diary or logbook, recording **CONTRACTOR** hours on the job site, weather conditions, data relative to questions of Work Directive Changes. Change Orders or changed conditions, list of job site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to **ENGINEER**.
- c. Record names, addresses and telephone numbers of all **CONTRACTORS**, subcontractors and major suppliers of materials and equipment.

### 9. Reports:

- a. Furnish **ENGINEER** periodic reports as required of progress of the work and of **CONTRACTOR'S** compliance with the progress schedule and schedule of Shop Drawing and sample submittals.
- b. Consult with **ENGINEER** in advance of scheduled major tests, inspections or start of important phases of the Work.
- c. Draft proposed Change Orders and Work Directive Changes obtaining backup material from **CONTRACTOR** and recommend to **ENGINEER** Change Orders, Work Directive Changes and Field Orders.

## SECTION 4 - SUPPLEMENTARY CONDITIONS (Cont'd)

- d. Report immediately to **ENGINEER** and **OWNER** upon the occurrence of any accident.

### 10. Payment Requests:

Review applications for payment with **CONTRACTOR** for compliance with the established procedure for their submission and forward with recommendations **ENGINEER**, noting particularly the relationship of the payment requested to the schedule of values, work completed and materials and equipment delivered at the site but not incorporated in the Work.

### 11. Certificates, Maintenance and Operation Manuals:

During the course of the work, verify that certificates, maintenance and operation manuals and other data required to be assembled and furnished by **CONTRACTOR** are applicable to the items actually installed and in accordance with the Contract documents, and have this material delivered to **ENGINEER** for review and forwarding to **OWNER** prior to final payment for the WORK.

### 12. Completion:

- a. When **CONTRACTOR** nears completion of work, submit to **CONTRACTOR** a list of observed items requiring completion or correction.
- b. Conduct final inspection in the company of **ENGINEER/OWNER** and **CONTRACTOR** and prepare a final list of items to be completed or corrected.
- c. Observe that all items on final list have been completed or corrected and make recommendations to **ENGINEER** concerning acceptance.

### 13. Limitations of Authority Resident Project Representative:

- a. Shall not authorize any deviation from the Contract Documents or substitution of materials or equipment, unless authorized by **ENGINEER**.
- b. Shall not exceed limitations of **ENGINEER'S** authority as set forth in the Contract Documents.
- c. Shall not undertake any of the responsibilities of **CONTRACTOR**, subcontractors or **CONTRACTOR'S** superintendent.
- d. Shall not advise on, issue directions relative to or assume control over any aspect of the means, techniques, sequences or procedures of construction unless such advice or directions are specifically required by the Contract Documents.
- e. Shall not advise on, issue directions regarding or assume control over safety precautions and programs in connection with the Work.
- f. Shall not accept Shop Drawing or sample submittals from anyone other than **CONTRACTOR**.
- g. Shall not authorize **OWNER** to occupy the Project in whole or in part.
- h. Shall not participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by **ENGINEER**.

**End of Section**

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## **SECTION FIVE**

### **GENERAL PROVISIONS OF CONTRACT**

**for**

### **GREENLAWN DRIVE STREETSCAPE**

**~ 2018 ~**

## SECTION FIVE - GENERAL PROVISIONS

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**SECTION FIVE - GENERAL PROVISIONS  
(Cont'd)**

**Section 5.0 -STATEMENT**

The General Provisions of the Contract shall be as listed in the South Carolina State Highway Division, Standard Specifications for Highway Construction, Edition of 2000, Section 100 General Provisions, Sections 101 - 109.08 inclusive, except as noted & amended elsewhere herein.

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## SECTION 5 1- GENERAL PROVISIONS

### Section 5.1 - SCHEDULE OF INSURANCE REQUIREMENTS

#### Exhibit GR-A

#### PART A

#### LIABILITY INSURANCE

The limits for the liability insurance required by Paragraph 11.1B of the General Conditions shall provide coverages for not less than the following amounts or greater where required by law or regulations.

All liability insurance shall remain in effect until final payment and at all times thereafter when the **CONTRACTOR** may be correcting, removing or replacing defective Work. In addition, **CONTRACTOR** shall maintain completed operations insurance for at least two years after final payment and furnish owner with evidence on continuation of such insurance at final payment and one year thereafter.

**Insurance shall include:** Workers Compensation and Employers Liability and Comprehensive General Liability as follows:

#### 1. **Comprehensive General Liability**

The **CONTRACTOR** shall procure and maintain at his own expense during the CONTRACT Time liability insurance as hereinafter specified:

- (a) *CONTRACTOR'S General Public Liability and Property Damage Insurance including vehicle coverage issued to the CONTRACTOR and protecting him from all claims for personal injury, including death, and all claims for destruction of or damage to property arising out of or in connection with any operations under the CONTRACT DOCUMENTS, whether such operations be by himself or by any SUBCONTRACTOR under him, or anyone directly or indirectly employed by the CONTRACTOR or by a SUBCONTRACTOR under him. Insurance shall be written with a limit of liability of not less than \$1,000,000 for all damages arising out of bodily injury, including death, at any time resulting there from, sustained by any one person in any one accident;*
- (b) *and a limit liability of not less than \$1,000,000 for any such damages sustained by two or more persons in any one accident. Insurance shall be written with a limit of liability of not less than \$500,000 for all property damages sustained by any one person in any one accident; and a limit liability of not less than \$500,000 for any such damage sustained by two or more persons in any one accident.*

#### 2. **Comprehensive Automobile Liability**

- (a) Bodily Injury and Property Damage shall be provided in the amount of coverage set forth above for Comprehensive General Liability.

#### 3. **Contract Liability**

Contractual Liability shall be provided for the coverage and in the amount of coverage set forth above for Comprehensive General Liability



**Section 5 1- GENERAL PROVISIONS  
(Cont'd)**

**4. Additional Liability**

Additional Liability coverage for **OWNER, ENGINEER & SCDOT** shall be provided either: By endorsement as additional insures on **CONTRACTOR'S** General Liability Policy, or By issue of a separate Protective Liability Policy covering **OWNER, ENGINEER & SCDOT** for the coverage an in the amount of coverage set forth above for General Liability.

**PART B**

**PROPERTY INSURANCE**

All property insurance shall remain in effect until final payment.

**1. Builders Risk:**

- (a) Coverage shall include: "all-risk" form; fire; extended coverage; and theft. Coverage amount shall be indicated:
- (b) The full insurable value of the Work at the Contract Price shall be in form of complete value.

**2. Boiler and Machinery:**

- (a) Object to be Insured: NONE
- (b) Limits: Not Applicable

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**SECTION SIX**

**SPECIAL PROVISIONS**

**for**

**GREENLAWN DRIVE**

**STREETSCAPE**

**~ 2018 ~**

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## SECTION SIX - SPECIAL PROVISIONS

### SECTION 6.0 -SPECIAL PROVISIONS: GREENLAWN STREET - STREETSCAPE

#### 1. Ownership

- A. City of Beaufort, herein after as may be referred to as **the City**, is the project owner. In the Specifications where the term “South Carolina Department of transportation” or the “Department” or other like terms that are used to describe the facility ownership, it shall be interpreted as meaning City of Beaufort, as appropriate.

#### 2. City’s Representative

- A. The Project Manager for Infrastructure Consulting & Engineering shall be the City of Beaufort Representative for this project.

#### 3. Progress and Job Site Meetings

- A. A **mandatory** Construction Progress Meeting attended by the **CONTRACTOR** will be conducted two weeks after the Notice to Proceed has been issued to the **CONTRACTOR**, followed by **weekly** progress meetings. The meeting time and place will be determined at the Preconstruction meeting prior to the start of construction.

#### 4. Supervision and Superintendence

- A. The work and the work site shall be under the direct charge and direction of the **CONTRACTOR**. The **CONTRACTOR** shall give sufficient superintendence to the Work, using the best skill and attention. The **CONTRACTOR** shall at all times keep on the site, during its progress, a necessary Forepersons and Assistants, all satisfactory to the **City of Beaufort**. The Superintendent shall represent and have full authority to act for the **CONTRACTOR** in the latter’s absence, and the directions given to the Superintendent shall be as binding as though given to the **CONTRACTOR**. The same shall apply to the Forepersons during the absence of both the **CONTRACTOR** and the Superintendent. The Superintendent shall not be changed during the performance of the Work covered by the Contract Documents except with written consent of the **City of Beaufort**, unless the Superintendent proves to be unsatisfactory to the **CONTRACTOR** and ceases to be in its employ.
- B. Should the **City of Beaufort**, at any time, give notice in writing to the **CONTRACTOR** or its representative on the Work that any employee is insolent, disorderly, careless, unobservant of the instructions, dishonest, or in any way a detriment to the satisfactory progress of the Work, such employee shall at once be removed from the Project and not again be allowed to engage in any part of the Work.
- C. **The NPDES Stormwater Construction Compliance Inspection.** The Contractor is required to become a co-permittee under the NPDES permit, and is responsible to provide a certified SCDHEC inspector to perform and document the weekly NPDES Stormwater Construction Compliance Inspection.
- D. The **CONTRACTOR** shall be required to organize, manage, and supervise its own work and to coordinate the work of its subcontractors. On all multi-contract projects, all prime contractors shall be required to organize, manage, and supervise their own work. As may be required, on all multi-contract projects, all prime contractors shall cooperate with the County and other prime contractors in the overall coordination and supervision of the project.

#### 5. Construction Notes All Referenced Roads

- A. **Material** – Contractor shall coordinate with 303 Associates (843-379-9455) as to where any overburden from the project is to be stockpiled. It shall be the obligation of 303 Associates to adequately protect stockpiled material from the project that has been placed on their lands.

## SECTION 6.0 - SPECIAL PROVISIONS (Cont'd)

- B. **CONTRACTOR** to contract all utility companies before any work commences. Verify utilities within project area.
- C. All work shall conform to the applicable Federal, State, and Local requirements and codes.
- D. Temporary control of storm water drainage shall be the responsibility of the general contractor, and shall be maintained throughout the period of the construction.
- E. Where existing pavement is shown to be matched, edge or contract face with existing pavement shall be saw cut to a real vertical line.
- F. Adjustment, relocation, or replacement of existing telephone, electric, cable television, and other private utilities shall be done in conjunction with the time frame of the contract schedule; this work shall be coordinated by the **CONTRACTOR**.
- G. The **CONTRACTOR** shall be responsible for coordinating with the owners and occupants the closure of driveways to residences and businesses. The **CONTRACTOR** shall provide adequate notice to the owners of his schedule for driveway improvements and for how long access to the driveway may be closed.
- H. All traffic control devices shall be in accordance with: FHWA Manual on Uniform Traffic Control Devices for Streets and Highways, current Edition.
- I. Any utilities that are damaged and are not to be removed shall be paid for or replaced at the **CONTRACTOR'S** expense.
- J. Location, existence, or nonexistence of any utility does not constitute responsibility of the **City of Beaufort**.
- K. The location of any shown utilities is approximate.
- L. Should the **CONTRACTOR** find any discrepancies in the drawings or in the field prior to beginning work or during construction, the **CONTRACTOR** shall immediately notify the **City of Beaufort** in writing.
- M. The **CONTRACTOR** is responsible to replace/reset any property corner by a registered land surveyor that is lost or disturbed.
- N. All watercourse ditch excavation quantities will be monitored by the **City of Beaufort**.

### 6. Existing Water, Sewer & Gas Location

**CONTRACTOR** to coordinate existing water, sewer, and gas location with the following agencies:

Beaufort Jasper Water & Sewer Authority – (843) 987-9220  
South Carolina Electric and Gas – (843) 217-7620

### 7. Other Pertinent Utility Agencies For This Contract

SCE&G (electric) – (843) 525-7742  
Century Link (Telephone) – (912) 408-2117  
Hargray (telephone and Cable) – (843)815-1698

### 8. Approved Contractors – Duct Bank

Construction of the duct bank for the project shall be completed by one of the following SCE&G approved underground contractors:

**SECTION 6.0 - SPECIAL PROVISIONS**  
**(Cont'd)**

<b>COMPANY</b>	<b>NAME</b>	<b>EMAIL</b>	<b>PHONE</b>
Anson Construction Company, Inc.	H.C. Heyward IV	None	(843) 556-4411
Post Office Box 590	P.T. Stutsman	<a href="mailto:pfs@ansonconstruction.com">pfs@ansonconstruction.com</a>	(843) 889-3178
4879 Savannah Hwy			
Ravenel, SC 29470			
Ertel Construction, Inc.	Candice Ertel	<a href="mailto:certel@ertelconst.com">certel@ertelconst.com</a>	843/760-8987
P.O. Box 19070 Charlotte, NC 29219	Tom Ertel	<a href="mailto:tertel@ertelconst.com">tertel@ertelconst.com</a>	(704) 394-3121
2507 Eatonton Street			
Charlotte, NC 29208			
Gregory Electric Company, Inc.	Lisa M. Phillips	<a href="mailto:lphillips@gregoryelectric.com">lphillips@gregoryelectric.com</a>	(803) 360-4401
P.O. Drawer 1419 Columbia, SC 29202	Scott Webber	<a href="mailto:SWebber@gregoryelectric.com">SWebber@gregoryelectric.com</a>	(803) 786-2201
2124 College Street			
Columbia, SC 29205			
Infratech Corporation	Christopher V. Prangley	<a href="mailto:cp@infratechcorp.com">cp@infratechcorp.com</a>	(800) 574-6372
2036A Baker Court			
Kennesaw, GA 30144			
Ivy H. Smith Company, LLC	Norris Mills	<a href="mailto:nmills@ivysmith.com">nmills@ivysmith.com</a>	(336)292-7020
207 E South Westgate Dr.	Hayden Saling	<a href="mailto:hsaling@anscoinc.com">hsaling@anscoinc.com</a>	(336)292-7021
Greensboro, NC 27407			(336) 255-9937
			(336) 314-2650
Williams Electric Co.	Rick Falls	<a href="mailto:rfalls_weco@bellsouth.net">rfalls_weco@bellsouth.net</a>	(704) 484-1881
P.O. Box 2367 / 2119 Dixon Blvd.			800-553-9326
Shelby, NC 28151			
Foremost Pipeline Contractors	Aton, Ben F	<a href="mailto:bfaton@sunlandconstruction.com">bfaton@sunlandconstruction.com</a>	803-939-4832
386 Frontage Road	Hendrix, Darrel	<a href="mailto:dhendrix@sunlandconstruction.com">dhendrix@sunlandconstruction.com</a>	
Gaston, SC			
MasTec North America, Inc.	Charlie Greene	<a href="mailto:charles.greene@mastec.com">charles.greene@mastec.com</a>	980-230-9768
1020 Shelby Hwy.	Randy Stegall	<a href="mailto:Randy.Stegall@mastec.com">Randy.Stegall@mastec.com</a>	864-529-2371
Gaffney, SC 29341			

## SECTION 6.0 - SPECIAL PROVISIONS (Cont'd)

### 9. Maintenance and Maintaining Traffic

- A. Unless otherwise provided, an existing road while undergoing improvements shall be kept open to all traffic by the **CONTRACTOR**. The **CONTRACTOR** will be required, without direct compensation, to maintain in good condition and satisfactory to the **CITY**, the entire section or sections of highway/roads, within the limits of the contract from the time he first begins work until all work has been completed and accepted. **US 21 Business shall be restricted from daytime lane closures. All work requiring lane closures will be coordinated with the City of Beaufort and SCDOT and performed at night or possibly on weekends. Specific work hours will be determined on a case by case basis.**

#### B. Lane Closure

The City prohibits lane closures on US 21 Business Monday through Friday from 6:00 AM to 8:00 PM, and on Sundays from 9:00 AM to 1:00 PM.

These restrictions also apply to all road closures and pacing operations. The City reserves the right to suspend a lane closure if any resulting traffic backups are deemed excessive by the City. Maintain all lane closure restrictions as directed by the plans, these special provisions, and the Engineer. Reduced regulatory speed limit of 35 MPH shall be in effect. Cover the existing regulatory speed limit signs when reduced speed limits are in place. Immediately remove or cover the "Speed Limit" signs (R2-1-48-35) and the "Speed Reduction 35 MPH" signs (W3-5-48-35) upon the removal of the lane closures.

#### C. Work Zone Traffic Control (Special Events)

The City reserves the right to restrict the installation of lane closures on high volume primary routes when the presence of a lane closure will seriously hinder normal traffic flow during special event periods. An extended special event period is hereby defined as those days preceding and following the special event that experience significant increases in the volume of traffic due to the special event as determined by the City or County. Also, the City reserves the right to increase an extended special event period if excessive traffic disruptions occur during those days prior to and after the established extended special event period. Extended special event periods include but are not limited to the week of the Beaufort Water Festival (late July). The City recommends the Contractor submit inquiries to the Engineer regarding specific days of a special event period 90 days prior to the holiday. The Contractor should make these inquiries annually due to the progressive nature of the calendar.

### 10. RIGHT OF WAY AVAILABILITY AND STAGING

REQUIREMENTS: Greenlawn Drive

All tracts may not be made available to the Contractor at the time of award.

Work for all sections and projects is required to be completed in the number of calendar days as described in previous portions of the contract documents.

**SECTION 6.0 - SPECIAL PROVISIONS  
(Cont'd)**

**SPECIAL PROVISIONS – SUPPLEMENTAL SPECIFICATIONS**

*[Attached and incorporated herein to Section 6.]*

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## SECTION 6.0 - SPECIAL PROVISIONS (Cont'd)

### **STANDARDS AND REFERENCES:**

- a) This project is to be constructed under the SCDOT 2007 Standard Specifications for Highway Construction, the 2009 SCDOT Standard Drawings, the SCDOT 2004 Construction Manual, the SCDOT Supplemental Technical Specifications in effect at the time of the letting, and the following Special Provisions:
- b) The above noted publications are available on the internet as follows, or may be obtained from the SCDOT Engineering Publications office at (803) 737-4533 or via e-mail at [engrpubsales@dot.state.sc.us](mailto:engrpubsales@dot.state.sc.us)

*SCDOT 2007 Standard  
Specifications for  
Highway Construction*

<https://www.scdot.org/business/standard-specifications.aspx>

*2009 SCDOT Standard  
Drawings*

<https://www.scdot.org/business/standard-drawings.aspx>

*SCDOT 2004 Construction  
Manual*

<https://www.scdot.org/business/scdot-construction-manual.aspx>

*SCDOT Supplemental  
Technical Specifications*

<https://www.scdot.org/business/road-technical-specs.aspx>

*South Carolina Manual on  
Uniform Traffic Control Devices  
(SCMUTCD)*

<https://www.mutcd.fhwa.dot.gov>

*Approved Products List for  
Traffic Control Devices in Work  
Zones*

[https://www.scdot.org/business/pdf/accessMgt/trafficEngineering/NCHRP350List\\_ALL2.pdf](https://www.scdot.org/business/pdf/accessMgt/trafficEngineering/NCHRP350List_ALL2.pdf)

### **ERRATA TO 2007 STANDARD SPECIFICATIONS FOR HIGHWAY CONSTRUCTION:**

See attached Supplemental Specification dated **May 4, 2009**

#### **1. SECTION 101: STANDARD DRAWINGS:**

- a) The Bidders are hereby advised that this project shall be constructed using the 2013 Standard Drawings with all updates effective at the time of the letting. The Standard Drawings are available for download at <http://www.scdot.org/business/projectsupport>. All drawings that are updated are labeled with their effective letting date in red.
- b) The Standard Drawings are available to purchase through the SCDOT Engineering Publications Sales Center. The Engineering Publication Sales Center is located in Room G-19 (basement level) of the SCDOT Headquarters Building, 955 Park Street, Columbia, South Carolina.
- c) All references in the plans, standard specifications, supplemental specifications, supplemental technical specifications or special provisions to drawings under the previous numbering system are hereby updated to the new drawing numbers. Refer to sheets 000-205-01 through 000-205-07 to find new drawing numbers when looking for references to older drawing numbers.

#### **2. SECTION 102: STANDARD DRAWING ERRATA:**

The Bidders are hereby advised that the following note changes apply to the published Standard Drawings.

**SECTION 6.0 - SPECIAL PROVISIONS**  
**(Cont'd)**

- a) On sheet **000-205-05**, add the following information under the columns below:
- | OLD DRAWING NAME         | NEW DRAWING NAME         |
|--------------------------|--------------------------|
| 720-905-01 to 720-905-05 | 720-901-01 to 720-993-32 |
- b) On sheet **605-005-05**, replace entire text of General Note #4 with the following text:
- The square footage of sign panels attached to 2½" x 2½" 12 gauge sign support secured to a 3" x 3" 7 gauge breakaway anchor shall not exceed 20 square feet.
- c) On sheet **610-005-00**, revise the following information as noted below:
- Add **(OPTIONAL)** underneath "TRUCK MOUNTED ATTENUATOR" adjacent to the illustration.
  - A chart, entitled "Truck Mounted Attenuator", displaying the minimum length of buffer space required when a truck mounted attenuator is not utilized.
  - The buffer area illustration has been updated to illustrate the requirements necessary when a truck mounted attenuator is utilized and the requirements necessary when a truck mounted attenuator is not utilized.
  - Underneath the section entitled "PORTABLE TRUCK MOUNTED ATTENUATOR", update Note 4 to read as follows:
  - A trailer mounted advance warning arrow panel may be utilized in advance of the work area when this traffic control setup is utilized for asphalt concrete placement operations.*
- d) On sheet **610-405-00**, revise the following information as noted below:
- Add **(OPTIONAL)** underneath "LEAD VEHICLE" adjacent to the illustration.
  - The "WORK VEHICLE" signing requirements have been updated. When the "LEAD VEHICLE" is omitted, the first "WORK VEHICLE" in the work train will also include the signing requirements specified for the "LEAD VEHICLE" in addition to the standard signing requirements for the "WORK VEHICLE".
  - Note 2 of the "Operation Notes" has been updated to describe the requirements for the "WORK VEHICLE" when the "LEAD VEHICLE" is omitted from the work train.
- e) On sheet **720-305-00**, delete the entire note directly above main detail:
- ~~i. If sidewalk exists, the driveway opening should...~~
- f) On sheet **720-405-00** section B replace dimension listed as 2'-6" maximum with:
- 2'-6" minimum*
- g) On sheet **720-901-01** replace note 5.04 with:
- 5.04 -When a mid-block crossing is required, consider mid-block staggered crossing (720-955-41) to encourage eye contact between the pedestrian and the oncoming traffic. Always angle the stagger so that the pedestrian travels through the refuge facing the oncoming traffic.
- h) On sheet **722-305-00** Detail 4 replace note "French Drain see note 21" with:
- French Drain see note 4.5.*
- i) On sheet **722-305-00** table 722-305A, 4<sup>th</sup> column, change the following:
- Delete: ~~{SF}~~
  - Replace text "up to 36" with  
*"up to 3'X3' "*

## SECTION 6.0 - SPECIAL PROVISIONS (Cont'd)

- iii. Replace text "larger than 36" with  
"larger than 3'X3'"

- j) On sheet 804-105-00 Title Block replace text "Rirap (Bridge End)" with:  
*Riprap (Bridge End)*

### 3. **SECTION 103.8: CONTRACTOR'S LIABILITY INSURANCE:**

- a) Delete the second sentence in paragraph 4.
- b) Delete the third sentence in paragraph 5, and replace it with the following sentence:
- c) *Ensure that all policies contain a provision that coverage afforded under the policies cannot be cancelled or reduced by the Contractor until at least 30 days prior written notice has been provided to SCDOT and that the policies cannot be cancelled for non-payment of premiums until at least 10 days prior written notice has been provided to SCDOT. Send Notice of Cancellations to Director of Construction Room 330, PO Box 191, Columbia, SC 29202.*
- d) Add the following as paragraph 6 at the end of Subsection 103.8:

*By execution of the contract, the Contractor accepts the responsibility to provide the liability insurance policies and endorsements as specified herein. Failure of SCDOT to identify a deficiency in the Certificate of Insurance submitted by the Contractor's insurance agent as evidence of the specified insurance or to request other evidence of full compliance with the liability insurance specified shall not be construed as a waiver of the Contractor's obligation to provide and maintain the required insurance for the duration of the contract.*

### 4. **SECTION 106: QUALIFIED PRODUCT LISTINGS (or approved equal)**

All references to "Approval Sheet" or "Approval Policy" are to be replaced with:

*"Qualified Products Listings (QPL)" and "Qualified Products Policies (QPP)" respectively. This change includes all references in the SCDOT Standard Drawings, SCDOT Standard Specifications, SCDOT Supplemental Specifications, SCDOT Special Provisions, SCDOT Supplemental Technical Specifications, SCDOT Internet and Intranet websites, and all other documents produced by SCDOT.*

### 5. **SECTION 106: SOUTH CAROLINA MINING ACT:**

- a) See Attached Supplemental Specification Dated March 20, 2003.
- b) This Supplemental Specification is hereby modified as follows: Paragraph 9 is hereby deleted and replaced with the following:

*The deputy secretary for engineering, or his duly appointed representative, will make a final inspection of the reclaimed area and keep a permanent record of his approval thereof. A map or sketch providing the location and approximate acreage of each pit used on the project will be provided to the resident construction engineer for inclusion in the final plans.*

- c) The last paragraph is hereby deleted and replaced with the following:  
*The contractor shall comply with the provisions of the plan that are applicable to the project as determined by the engineer. Seeding or other work necessary to comply with the plan on pits furnished by the contractor shall be at the expense of the contractor. Seeding shall be in accordance with SC-M-810 (latest version) which can be found at*  
[http://scdot.org/doing/sup\\_tech\\_specs.shtml](http://scdot.org/doing/sup_tech_specs.shtml).

### 6. **SECTION 107: FAIR LABOR STANDARDS ACT OF 1938, AS AMENDED:**

Attention is directed to this Federal Legislation, which has been enacted into law. The contractor will be responsible for carrying out all of the provisions of this legislation, which may affect this contract.

**SECTION 6.0 - SPECIAL PROVISIONS**  
**(Cont'd)**

**7. SECTION 107: APPLICATION OF DAVIS-BACON AND RELATED ACTS TO INDEPENDENT TRUCK DRIVERS AND MISCELLANEOUS CONSTRUCTION ACTIVITIES:**

See attached Supplemental Specification dated June 13, 1990.

**8. SECTION 107: CRANE SAFETY:**

See attached Supplemental Specification dated August 1, 2013

**9. SECTION 107: REQUIREMENTS FOR FEDERAL AID CONTRACTS WHICH AFFECT SUBCONTRACTORS, DBE HAULERS, MATERIAL SUPPLIERS AND VENDORS:**

See attached Supplemental Specification dated March 1, 2010

**10. SECTION 107: DISADVANTAGED BUSINESS ENTERPRISES (DBE) GOALS AND REQUIREMENTS:**

The DBE goal for the project is as follows:

**DISADVANTAGE BUSINESS ENTERPRISES CONTRACT GOAL      5 %**

See attached Supplemental Specification entitled special provision "Disadvantaged Business Enterprises (DBE)" dated **May 2, 2014** on page **38** for specific requirements that must be met.

The contractor's attention is invited to the electronic DBE BIN file found on the electronic bidding service website, *Bid Express*, containing data from the "Directory of Certified Disadvantaged Business Enterprises" approved for use in each particular letting. It specifies the amount (percentage) that the contractor may count toward its appropriate DBE Goals of expenditure for materials and supplies obtained from DBE Suppliers and Manufacturers.

**11. SECTION 107: PROJECT BULLETIN BOARDS:**

In accordance with the Required Contract Provisions Federal-Aid Construction Contracts Section II, Item 3, Part d, add the following:

- a) *Single Location Projects – On projects in which work is performed at a single location (such as bridge replacement projects, two-lane to five-lane widening projects, etc.), mount the project bulletin board in a permanent location within the project limits so that it is visible and accessible at all times.*
- b) *Multiple Location Projects – On projects in which work is being performed or has the capability of being performed at multiple locations (such as resurfacing projects, pavement marking projects, etc.), display a portable bulletin board with at least one of the prime contractor's work crews. If the prime contractor is not performing work, display the portable bulletin board with at least one of the subcontractor's work crews. Display the portable bulletin board in a location and a manner that is acceptable to the RCE. Notify the RCE and all subcontractors as to the location of the portable bulletin board. On resurfacing projects, mount an additional project bulletin board in a permanent location at the asphalt plant supplying asphalt mix to the project so that it is visible and accessible at all times.*

**12. SECTION 107: REQUIRED MEDIA NOTIFICATION FOR CONSTRUCTION PROJECTS:**

- a) Contractors are encouraged to co-operate with the news media since all projects are constructed with public funds. Because the scope of this project will cause disruption of normal traffic flow, the Contractor is required to notify the public, in a timely manner, of disruptive activities such as lane closures.
- b) The Contractor is required to utilize area media to accomplish public notification of traffic disruptions.
- c) The Contractor is required to deal directly with the news media and all reasonable efforts should be made to co-operate with the media. However, the safety, security and construction schedule on site should not be disrupted in order to accomplish this. The Contractor may co-

## SECTION 6.0 - SPECIAL PROVISIONS (Cont'd)

ordinate these activities with and receives guidance from the SCDOT Public Affairs Office.

**13. SECTION 107: LATE DISCOVERY OF ARCHAEOLOGICAL/HISTORICAL REMAINS ON FEDERAL AID PROJECTS AND APPROVAL OF DESIGNATED BORROW PITS:**

See attached Supplemental Specification dated August 7, 1991.

**14. SECTION 107: DBE PARTICIPATION:**

The Bidder is encouraged to use DBE subcontractors on this project. All DBE participation shall be reported to the RCE on the DBE Quarterly Report.

**15. SECTION 107: CONTRACT PROVISION TO REQUIRE CERTIFICATION AND COMPLIANCE CONCERNING ILLEGAL ALIENS**

By submission of this bid, the bidder as the prime contractor does hereby agree:

- a) to certify its compliance with the requirements of Chapter 14 of Title 8 of the S.C. Code of Laws regarding Unauthorized Aliens and Public Employment;
- b) to provide SCDOT or the project Owner with any documents required to establish such compliance upon request; and
- c) to register and participate and require agreement from subcontractors and sub-subcontractors to register and participate in the federal work authorization program to verify the employment authorization of all new employees, or to employ only workers who supply the documents required pursuant to S.C.Code 8-14-20(B)(2).

**16. DIVISION 600:**

**A. MAINTENANCE and CONTROL of TRAFFIC**

**a) MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES:**

"The Contractor is hereby advised that the Department has adopted the MUTCD 2003 – Manual on Uniform Traffic Control Devices for use on all projects. All references to the South Carolina Manual on Uniform Traffic Control Devices (SCMUTCD) are hereby revised to read "MUTCD – 2003 Edition". "

**b) TRAFFIC CONTROL:**

See attached Supplemental Specification dated January 3, 2013

**c) ADHESIVELY BONDED ANCHORS AND DOWELS:**

See attached Supplemental Specification dated **September 1, 2008**

- i. This Supplemental Specification applies when Adhesively Bonded Anchors or Dowels are called for in the Plans or Detailed Drawings.
- ii. The following Standard Drawings have been identified as showing Adhesively Bonded Anchors or Dowels:

605-205-03	Temporary Concrete Barrier
605-210-04	Temporary Concrete Barrier
605-310-01	Temporary Concrete Barrier
605-315-00	Temporary Concrete Barrier
605-320-00	Temporary Concrete Barrier
605-325-00	Temporary Concrete Barrier
605-330-00	Temporary Concrete Barrier
651-105-00	Barrier Mounted Sign Post
657-100-00	Overhead Sign Support Roadway Bridges
722-105-01	Box Culvert (Used to connect headwall, wingwalls, and for extensions)
805-120-00	Guardrail (W Beam) Base Plate Connection

**SECTION 6.0 - SPECIAL PROVISIONS  
(Cont'd)**

- iii. It is the contractor's responsibility to determine if Adhesively Bonded Anchors or Dowels are a part of the project, and to comply with the provisions of the Supplemental Specification.

**d) TRAILER MOUNTED AUTOMATED FLAGGER ASSISTANCE DEVICE SYSTEM**

**(AFAD):**

See attached Supplemental Specification dated September 1, 2012

**e) WORK ZONE TRAFFIC CONTROL TRAINING REQUIREMENTS FOR CONTRACTORS / SUBCONTRACTORS:**

See attached Supplemental Specification dated September 1, 2013

**B. SECTION 605: PERMANENT CONSTRUCTION SIGNS:**

- a) Utility locations must be performed prior to the placement of Permanent Construction Signs. State Law requires that the location of each sign be marked with a white line in the roadway or a stake in the shoulder. The locator company will mark 25 feet on either side of the location. The responsibility for marking the sign locations prior to the contractor calling PUPS for utility locate lies with the party responsible for lines and grades on the project. If Construction Lines and Grades is a pay item, then the Prime Contractor is responsible for marking the sign location. If this is not included, it is the Department's responsibility to mark the locations.
- b) Prior to marking the sign location, care must be taken when marking the signs to ensure that there are no obstructions or other mitigating factors that will cause the sign to be moved outside of the 50 foot utility window. Any costs associated with staking out the sign locations are considered incidental to the cost of Permanent Construction Signs.
- c) Requests for utility locates must be specific and isolated to the sign locations if no ground disturbing activities are occurring outside of the sign placement.

**17. SECTION 665: LIGHTING FOUNDATION AND POLE CONSTRUCTION**

This work shall consist of installing and/or furnishing a Lighting Pole and Foundation in a breakaway configuration in accordance with these Specifications.

**Installation:**

- a) **Location:** Lighting poles shall be installed where shown on the Plans or at other locations as directed or permitted by the ENGINEER.
- b) **Clearance:** Lighting poles shall be mounted so that no portion of the assembly is closer than 18 inches to the face of the curb.
- c) **Foundation:**
  - i. **Concrete Foundation:** The foundation for the street lights shall be constructed to the dimensions shown on the attached details. Bolt "circle" data and foundation depth shall be in accordance with the recommendations of the base manufacturer. Suitable templates for setting anchor bolts shall be accurately set and left in place until the forms are removed. Bolt "circle" data and foundation depth shall be submitted to the Engineer prior to construction.
  - ii. The Contractor may submit an alternate foundation, other than concrete, to the RCE for consideration. The alternate foundation must be approved by the RCE prior to the submittal of the bid. The Contractor's bid documents (Section 1.8 – Schedule of Prices) must clearly indicate that an alternate foundation is being bid. A copy of the RCE's document of approval for the use of an approved alternate foundation shall be attached to the submitted schedule of prices (Section 1.8 of the Contract Documents) as part of the complete bid package.
- d) **Concrete** shall be mixed, placed, and tested in accordance with applicable portions of SCDOT STANDARD SPECIFICATIONS Sections 701, 702, 703, and 704.

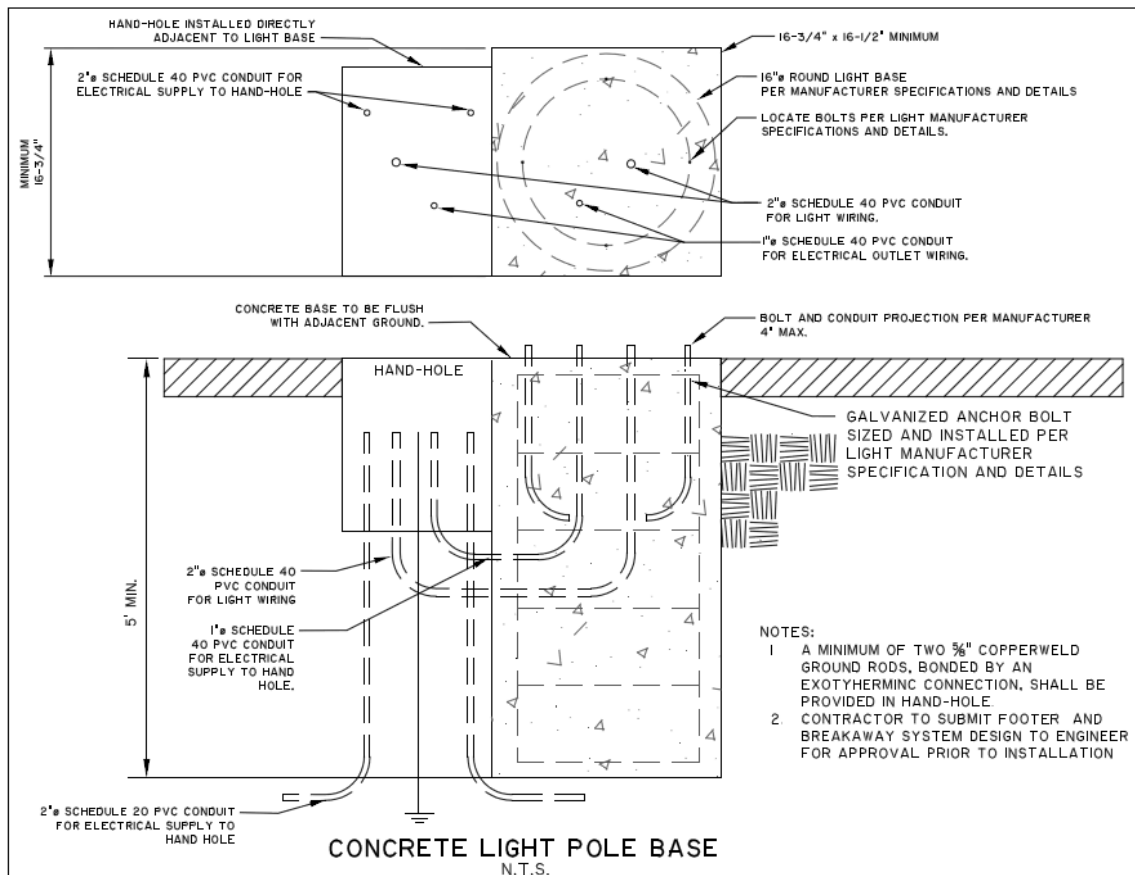
## SECTION 6.0 - SPECIAL PROVISIONS (Cont'd)

- e) **Anchor Bolts:** Four Anchor Bolts shall be set using pre-formed templates (wood or metal), to provide a "bolt-circle" in accordance with recommendations of the base manufacturer. The templates shall be left in place for two days (48 hours). The bolts shall be breakaway and approved by FHWA in accordance with the requirements of NCHRP 350 "Recommended Procedures for the Safety Performance Evaluation of Highway Features." Anchors shall be completely hot dip galvanized. Cost of Anchor Bolts included in cost of pole. Breakaway mounting system shall be submitted to Engineer for approval prior to construction.
- f) **Conduit Elbows:** Two 2-inch conduit elbows shall be capped at both ends and secured in place in the excavation before any concrete is poured. The size and number of elbows shall be that necessary to mate with the incoming runs.
- i. All conduit elbows shall extend beyond the side of the finished foundation by approximately twelve inches, in the direction, and at a depth matching the incoming conduit.
- g) **Pole and Base Materials:** The base and fluted tapered cast shaft shall be heavy wall, cast aluminum produced from certified ASTM 356.1 ingot per ASTM B-179-95a or ASTM B26-95. The straight shafts shall be extruded from aluminum, ASTM 6061 alloy, heat treated to a T6 temper. The tapered shaft shall be extruded from aluminum, ASTM 6063 alloy, spun to a tapered shape, then heat treated to a T6 temper. All hardware shall be tamper resistant stainless steel. Anchor bolts to be completely hot dip galvanized. Pole to include GFIC outlets with covers at top of poles. Wiring of street light to include wiring for said outlet stated above. Fast disconnects to be installed on all street pole wires located at the bottom of the pole and accessible at the base plate access opening.
- h) **Mounting:** The base (shown on attached detail) shall be fastened to the concrete foundation using appropriate hardware, as per manufacturer's instructions.
- i) **Construction:** The shaft shall be double welded to the base casting and shipped as one piece for maximum structural integrity. The shaft shall be circumferentially welded inside the base casting at the top of the access door, and externally where the shaft exits the base. All exposed welds below 8' shall be ground smooth. All welding shall be per ANSI/AWS D1.2- 90.
- j) **Hand - Hole:** Hand-holes to be provided and installed by the Contractor per detail. Plastic hand holes are acceptable.
- k) **Pole Dimensions:** The post shall be 14'-0" in height with a 16" diameter base. The shaft diameter shall be 4". At the top of the post, a 3" x 3" tall tenon with a transitional donut shall be provided for luminaire mounting. See attached pole detail.
- l) **Pole Finish:** Pole will be aesthetically matching to the existing light poles at Beaufort City Hall.
- m) **MEASUREMENT:** The furnishing and installing of a lighting pole and base shall be measured by EACH including all required hardware.
- n) **PAYMENT:** Furnishing and installing Lighting Pole and Foundation measured as provided above, will be paid for at the contract unit price for:
- |         |                                       |    |
|---------|---------------------------------------|----|
| 6651005 | Light Standard Concrete Foundation    | EA |
| 6651005 | Light - Alternate Approved Foundation | EA |
| 6651091 | Single Light Decorative Pole          | EA |
- i. Such payment shall be full compensation for furnishing and installing the specified equipment, materials, labor, and incidentals to complete this item.

[See light pole foundation detail-next page]

(Cont'd)

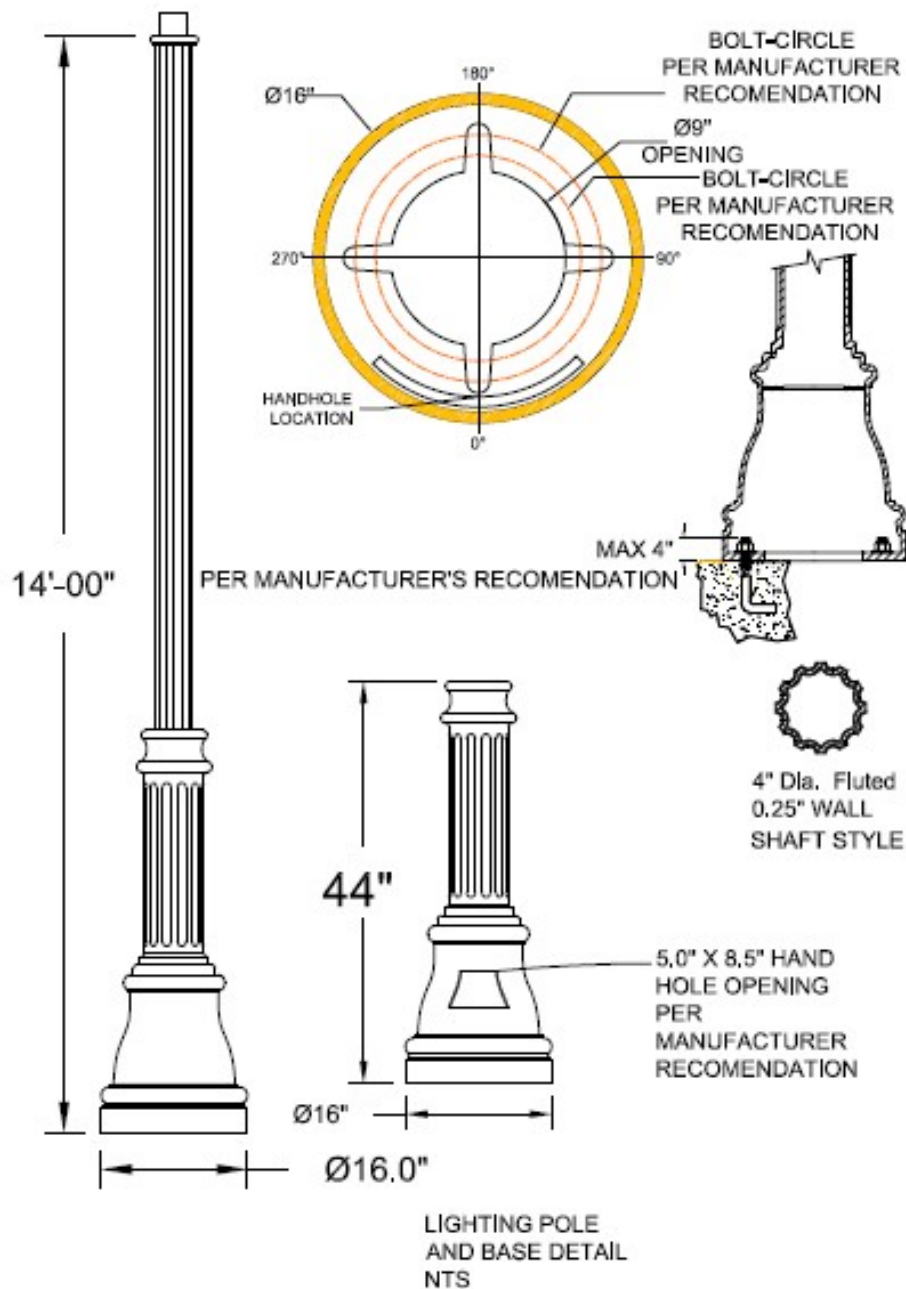
### LIGHTING POLE FOUNDATION



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## SECTION 6.0 - SPECIAL PROVISIONS (Cont'd)



### 18. SECTION 688: INSTALL STREETLIGHT LUMINAIRE

**DESCRIPTION:** This work shall consist of installing and/or furnishing a Street Luminaire and designated mounting hardware in accordance with these Specifications and attached detail.

**Construction:**

- A. **Location:** Street Light Luminaire shall be installed where shown on the Plans or at other locations as directed or permitted by RCE.
- B. **Clearance:** Streetlight Luminaire shall be mounted so that no portion of the assembly is closer than 18 INCHES to the face of the curb.

**SECTION 6.0 - SPECIAL PROVISIONS**  
**(Cont'd)**

- C. **Wiring:** The Contractor is responsible for connecting the Luminaire to the hand hole and from the hand hole back to the meter. SCE&G is responsible for connecting the meter to the power source
- D. **Hardware:** All hardware is to be non-corrosive material. All brackets, arms, and other hardware shall be painted to match adjacent pole and light systems at Beaufort City Hall, or as directed by the Engineer.
- E. **Optical Assembly:** The optical assembly is molded thermal resistant borosilicate glass reflector and refractor. The upper portion of this system incorporates a series of reflecting prisms that redirect over 50% of the upward light into the controlling refractor. The top of the assembly is a removable decorative aluminum cover with a replica chimney finial for entry into the lamp chamber. A total of eight decorative ribs surround the prismatic glass reflector and refractor.
- F. **Luminaire:** TYPE- Holophane - Madiera 100 watt LED, or approved equal.
- G. **Luminaire Housing:** A decorative leaf style cast aluminum luminaire housing cradles the optical assembly and provides an enclosure for the plug-in electrical module. Nickel plated lamp grip socket and the three-station incoming line terminal block are prewired to a five-conductor receptacle. A slip fitter will accept a 3-inch high by 2 7/8 inch to 3 1/8-inch O.D. pipe tenon.
- H. **Electrical Module/Luminaire Housing Door:** The decorative leaf style cast aluminum housing door contains the ballast components and is held in place by two captive ¼–20 stainless steel screws. A matching six conductor plug connects to the receptacle in the luminaire housing to complete the wiring. The door has a hook which, when engaged over a retaining bar in the luminaire housing allows both hands to be free while making and breaking connections.
- I. **Ballast/Transformer Manufacturer:** Refer to Manufacturer Ballast/Transformer Data Sheet for specific operating characteristics.
- J. **Measurement:** The furnishing and installation of street light luminaire shall be measured by EACH, including ALL internal electrical connections and all incidental hardware.
- K. **Finish/Material:** The luminaire is finished with polyester powder paint to insure maximum durability. All castings utilize aluminum for maximum corrosion resistance and all exposed hardware is corrosion resistant.
- L. **Payment:** Furnishing and/or installing street light luminaire measured as above, will be paid at the contract unit price for:

6888110

Furnish & Install Street Light Luminaire

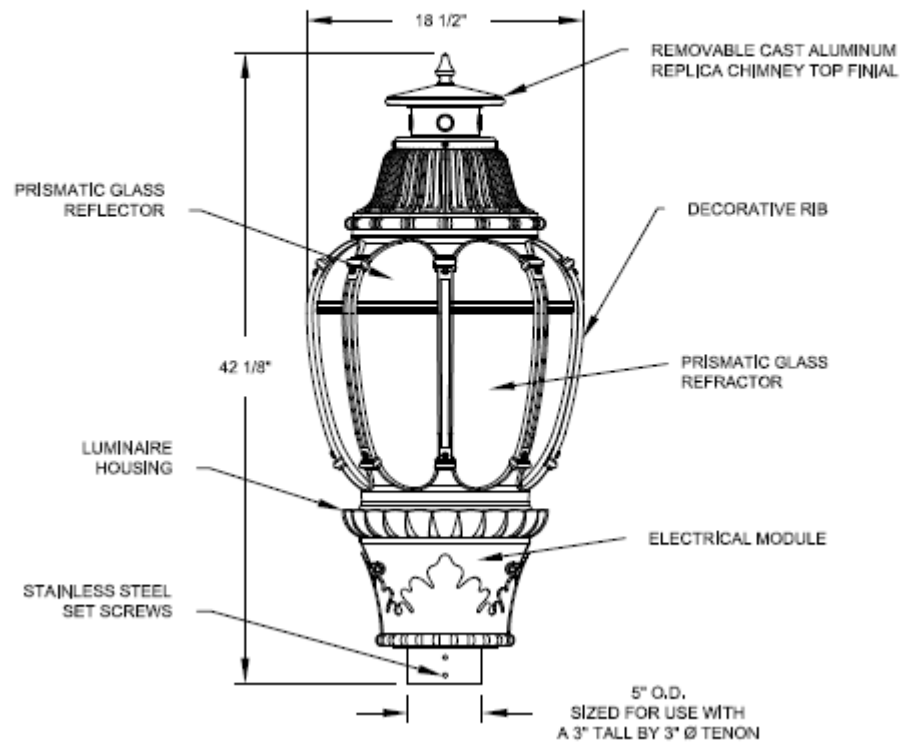
EA

[See luminaire detail-next page]

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## SECTION 6.0 - SPECIAL PROVISIONS (Cont'd)

ACORN STYLE WITH REPLICA CHIMNEY,  
ORNAMENTAL CROWN, AND DECORATIVE RIBS  
MAXIMUM WEIGHT - 100 lbs  
MAXIMUM EFFECTIVE PROJECTED AREA - 2.7 sq. ft.



STREETLIGHT LUMINAIRE

**SECTION 6.0 - SPECIAL PROVISIONS**  
**(Cont'd)**

**19. SECTION 702: CONCRETE STRUCTURES – PREFORMED JOINT FILLER:**

See attached Supplemental Specification dated April 1, 2013

**20. SECTION 714: SMOOTH WALL PIPE:**

**REFERENCE: SCDOT Supplemental Technical Specification SC-M-714**

- A. DESCRIPTION:** When bid items for smooth wall pipe are listed in the EBS file and/or proposal, the SCDOT will allow the use of reinforced concrete pipe, spiral ribbed aluminum pipe or high-density polyethylene pipe in accordance with the specifications found in SC-M-714 (latest edition), the Standard Drawings, and this Special Provision. The plans may indicate reinforced concrete pipe only and are hereby superseded by this Special Provision.
- B. MATERIALS:** Smooth wall pipe is either Reinforced Concrete Pipe (RCP: 714-205-XX), Spiral Ribbed Aluminum Pipe (SRAP: 714-605-XX), or High-Density Polyethylene pipe (HDPE: 714-705-XX) as described in SCDOT Supplemental Technical Specification SC-M-714 and in the SCDOT Standard Drawings. Use smooth wall pipe culvert from manufacturers listed on Qualified Product Lists 30, 68, or 69 or approved equal. No value engineering application is required in order to use alternate pipe.
- a) For the following counties: Berkeley, Beaufort, Charleston, Colleton, Dorchester, Georgetown, Horry, and Jasper, provide pipe joints meeting AASHTO M 315 for RCP or passing the 13 psi pressure test as indicated on the QPL for SRAP or HDPE.
  - b) Take care to properly lubricate and equalize pipe gaskets as indicated in the **SCDOT Standard Drawings** and **SC-M-714** to prevent gaskets from “rolling” during installation.
  - c) For all other counties, provide pipe joints meeting AASHTO M 198, M 315, or passing the minimum 10 psi pressure test unless specific pipe joints are indicated in the plans or special provisions.
  - d) No other pipe type will be accepted as an alternate.
- C. CONSTRUCTION REQUIREMENTS:** Use only pipe that conforms to the minimum and maximum fill height limitations indicated on the appropriate standard drawing. Unless indicated otherwise in the plans, determine pipe fill height based on the following formula:
- a)  $\text{Fill Height} = \text{Elevation (top of curb or max grade above pipe)} - \text{Elevation (pipe crown)}$
  - b) For all locations where, new pipe is being attached to an existing system, use one of the following options:
    - i. Any existing pipe may be extended using any acceptable alternate pipe type by using a drainage structure at the interface between the different pipe types. The drainage structure\* may consist of standard junction boxes, manholes, catch basins, drop inlets, or circular drainage structures detailed on **SCDOT Standard Drawings**. For larger diameter pipe, custom drainage structures may be required. Field cut existing pipe to remove damaged joint (if applicable) and install new drainage structure at the field cut interface. Always fully clean existing pipe and pipe joints before installing joint sealant or gaskets and attaching new pipe.
    - ii. For locations where, existing pipe properties cannot be directly matched, use a custom designed interface\* (concrete collar, proprietary mastic wrap, custom coupling band, etc.) appropriate to interface the existing pipe to the new pipe of the same type. Submit interface drawings and design for review by the Engineer of Record and the Design Standards Engineer. Always fully clean existing pipe and pipe joints before installing joint sealant or gaskets and attaching new pipe. Replace existing pipe that has joint damage

## SECTION 6.0 - SPECIAL PROVISIONS (Cont'd)

before connecting new pipe to the system. Any existing pipe may be extended using new pipe with the same joint profile and wall properties of the existing pipe. Always fully clean existing pipe and pipe joints before installing joint sealant or gaskets and attaching new pipe. Verify\* the following parameters before ordering new pipe:

- 1) For RCP to RCP, confirm wall thickness, joint profile shape, and compatibility with existing manufacturer's pipe. Replace existing pipe that has joint damage before connecting new pipe to the system.
  - 2) SRAP, replace existing pipe that has joint damage before connecting new pipe to the system.
  - 3) For HDPE to For SRAP to HDPE, confirm the manufacturer of the existing pipe and the joint compatibility with the new pipe. Provide a new gasket when connecting to existing spigot end of HDPE pipe. Replace existing pipe that has joint damage before connecting new pipe to the system.
  - 4) For CAAP to CAAP, confirm the type and size of end corrugations of the pipe. When existing pipe has full helical corrugations, provide new connecting pipe with one end fully helical and fully helical coupling band. When end corrugation size does not match the corrugation size shown on SCDOT Standard Drawings, provide a drainage structure (described above) at the interface. Replace existing pipe that has joint damage before connecting new pipe to the system. Do not install CAAP as smooth wall pipe; however, use these requirements when plans specify installing new CAAP.
- iii. The **RCE** will verify that connections between existing pipe and new installed pipe have been handled with one of the options listed above. Repair or replace all existing to new joint interfaces that do not meet the requirements above at no additional cost to **SCDOT** or the **OWNER**.
- iv. In all installations, provide the RCE with a complete pipe table indicating the following: Plan Pay Item, Plan Pipe Description, Plan Quantity, Installed Pipe (diameter, type, class/gage), Installed Quantity, and description of interface used to join new pipe to existing pipe for each occurrence.
- v. In cases where 2 or more different pipe types are installed, provide a copy of the proposed installation layout on the drainage/plan sheets to the RCE indicating which pipe is installed at each location.

**D. MEASUREMENT:** Measure smooth wall pipe in accordance with methods specified in SC-M-714 for the pipe material installed.

*\* No measurement will be made for drainage structure, designed interface, or field verification performed at each interface between existing pipe and new pipe unless drainage structure/interface is specified in the plans.*

**E. PAYMENT:** Payment will be made for smooth wall pipe regardless of the type of material installed.

Payment for smooth wall pipe is as specified in SC-M-714 for the pipe material installed.

*\*Include all costs for work related to connecting new pipe to existing pipe in the unit bid price of the new pipe. This connection work includes: drainage structure at the interface, custom designed interface, field verification of existing pipe and compatibility with new pipe, new gaskets, new joint sealant, new coupling bands, removal, and disposal of damaged sections of existing pipe.*

## SECTION 6.0 - SPECIAL PROVISIONS (Cont'd)

ITEM NO.	DESCRIPTION	UNIT
7143XXX	X" SMOOTH WALL PIPE	LF
7143XXX	X"x X" SMOOTH WALL PIPE CUL.TEE	EA
714XXX X	X" x X" SMOOTH WALL PIPE CUL.WYE	EA
7144XXX	X" SMOOTH WALL PIPE X DEG BEND	EA
7144XXX	SMOOTH WALL PIPE INCR.— X" TO X"	EA

### 21. SECTION 714: PIPE END TREATMENTS (2/5/2010)

#### REFERENCE: SCDOT Supplemental Technical Specification SC-M-714 DESCRIPTION:

For exposed pipe culvert ends, provide an end treatment in accordance with this special provision.

A. **MATERIALS:** Rigid pipe culvert is Reinforced Concrete Pipe (RCP: 714-205-00). Flexible pipe culvert is either Spiral Ribbed Aluminum Pipe (SRAP: 714-610-00), High Density Polyethylene pipe (HDPE: 714-705-00), or Corrugated Aluminum Alloy Pipe (CAAP: 714-605-00).

- i. **Use:** minimum Class B riprap for pipe up to 84" diameter. Use minimum Class C riprap for pipe 84" diameter or larger.
- ii. **Use:** minimum Class 4000 concrete (4000P for precast).
- iii. **Use:** ASTM A-706 grade 60, low-alloy steel deformed rebar.
- iv. **Use:** minimum AASHTO M-196 Alclad 3004-H32 alloy aluminum. Use Type M Mortar Grout unless specified otherwise.

#### B. CONSTRUCTION REQUIREMENTS:

- i. Use one of the following end treatments as specified in the plans or special provisions:



- ii. For all exposed crossline pipe ends, when an end treatment is not specified in the plans, use **Pipe Riprap Protection** (804-3xx-xx). For flexible pipe larger than 24" diameter, install pipe straight headwall, pipe end structure, flared end section, or wingwall section in addition to riprap. For all exposed driveway pipe ends where no end treatment is specified in the plans, use **Pipe Riprap Protection** (804-3xx-xx) unless directed otherwise by the engineer.

## SECTION 6.0 - SPECIAL PROVISIONS (Cont'd)



- iii. Use **Beveling of Pipe End** (719-610-00) when specified in the plans or special provisions. Beveled ends may only be used on flexible pipe up to 24" diameter and on rigid pipe up to 60" diameter. When beveling of pipe ends is specified on flexible pipe larger than 24" diameter, install pipe straight headwall, pipe end structure, flared end section, or wingwall section. Use factory fabricated beveled ends for all pipe types unless approved by the Engineer.



- iv. Use **Pipe Straight Headwall** (719-605-00) when specified in the plans or special provisions. Use straight headwall only in locations where pipe exposed end does not face the direction of traffic.



- v. Use **Pipe End Structure** (719-615-00) when specified in the plans or special provisions. Use pipe end structure in locations where pipe exposed end faces the direction of traffic. Pipe end structures may be used in other locations if approved by the RCE.
- vi. Use **Pipe Flared End Section** when specified in the plans or special provisions.



## SECTION 6.0 - SPECIAL PROVISIONS (Cont'd)



- i. Use **Pipe Wingwall Section** when specified in the plans or special provisions.

- 1) Completely seal interface between pipe and end treatment with grout. If bricks or shims are used to place pipe, take care to remove all air pockets and voids when grouting.
- 2) For systems not designed in the SCDOT Standard Drawings, provide shop drawings, installation procedure and design calculations for review by RCE. Design must include provision to control erosion around the structure and prevent the separation of the end treatment from the pipe system. Design must provide for a proper seal at all construction joints including the interface between the pipe and the structure. Design must be self-supporting and not induce any additional loads on the pipe. Submit designs for consideration as new standard drawings to the Design Standards Engineer at the address listed in the SCDOT Standard Drawings book.

C. **MEASUREMENT:** Measure pipe in accordance with SC-M-714

Measure end treatments in accordance with Standard Specifications, Standard Drawings, or Special Provisions.

D. **PAYMENT:** Beveling of pipe ends will be in addition to the standard pipe pay item. Payment for the item Beveling of Pipe Ends includes all labor required to factory (or field, if approved) fabricate a bevel on one end of pipe.

- i. Pipe culvert and end treatments, measured as provided in **SC-M-714 Subsection x.4**, are paid for at the contract unit price for the respective items, which price and payment is compensation for furnishing all material, labor, equipment, tools including hauling and placing all pipe sections and materials, excavation of the entire standard trench, bedding, and pipe backfill as described in the measurement section (both structural and embankment backfill in this region), removal of existing pipe to be replaced, constructing pipe joints, removal of old end treatments, cleaning out pipe, disposal of surplus materials, all visual inspection, and all incidentals necessary to complete the work.
- ii. Add the following paragraph to SC-M-714 subsections x.5:

*Payment for riprap and geotextile for erosion control under riprap as measured in subsection x.4 includes all direct and indirect costs and expenses necessary to complete the work.*

### **22. SECTION 810: CO-PERMITTEE AGREEMENT & CONTRACTOR CERTIFICATION**

See attached Co-Permittee Agreement & Contractor Certification Form on page 76. In accordance with the NPDES General Permit (effective September 1, 2006), all Contractors and Sub-contractors must sign the Co-Permittee Agreement or the Contractor Certification, based on work being performed, prior to beginning work. Section 1 of the form must be signed by all Contractors and Sub-contractors performing land disturbing activities. This applies to all clearing



## **SECTION 6.0 - SPECIAL PROVISIONS (Cont'd)**

and grubbing, grading operations, drainage installation, curb and gutter, sidewalk, bridge construction, culvert construction, erosion control, seeding, utilities, etc. Section 2 must be signed by all Contractors and Sub-contractors performing non-land disturbing activities. A Contractor or Sub-contractor that has not signed the agreement will not be permitted to perform work on this project. No additional compensation will be made in association with this agreement.

### **23. SECTION 815: EROSION CONTROL MEASURES:**

See attached Supplemental Specification dated **January 1, 2009**,

### **24. SECTION 815: EROSION CONTROL:**

See attached Supplemental Specification Dated **July 1, 2011**

### **25. SECTION 899: DUCTBANK**

#### **PART 1 – GENERAL**

##### **1. SECTION INCLUDES**

- i. Construction of flowable fill and granular embankment ductbanks.
- ii. All utilities shall install cable within the conduits after completion and approval of the duct bank. All work shall be in accordance with utility standards. All utilities shall provide a field inspector to monitor and approve the duct bank installation.

##### **2. RELATED SECTIONS**

- i. Section 205 – Embankment Construction
- ii. Section 210 – Flowable Fill
- iii. Section 675.1 – Electrical Conduit

##### **3. REFERENCES (Latest Revision)**

- i. ASTM D 3740 – Minimum Requirements for Agencies Engaged in Testing and/or Inspection of Soil and Rock as Used in Engineering Design and Construction.
- ii. ASTM E 329 – Agencies Engaged in Construction Inspection and/or Testing.
- iii. ASTM D 2321 – Underground Installation of Thermoplastic Pipe for Sewers and Other Gravity Flow Applications.
- iv. ASTM A123/A123M– Standard Specification for Zinc (Hot Dip Galvanized) Coatings on Iron and Steel Products.
- v. ASTM C 150 – Portland Cement.
- vi. ASTM C 1433 – Precast Reinforced Concrete Monolithic Box Sections for Culverts, Storm Drains, and Sewers.
- vii. ASTM D 1557 – Test Method for Laboratory Compaction Characteristics of Soil Using Modified Effort.
- viii. ASTM D 6938 – In Place Density and Water Content of Soil and Soil– Aggregate by Nuclear Methods (Shallow Depth).
- ix. This project is to be constructed under the South Carolina Department of Transportation's Specifications for Highway Construction Edition of 2007, the South Carolina Department of Transportation's 2004 Construction Manual, the Supplemental Technical Specifications in effect at the time of the letting, and the following Special Provisions.

## **SECTION 6.0 - SPECIAL PROVISIONS (Cont'd)**

### **4. QUALITY ASSURANCE**

- A. Material Review – Contractor will furnish the Engineer a description of all material before ordering. Engineer will review the Contractor's submittals and provide in writing an acceptance or rejection of material.
- B. Acceptable materials can be found on the current SCDOT Qualified Products List. Product Specifications for acceptable materials are located at [http://scdot.org/doing/publications\\_Traffic.aspx](http://scdot.org/doing/publications_Traffic.aspx). Materials other than those shown on the Qualified Products List can be used, but materials must be “equal to” and submitted and approved by the Engineer prior to use.
- C. Design – Devices, equipment, structures, and systems not designed by Engineer and Contractor wishes to furnish, shall be designed by either a Registered Professional Engineer or by someone the Engineer accepts as qualified. If required, complete design calculations and assumptions shall be furnished to the Engineer or before ordering.
- D. Testing Agencies – Soil tests shall be taken by a testing laboratory operating in accordance to ASTM D-3740 and E-329 and be acceptable to the Engineer prior to engagement. Mill certificates of tests on materials made by manufacturers will be accepted provided the manufacturer maintains an adequate testing laboratory, makes regularly scheduled tests, spot checked by an outside laboratory and furnishes satisfactory certificates.

### **5. PRODUCT DELIVERY, STORAGE, AND HANDLING**

- A. Material shall be unloaded in a manner avoiding damage and shall be stored where it will be protected and will not be hazardous to traffic. Contractor shall repair any damage caused by the storage. Material shall be examined before installation. Neither damaged nor deteriorated material shall be used in the work.

### **6. SEQUENCING AND SCHEDULING**

- A. Duct bank construction shall start at Boundary Street and work toward the circle at the Housing Authority.
- B. Contractor shall arrange work so sections of duct bank between structures are backfilled, checked, pavement replaced, and the section placed in service as soon as reasonable after installation.

### **7. EXISTING UTILITIES**

- A. All known utility facilities are shown schematically on the construction drawings, and are not necessarily accurate in location as to plan or elevation. Utilities such as service lines or unknown facilities not shown, will not relieve the Contractor of responsibility under this requirement. "Existing Utilities Facilities" means any utility existing on the project in its original, relocated, or newly installed position. Contractor will be held responsible for cost of repairs to damaged underground facilities; even when such facilities are not shown on the drawings.
- B. The Contractor shall call for underground utility locations before starting work.

### **8. TESTING**

All testing will be done in accordance with SCDOT specifications.

## **PART 2 – PRODUCT**

### **1. DUCT BANK**

- A. Details – See plans.
- B. Conduit for duct bank shall be:
  - i. Rigid Non-Metallic PVC Conduit – Shall be Schedule 80.

- ii. Galvanized Rigid Steel Conduit for all turnouts and bends. Turnouts shall be a minimum of

## **SECTION 6.0 - SPECIAL PROVISIONS (Cont'd)**

a 3' radius. Turnouts shall be threaded to accept a PVC transition coupling

### **C. Grout**

- i. All electrical turnouts shall be grouted in place with a minimum 3000 PSI concrete grout.
- ii. The grout shall extend beyond the outer edges of the conduit a minimum of 3" above, below and to the sides of all conduit banks.
- iii. The grout for the electrical turnouts shall be placed back a minimum of 12" beyond the threaded PVC transition coupling
- iv. The number, size and arrangement of conduits in the cast-in-place underground duct bank sections shall be as indicated on the drawings.

### **D. Conduit – Spacers & Fittings**

- i. Conduit spacers shall be PVC, sized to allow for the full separation of conduits as indicated on the drawings and spaced a maximum of eight (8) feet on centers. No conduits, wood stakes, etc... shall be used to separate conduits in the duct bank.
- ii. Conduit and fittings used in the construction of this cast-in-place underground duct bank shall conform to Section 2. 1 of this specification. Make all joints and connections in conduit using fittings designed for the purpose bonded permanently and watertight using solvent cement. Duct banks shall be installed using long radius sweeps, unless otherwise noted on drawings or in job scope.

### **E. Underground Warning Tape**

- i. Shall be placed a minimum of twelve inches (12") above the duct bank and no less than twelve inches (12") below finished surface.
- ii. It shall be a 3 inches wide detectable metallic tape, colored red with suitable warning legend describing buried electrical lines.

## **2. SUBMITTALS**

- A. Before ordering: Contractor shall submit shop drawings, catalog cut sheets and or samples of product(s) to be utilized in the construction of the duct bank to the RCE or Project Engineer for review, acceptance and approval for use in the project.

## **PART 3 – EXECUTION**

### **1. ON SITE OBSERVATIONS OF WORK**

- A. Utility representative or Engineer will have the right to require any portion of work be completed in their presence and if work is covered up after such instruction, it shall be exposed by Contractor for observation. However, if Contractor notifies Engineer such work is scheduled and the Engineer fails to appear within 48-hours, Contractor may proceed. All work completed and material furnished shall be subject to review by the Engineer or Project Representative. All improper work shall be reconstructed. All materials not conforming to requirements of specifications shall be removed from the work upon notice being received from Engineer for rejection of such materials. Engineer shall have the right to mark rejected materials to distinguish them as such. Contractor shall give the Engineer a minimum of 48 hours' notice for all required observations or tests.

It will also be required of Contractor to keep accurate, legible records of the location of all duct banks and appurtenances. These records will be prepared in accordance with paragraph on "Record Data and Drawings" in the Special Conditions. Final payment to the Contractor will be withheld until all such information is received and accepted.

## **SECTION 6.0 - SPECIAL PROVISIONS (Cont'd)**

### **2. DUCT BANK**

- A. The Contractor shall be responsible to:
- i. Verify that field measurements are as indicated.
  - ii. Verify routing and termination locations of duct bank prior to excavation or rough-in. Duct bank routing is shown in approximate locations unless dimensions are indicated. Route as required, completing duct systems.
  - iii. Ensure that trench for duct bank is clear and free from loose matter. If sides of trench do not conform to shape of duct bank, install all forms and bracing necessary for proper duct bank shape. Sides of trench shall be shaped to act as forms for new duct bank and shall allow for minimum thicknesses of concrete as described on the drawings. Excavated material shall be piled a sufficient distance from the trench banks to avoid overloading to prevent slides or cave-ins.
  - iv. Remove from site all material not required or suitable for backfill. Grade as necessary to prevent water from flowing into excavations.
  - v. Remove all water accumulating in the excavation, from surface flow, seepage, or otherwise, by pumping or other acceptable method.
  - vi. Provide adequate sheeting, bracing or shoring shall be used as necessary for protection of the work and safety of personnel.
- B. The number, size and arrangement of the conduits in each duct bank shall be as indicated on the drawings. The entire length of excavation except as otherwise approved between structures, shall be opened before installing any duct, to determine all interferences and adjust elevations accordingly, if necessary. The Contractor is responsible for providing accurate locations of the block cuts for utility connections using x, y, and z coordinates as shown on the appropriate drawings for the project
- C. Contractor shall provide all excavating necessary to accomplish his work. After the duct bank is installed, inspected and approved by the Engineer and SCE&G, all trenches and excavations shall be backfilled. Backfill trenches under provisions of Section 205.
- D. Interface installation of underground warning tape with backfilling. Install warning tape 12 inches (12") below finished surface.
- E. A minimum distance between top of duct bank and ground surface of three feet (36") is required for all points of all electrical duct runs, unless otherwise noted on plans.
- F. Where curves are necessary in duct run (both vertical curves and horizontal curves) same shall be the least curvature practical, and without any abrupt changes in the direction of the ducts. Maximum deflection (both vertical curves and horizontal curves) shall be no greater than 1' deflection per 100 lf of ductbank. For 3' diameter and larger Galvanized Rigid Steel conduit bends, minimum bending radius shall be 36". Standard factory bends may be used for 3-1/2" diameter and smaller conduits bends. Curves/bends will be limited to 4 per conduit run.
- G. After excavating and installing conduit, the full height of the electrical conduit formation shall be formed to provide a grout application reasonably rectangular in cross-section. The conduits shall be spaced and supported off the trench bottom using PVC conduit
- H. Spacers at intervals of not greater than eight feet (8'); stagger conduit joints in grout encasement 12 inches (12") minimum and support each length of conduit with not less than two spacers. Install an intermediate spacer over top tier of conduits to prevent floating

during grout encasing. No conduits, wood stakes, etc., shall be used to separate conduits in the duct bank.

## **SECTION 6.0 - SPECIAL PROVISIONS (Cont'd)**

- I. Furnish and install suitable fittings to accommodate expansion and deflection where required.

### **3. PROTECTION OF UTILITY LINES**

- A. Existing utility lines shown on drawings or locations of which are made known to the Contractor prior to excavation, and are to be retained, as well as utility lines constructed during excavation operations, shall be protected from damage during excavation and backfilling, and if damaged, shall be repaired at Contractor's expense. If the Contractor damages any existing utility lines not shown on drawings or locations of which are not known to Contractor, report thereof shall be made immediately. When utility lines to be removed are encountered within the area of operations, Contractor shall notify Engineer in ample time for necessary measures taken to prevent interruption of service.

### **4. FOUNDATION AND BEDDING**

- A. Stone Foundation – Where the subgrade of duct bank is unsuitable material, Contractor shall remove unsuitable material to a depth determined by Engineer and furnish and place stone foundation in trench to stabilize subgrade.
- B. Sand Foundation –Where the character of soil is unsuitable, even though dewatered, additional excavation to a depth determined by Engineer or shall be made and replaced with clean sand furnished by Contractor.
- C. Bedding for duct bank shall provide a firm surface of uniform density throughout the entire length of duct bank. Before placement of duct bank base, trench bottom shall be de-watered by the use of well points. Where well points will not remove the water, Contractor shall construct sumps and use pumps to remove all water from bedding surface. Concrete Pipe:

### **5. FINAL BACKFILL**

- A. Final Backfill – Shall be select materials and comply with SCDOT backfill requirements for pipe.
- B. Upon completion of final backfilling, the Contractor shall install a cloth pull tape of a minimum 1200 PSI strength in all conduit in the duct bank configuration.
- C. Upon the installation of the pull tape, all conduit shall immediately be sealed off by means of PVC caps or other suitable approved means.

### **6. MEASUREMENT**

- A. For Duct Bank conduit, measurement for payment shall be the actual installed lineal footage of a run as measured in the field, as follows;
  - i. The lineal footage shall be measure from start point of conduit to start point of preformed steel turnout, or
  - ii. From start point of preformed steel turnout to start point of next preformed steel turnout, or
  - iii. From start point of preformed steel turnout to end point of conduit, or
  - iv. From start point of conduit to end point of conduit, whichever applies.
- B. For turnouts, both electrical and communication, measurement for payment shall be for each turnout installed per plans and specifications

**7. PAYMENT**

- A. Duct bank conduit shall be paid by the Lineal Foot (LF) of run of the prescribed duct bank segment in place and accepted.

**SECTION 6.0 - SPECIAL PROVISIONS  
(Cont'd)**

- i. The linear foot payment will include all materials and labor required to construct duct bank according to plans and specifications.
- B. Payment for installed turnouts, in place and accepted, shall be made at the unit price for Each (EA) type of turn-out as identified on the plans and in the Bid Schedule of Values of the Contract.
- ii. The unit price payment per turn-out shall include all materials and labor required to construct each duct bank turn-out according to plans and specifications.

END OF SECTION

**TITLE SHEET**

**SECTION SIX .ONE**

**CDBG**

**GENERAL SPECIAL PROVISIONS**

**DEPARTMENT OF COMMERCE CONTRACT**

**SPECIAL PROVISIONS**

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8/2017

**DEPARTMENT OF COMMERCE  
GRANTS ADMINISTRATION  
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM**



**DEPARTMENT OF COMMERCE CONTRACT  
SPECIAL PROVISIONS**

*The following CDBG Contract Special Provisions should be used with all construction contracts, including housing rehabilitation, as applicable, and professional service contracts, where CDBG funds are being used in whole or in part.*

**SECTION 6.1 – SPECIAL PROVISIONS  
(Cont'd)**

**Department of Commerce – Contract  
SPECIAL PROVISIONS**

1. **Definitions:** For purposes of this Contract, the following terms shall have the meanings set forth below:
  - (a) **“Assistance”** means the CDBG grant funds provided, or to be provided, to the Grantee by the State, pursuant to the Grant Award Agreement.
  - (b) **“CDBG”** means Community Development Block Grant.
  - (c) **“Contract”** means the contractual agreement between the Owner and the Contractor to which these Contract Special Provisions have been incorporated and made a part thereof.
  - (d) **“Contractor”** means the contractor whose services are retained pursuant to the Contract.
  - (e) **“Grantee”** means the unit of local government designated as the recipient of the Assistance in the Grant Award and signing the acceptance provision of the Grant Award.
  - (f) **“HUD”** means U.S. Department of Housing and Urban Development, which is the federal agency that awards and has authority over CDBG funding to the State.
  - (g) **“Owner”** means the Grantee or Subrecipient, as applicable.
  - (h) **“Project”** means the project for which the services of the Contractor have been retained pursuant to the Contract which are funded, in whole or in part, with CDBG funds.
  - (i) **“State”** means the State of South Carolina, or that agency, agency division, or Office of State government which has been delegated the responsibility for administering the CDBG program for the State of South Carolina, as appropriate.
  - (j) **“Subrecipient”** means the agent of the unit of local government as designated by an agreement.
  - (k) **“Labor Surplus Area”** means a civil jurisdiction that has an unemployment rate at least 20% above the average unemployment rate for all states, the District of Columbia, and Puerto Rico during the previous two calendar years. The Department of Labor issues the labor surplus area list on a fiscal year basis.
2. **Prime Contractor Responsibilities:** The Contractor is required to assume sole responsibility for the complete effort and enforcement of laws and regulations under this Contract. The Owner will consider the Contractor to be the sole point of contact with regard to contractual matters. All contractors, including subcontractors must be registered in SAM and eligible to receive federal contracts.
3. **Federal and State Laws:** The Contractor agrees to comply with all CDBG requirements as well as other federal and state laws, regulations, or Executive Orders. The State reserves the right to add or delete terms and conditions of this Contract as may be required by revisions and additions or changes in the requirements, regulations, and laws governing the CDBG Program.
4. **Procurement and Contracting:** In accordance with 2 CFR Part 200, the cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used. This provision shall supersede any conflicting provision in an executed contract document or agreement funded in whole or in part with CDBG funds.

**SECTION 6.1 – SPECIAL PROVISIONS**  
**Department of Commerce – Contract**  
**(Cont'd)**

5. **Ownership:** Ownership of all real or personal property, acquired in whole or in part with CDBG funds for use on this Project, shall be vested in the Grantee, unless otherwise authorized by the State. When the Grantee determines that the property is no longer required for the purposes of this Project, the Grantee must notify the State and obtain approval for disposition of the property in accordance with applicable guidelines.
6. **Copyright:** Except as otherwise provided in the terms and conditions of this Contract, the Contractor paid through this Contract is free to copyright any books, publications or other copyrightable materials developed in the course of the Project and under this Contract. However, HUD and the State reserve a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, for Federal government and State purposes:
  - (a) the copyright in any work developed under this Contract; and
  - (b) any rights of copyright to which a subcontractor purchases ownership with grant support.

The Federal government's rights and the State's rights identified above must be conveyed to the publisher and the language of the publisher's release form must insure the preservation of these rights.

7. **Reporting Requirements:** The Contractor agrees to complete and submit all reports, in such form and according to such schedule, as may be required by the State or HUD. Further, the Contractor agrees to require any subcontractors to submit reports that may be required and to incorporate such language in its agreements. Failure to meet deadlines with the required information could result in sanctions.
8. **Access to Records:** All records with respect to all matters covered by this Contract shall be made available at any time for audit and inspection by HUD, the State or the Grantee or their representatives upon their request.
9. **Maintenance of Records:** Records for non-expendable property purchased totally or partially with Federal funds must be retained for five years after final close-out of the grant. All other pertinent contract records including financial records, supporting documents and statistical records shall be retained for a minimum of five years after the final close-out report. However, if any litigation, claim, or audit is started before the expiration of the five year period, then records must be retained for five years after the litigation, claim or audit is resolved.
10. **Confidential Information:** Any reports, information, data, etc., given to, prepared by, or assembled by the Contractor under this Contract, which the Grantee or the State requests to be kept confidential, shall not be made available to any individual or organization by the Contractor without prior written approval of the Grantee or the State, as applicable.
11. **Reporting of Fraudulent Activity:** If at any time during the term of this Contract anyone has reason to believe by whatever means that, under this or any other program administered by the State, a recipient of funds has improperly or fraudulently applied for or received benefits, monies or services pursuant to this Contract or any other contract, such information shall be reported immediately to the appropriate authorities.
12. **Political Activity:** None of the funds, materials, property or services provided directly or indirectly under this Contract shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office or otherwise in violation of the provisions of Section 8-13-765 of the Code of Laws of South Carolina, 1976, as amended.

**SECTION 6.1 – SPECIAL PROVISIONS**  
**Department of Commerce – Contract**  
**(Cont'd)**

**13. Conflicts of Interest and Ethical Standards, South Carolina Consolidated Procurement**

**Code:** The following provisions regarding “conflicts of interest” apply to the use and expenditure of CDBG funds by the Grantee and its subrecipients, including the Contractor.

In the procurement of supplies, equipment, construction and services, the more restrictive conflict of interest provisions of the State of South Carolina Ethics, Government Accountability and Campaign Reform Act of 1991 or of the Contractor shall apply.

In cases not governed by the above, such as the acquisition and disposition of real property and the provision of CDBG assistance to individuals, businesses and other private entities, the following provisions shall apply.

Except for eligible administrative or personnel costs, the general rule is that no person who is an employee, agent, consultant, officer, or elected or appointed official of the State or a unit of general local government or any designated public agencies or subrecipient which are receiving CDBG funds who exercise or have exercised any function or responsibilities with respect to CDBG activities assisted herein or are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder either for themselves or those with whom they have family or business ties during their tenure or for one year thereafter. Exceptions may be granted by the State on a case by case basis as requested upon full disclosure in writing.

Should any governmental entity, contractor, subcontractor, employee or official know or perceive any breach of ethical standards or conflict of interest under the CDBG grant awarded to the Grantee or any other CDBG grant, they shall immediately notify in writing the Department of Commerce, Grants Administration, 1201 Main Street, Suite 1600, Columbia, South Carolina, 29201. If the State finds any circumstances that may give rise to a breach of ethical standards or conflict of interest, under any grant, they shall notify the participating governmental entity and the State Ethics Commission as appropriate. The State may undertake any administrative remedies it deems appropriate, where there is a breach of ethical standards or conflict of interest under the regulations governing the CDBG Program and the State policies.

- 14. Applicable Law:** In addition to the applicable Federal laws and regulations, this Contract is also made under and shall be construed in accordance with the laws of the State. By execution of this Contract, the Contractor agrees to submit to the jurisdiction of the State for all matters arising or to arise hereunder, including but not limited to performance of said Contract and payment of all licenses and taxes of whatever kind or nature applicable hereto.
- 15. Limitation of Liability:** The Contractor will not assert in any legal action by claim or defense, or take the position in any administrative or legal procedures that he is an agent or employee of the Owner. This provision is not applicable to contracts for CDBG administration services where the Contractor is a Council of Government. The State shall not be liable for failure on the part of the Grantee or any other party to perform all work in accordance with all applicable laws and regulations. The Grantee agrees to defend, indemnify, and hold harmless the State from and against all claims, demands, judgments, damages, actions, causes of actions, injuries, administrative orders, consent agreement and orders, liabilities, penalties, costs, and expenses of any kind whatsoever, including, without limitation, claims arising out of loss of life, injury to persons, property, or business or damage to natural resources in connection with the activities of the Grantee and any other third parties in a contractual relationship with the Grantee, or a subsidiary, whether or not occasioned wholly or in part by any condition, accident, or event caused by any act or omission of the State as a result of the Assistance.

**SECTION 6.1 – SPECIAL PROVISIONS**  
**Department of Commerce – Contract**  
**(Cont'd)**

16. **Legal Services:** No attorney-at-law shall be engaged through the use of any funds provided under this Contract in any legal action or proceeding against the State, the Grantee, any local public body or any political subdivision.
17. **Contract:** If any provision in this Contract shall be held to be invalid or unenforceable, the remaining portions shall remain in effect. In the event such invalid or unenforceable provision is considered an essential element of this Contract, the parties shall promptly negotiate a replacement provision, which addresses the intent of such provision.
18. **Amendments:** Any changes to this Contract affecting the scope of work of the Project must be approved, in writing, by the Owner and the Contractor and shall be incorporated in writing into this Contract. Any amendments of the original contract must have written approval by the State prior to execution.
19. **Termination for Convenience:** This Contract may be terminated for convenience in accordance with 2 CFR Part 200.
20. **Sanctions:** If the Contractor fails or refuses to comply with the provisions set forth herein, the State or Owner may take any or all of the following actions: cancel, terminate or suspend in whole or in any part the contract, or refrain from extending any further funds to the Contractor until such time as the Contractor is in full compliance.
21. **Subcontracting:** If any part of the work covered by this Contract is to be subcontracted, the Contractor shall identify the subcontracting organization and the contractual arrangements made therewith to the Owner and to the State. All subcontracts must be approved by the Owner and the State to insure they are not debarred or suspended by the Federal or State governments and to insure the Owner and the State understand the arrangements.
22. **Subcontracting with Small and Minority Firms, Women's Business Enterprise and Labor Surplus Areas:** It is national policy to award a fair share of contracts to disadvantaged business enterprises (DBEs), small business enterprises (SBEs), minority business enterprises (MBEs) and women's business enterprises (WBEs). Accordingly, affirmative steps must be taken to assure that DBEs, SBEs, MBEs and WBEs are utilized when possible as sources of supplies, equipment, construction and services. Affirmative steps shall include the following:
  - (a) Including qualified DBEs, SBEs, MBEs and WBEs on solicitation lists;
  - (b) Assuring that DBEs, SBEs, MBEs and WBEs are solicited whenever they are potential sources;
  - (c) Whenever economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum participation by DBEs, SBEs, MBEs and WBEs;
  - (d) Where the requirement permits, establishing delivery schedules which will encourage participation by DBEs, SBEs, MBEs and WBEs;
  - (e) Using the services and assistance of the Small Business Administration, Minority Business Development Agency, the State Office of Small and Minority Business Assistance, the U.S. Department of Commerce and the Community Services Administration as required; and
  - (f) Requiring the subcontractor, if any, to take the affirmative actions outlined in (1) – (5) above.
23. **Debarment Certification:** The Contractor must comply with Executive Orders 12549 and 12689 regarding Federal debarment and suspension regulations prior to entering into a financial agreement for any transaction as outlined below.

**SECTION 6.1 – SPECIAL PROVISIONS**  
**Department of Commerce – Contract**  
**(Cont'd)**

- (a) Any procurement contract for goods and services, regardless of type, expected to equal or exceed the Federal procurement small purchase threshold (which is \$100,000 and is cumulative amount from all federal funding sources).
- (b) Any procurement contract for goods and services, regardless of amount, under which the Contractor will have a critical influence on or substantive control over the transaction.

In addition, no contract may be awarded to any contractors who are ineligible to receive contracts under any applicable regulations of the State.

24. **South Carolina Illegal Immigration Reform Act:** The Owner and the Contractor are required to comply with the South Carolina Illegal Immigration Reform Act (signed June 4, 2008) requiring verification of lawful presence in the United States of any alien eighteen years of age or older who has applied for state or local public benefits, as defined in 8 U.S.C. Section 1621, or for federal public benefits, as defined in U.S.C. Section 1611.
25. **Equal Employment Opportunity:** The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the State.

In carrying out the Project, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor must take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the State setting forth the provisions of this non-discrimination clause. The Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin. The Contractor will, in all solicitations or advertisements for employees by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

The Contractor shall incorporate the foregoing requirements of this paragraph in all of its subcontracts for the Project unless exempted by rules, regulations, or orders of the State issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor.

The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the State advising the said labor union or workers' representatives of the Contractor's commitment under this Section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the State, or pursuant thereto, and will permit access to its books, records, and accounts by HUD and the State for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

In the event of the Contractor's noncompliance with the non-discrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further State government contracts or federally assisted construction contract procedures authorized in Executive Order 11246 of

**SECTION 6.1 – SPECIAL PROVISIONS**  
**Department of Commerce – Contract**  
**(Cont'd)**

September 24, 1965, or by rules, regulations, or orders of the State, or as otherwise provided by law.

26. **Age Discrimination:** In accordance with 45 CFR, Parts 90 and 91, the Contractor agrees there shall be no bias or age discrimination as to benefits and participation under this Contract
27. **Section 109 of the Housing and Community Development Act of 1974:** No person in the United States shall on the grounds of race, color, national origin or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under the CDBG program of the State.
28. **Section 504 of the Rehabilitation Act of 1973, as amended:** The Contractor agrees that no otherwise qualified individual with disabilities shall, solely by reason of his disability, be denied the benefits, or be subjected to discrimination including discrimination in employment, any program or activity that receives the benefits from the Assistance.
29. **Section 3, Compliance and Provision of Training, Employment and Business Opportunities:** The work to be performed under this Contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, (12 USC § 1701u). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3 shall, to the greatest extent feasible be directed to low and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

The parties to this said Contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this Contract, the parties to this Contract certify that they are under no contractual or other impediment that would prevent them from complying with the 24 CFR Part 135 regulations.

The contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions; the qualifications for each; and the name and location of person(s) taking applications for each of the positions; and the anticipated date the work shall begin. The Contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

The Contractor will certify that any vacant employment positions including training positions, that are filled (1) after the Contractor is selected but before this Contract has been executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR Part 135.

The Contractor agrees to submit such reports as required to document compliance with 24 CFR Part 135. Noncompliance with the regulations in 24 CFR Part 135 may result in sanctions, termination of this Contract for default, and debarment or suspension from future HUD assisted contracts.

**SECTION 6.1 – SPECIAL PROVISIONS**  
**Department of Commerce – Contract**  
**(Cont'd)**

30. **Lead-Based Paint:** The construction or rehabilitation of residential structures with any portion of the Assistance is subject to the HUD Lead-Based Paint regulations found at 24 CFR Part 35. Any grants or loans made by the Grantee for the rehabilitation of residential structures with any portion of the Assistance shall be made subject to the provisions for the elimination of lead-base paint hazards under subpart B of said regulations, and the Grantee shall be responsible for the inspections and certifications required under Section 35.14(f) thereof.
31. **Compliance with Air and Water Acts:** (Applicable to construction contracts and related subcontracts exceeding \$100,000) This Contract is subject to the requirements of the Clean Air Act, as amended, 42 USC § 7401 et seq., the Federal Water Pollution Control Act (Clean Water Act), as amended, 33 USC § 1251 et seq., and the regulations of the Environmental Protection Agency with respect to 40 CFR Part 15, as amended from time to time, and the South Carolina Stormwater Management and Sediment Reduction Act. In particular, the following are required:
- (a) A stipulation by the Contractor or subcontractor that any facility to be utilized in the performance of any nonexempt contract or subcontract is not listed on the List of Violating Facilities, issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR § 15.20.
  - (b) Agreement by the Contractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended (42 USC § 7414) and Section 308 of the Federal Water Pollution Control Act, as amended (33 USC § 1318) relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in said Sections 114 and 308, and all regulations and guidelines issued thereunder.
  - (c) A stipulation that as a condition of award of contract prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized or to be utilized for the contract under consideration is to be listed on the EPA list of Violating Facilities.
  - (d) Agreement by the Contractor that the Contractor will include or cause to be included the criteria and requirements in these subparagraphs (1) through (4), in every nonexempt subcontract and requiring that the Contractor will take such action as the State may direct as a means of enforcing such provisions.

In no event shall any amount of the Assistance be utilized with respect to a facility which has given rise to a conviction under section 113(c)(1) of the Clean Air Act or Section 309(c) of the Federal Water Pollution Control Act.

32. **Federal Labor Standards Provisions:** *(Applicable to construction contracts in excess of \$2,000 or residential rehabilitation contracts involving more than eight units)*

The Project or program to which the construction work covered by this Contract pertains is being assisted by the United States of America and the Federal Labor Standards Provisions as set forth on Attachment 1 are included in this Contract pursuant to the provisions applicable to such Federal assistance. These provisions must be complied with or sanctions will be instituted.

33. **Force Majeure:** The Offeror shall not be liable for any excess costs if the failure to perform the resulting agreement arises out of causes beyond the control and without fault or negligence of the Offeror. Such causes may include, but are not restricted to acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and



unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the contractor. If the failure to perform is caused by default of a subcontractor, and if such default arises out of causes beyond the control of both the Offeror and subcontractor and without excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the contractor to meet the required delivery schedule.

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**SECTION 6.1 – SPECIAL PROVISIONS**  
**Department of Commerce – Contract**  
**(Cont'd)**

**Attachment 1**

U.S. Department of Housing and Urban Development, Office of Labor Relations form HUD-4010 (06/2009) ref. Handbook 1344.1

**1. Minimum Wages.**

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached thereto and made a part thereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5 (a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification of the time actually work therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification a wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

**(ii)**

(a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the contractor and the laborers and mechanics to be employed I the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee within the 30-day period that

**SECTION 6.1 – SPECIAL PROVISIONS**  
**Department of Commerce – Contract**  
**(Cont'd)**

additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1214-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

**2. Withholding.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federal-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension or any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for an on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

**3. Payrolls and basic records.**

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1 (b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked,

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deductions make and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment of provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices and trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

**(ii)**

**(a)** the contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget Under OMB Control Number 1215-0129.)

**(b)** Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the contractor or subcontractor or his or her agent who pays for supervises the payment of the persons employed under the contract and shall certify the following:

**(1)** That the payroll for the payroll period contains the information required to be maintained under 29 CFR 5.5 (a)(3)(i) and that such information is correct and complete’

**(2)** That each laborer or mechanic (including each apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

**(3)** That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

**(c)** The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by subparagraph A.3.(ii)(b).

**(d)** The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

**(iii)** The contractor or subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment,

**SECTION 6.1 – SPECIAL PROVISIONS**  
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**(Cont'd)**

advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

**4. Apprentices and Trainees.**

(i) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment Training Administration, Office of Apprenticeship Training, Employer and Training Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as state above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ration permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved

(ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every Trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio

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permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

**(iii) Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract.

**6. Subcontracts.** The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 of this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this paragraph.

**7. Contract termination; debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act Requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

**9. Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any if its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

**10. Certification of Eligibility.**

**(i)** By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

**(ii)** No part of this contract shall be subcontracted to any person or firm ineligible for award of a government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

**(iii)** The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration transactions", provided in part: "Whoever, for the purpose of influencing in any way the action of such Administration makes, utters or publishes any statement knowing the same to be false shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

**11. Complaints, Proceedings, or Testimony by Employees.** No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified

**SECTION 6.1 – SPECIAL PROVISIONS**  
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or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

**B. Contract Work Hours and Safety Standards Act.** The provisions of this paragraph B are applicable only where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms “laborers” and “mechanics” include watchmen and guards.

**(1) Overtime Requirements.** No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

**(2) Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violations of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in sub paragraph (1) of this paragraph.

**(3) Withholding for unpaid wages and liquidated damages.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract, or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

**(4) Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

**C. Health and Safety.** The provisions of this paragraph C are applicable only where the amount of the prime contract exceeds \$100,000.

**(1)** No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to this health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

**(2)** The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, 40 USC 3701 et. seq.

**(3)** The Contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The Contractor shall take such action with respect to any subcontract as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

**End of section**

## SECTION 6.2 - GENERAL SPECIAL PROVISIONS

### SPECIAL PROVISIONS: Greenlawn Drive - Streetscape.

1. **The ENGINEER shall verify the amount of work completed on the above referenced reconstruction projects with the CONTRACTOR before Progress Payments are issued.**
2. **There shall be no pre-qualifications of the Bidders.**
3. **Progress and Shop Drawing Schedules**
  - A. Before starting construction the **CONTRACTOR** shall be required to submit a progress schedule and shop drawings as follows:
  - B. Before commencement of work the **CONTRACTOR** shall submit a computerized schedule in an approved tracking format of the work necessary to complete the project to the **ENGINEER** for review at the time of the preconstruction meeting. The computerized software to be used will be Microsoft Project, SureTrac/Primavera or equal. The schedule shall be a form approved by the **ENGINEER** indicating the estimated start time and end dates of each major item or phase of the work. Also the progress schedule may be a bar chart of type acceptable to the **ENGINEER** as to form and substance. All costs for furnishing and updating the progress schedule shall be included in the price bid for the various Pay Items scheduled in the Bid Document.
  - C. The **CONTRACTOR** shall also submit to the **ENGINEER** a schedule of Shop Drawing submissions for all fabricated materials which are to be incorporated into permanent construction and which are not furnished by the County. Such Detail drawings shall become property of the City of Beaufort.
4. **Progress and Job-Site Meetings**
  - A. A **mandatory** Construction Progress Meeting attended by the **CONTRACTOR** and **ENGINEER** will be conducted two weeks after the Notice To Proceed has been issued to the **CONTRACTOR**, followed by **semi-monthly (twice a month)** progress meetings. The meeting time and place will be determined at the Preconstruction meeting prior to the start of construction.
5. **Survey and Stakeouts**
  - A. A horizontal "Control Plan" sheet establishing all controls necessary to construct each road is included in the drawings. The **CONTRACTOR** shall do all surveying and stakeout work required to construct all elements of the Project as stated in the **Supplemental Conditions, Section 104** of the Contract Documents. The **CONTRACTOR** is responsible for the accuracy of all survey and stakeout work including verification of existing reference points. The **CONTRACTOR** shall furnish any copies of survey notes requested by the **ENGINEER**. This work shall include finish grade and offset stakes, to be set throughout the project and shall be provided by the **CONTRACTOR's** Land Surveyor.
  - B. A final "**as-built**" drawing will be supplied by the **CONTRACTOR** to the **ENGINEER** before final payment is received. The as-built will be **stamped** by a **Registered Land Surveyor, R.L.S.** The survey will include, but is not limited to final road grades (center and edge of pavement), finished grade, drainage structures, ditches, and property lines.
6. **Supervision and Superintendence**
  - A. The work and the work site shall be under the direct charge and direction of the **CONTRACTOR**. The **CONTRACTOR** shall give sufficient superintendence to the Work, using the best skill and attention. The **CONTRACTOR** shall at all times keep on the site, during its progress, a necessary Forepersons and Assistants, all satisfactory to the **ENGINEER**. The Superintendent shall represent and have full authority to act for the **CONTRACTOR** in the latter's absence, and the directions given to the Superintendent shall be as binding as though given to the **CONTRACTOR**. The same shall apply to the Forepersons during the absence of both the **CONTRACTOR** and the Superintendent. The Superintendent shall not be changed during the performance of the Work covered by the Contract Documents except with written consent of the **ENGINEER** unless the Superintendent proves to be unsatisfactory to the **CONTRACTOR** and ceases to be in its employ.



**SECTION 6.2 - GENERAL SPECIAL PROVISIONS  
(Cont'd)**

- B. Should the **ENGINEER**, at any time, give notice in writing to the **CONTRACTOR** or its representative on the Work that any employee is insolent, disorderly, careless, unobservant of the instructions, dishonest, or in any way a detriment to the satisfactory progress of the Work, such employee shall at once be removed from the Project and not again be allowed to engage in any part of the Work.
- C. The **CONTRACTOR** shall be required to organize, manage, and supervise its own work and to coordinate the work of its subcontractors. On all multi-contract projects, all prime contractors shall be required to organize, manage, and supervise their own work. On all multi-contract projects, all prime contractors shall cooperate with the City and other prime contractors in the overall coordination and supervision of the project.

**7. Construction Notes – Greenlawn Drive - Streetscape**

- A. **CONTRACTOR** to contact all utility companies before any work commences. Verify utilities within project area.
- B. All work shall conform to the applicable Federal, State, and Local requirements and codes.
- C. Temporary control of storm water drainage shall be the responsibility of the general contractor, and shall be maintained through-out the period of the construction.
- D. Where existing pavement is shown to be matched, edge or contact face with existing pavement shall be saw cut to a real vertical line.
- E. Adjustment, relocation, or replacement of existing telephone, electric, cable television, and other private utilities shall be done in conjunction with the time frame of the contract schedule, this work shall be coordinated by the **CONTRACTOR**.
- F. All radii are 10' unless otherwise shown. The **CONTRACTOR** shall be responsible for coordinating with the owners and occupants the closure of driveways to residences and businesses. The **CONTRACTOR** shall provide adequate notice to the owners of his schedule for driveway improvements and for how long access to the driveway may be closed.
- G. All traffic control devices shall be in accordance with: South Carolina Department of Highways and Public Transportation, The South Carolina Manual on Uniform Traffic Control Devices for Streets and Highways, Edition 2000.
- H. In the event of a conflict with a sewer, water, drainage, or other utility lines or services, the **CONTRACTOR** shall coordinate with the affected utility and the **ENGINEER** and shall field adjust as directed.
- I. Any utilities that are damaged and are not to be removed shall be paid for or replaced at the **CONTRACTOR'S** expense.
- J. Location, existence, or non-existence of any utility does not constitute responsibility of the **ENGINEER**.
- K. The location of any shown utilities is approximate.
- L. Should the **CONTRACTOR** find any discrepancies in the drawings or in the field prior to beginning work or during construction, the **CONTRACTOR** shall immediately notify the **ENGINEER**.
- M. The **CONTRACTOR** is responsible to replace/reset any property corner by a registered land surveyor that is lost or disturbed. See section 6.20 and 6.16 of the general conditions.

**8. Control & Acceptance of Hot Laid Asphalt for City of Beaufort Road Projects Under Section 401 of SCDOT Standard Specifications**

- A. Field inspection which includes placement, temperature, load tickets, etc.
- B. Testing at plant (outside agency), including nuclear density along the road at randomly selected locations by the **ENGINEER**.

**SECTION 6.2 - GENERAL SPECIAL PROVISIONS  
(Cont'd)**

- C. Asphalt cores shall be obtained by outside agencies Contractor to hire and pay for an accredited/approved Asphalt Testing Agency.

**9. Existing Water Location**

**CONTRACTOR** to coordinate existing water main location with the following agency.

Beaufort Jasper Water & Sewer Authority – (843) 987-9220.

**10. Other Pertinent Utility Agencies for This Contract**

SCE&G (electric) – ..... (843) 525-7742.

Centurylink (Cable, Telephone) – .....(843) 525-7932

SCDOT – Beaufort .....(843) 524-7255.

Hargray (Cable, Telephone) ..... (843) 815-1697

**11. Stabilized Aggregate Base Road Repair (306A)**

A. It is the intent of the contract to sustain the roads within the work of the contract in acceptable, passable condition for use by the general public, therefore, if proposed road subbases shall develop pot hole depressions or become unusable prior to paving, the subgrade or stabilized aggregate base is to be repaired in a prescribed manner that is acceptable to the RCE or Project Engineer. Any additional material, labor, or equipment needed shall already be included in the items of the Contract even though not specifically identified for payment

**12. Right-of-Way and Suspension of Work**

A. The **OWNER** shall furnish all land and rights-of-way necessary for the carrying out of this contract and the completion of the work herein contemplated. It is possible that all rights-of-way may not be obtained as herein contemplated before construction begins, in which event the **CONTRACTOR** shall begin his work upon such rights-of-way as the **OWNER** may have previously acquired and no claim for damages whatsoever will be allowed by reason of the delay in damages whatsoever will be allowed by reason of the delay in obtaining the remaining rights-of-way. Should the **OWNER** be prevented or enjoined from proceeding with the work, or from authorizing its prosecution, either before or after the commencement, by reason of any litigation, or by reason of its inability to procure any rights-of-way for the said work, the **CONTRACTOR** shall not be entitled to make or assert claim the damage by reason of said delay, or inability to proceed with portions of their work, or to withdraw from the work within the contract except by consent of the **OWNER**; but time for completion of the work will be extended to such time as the **OWNER** determines necessary for the time lost by such delay, such determination to be set forth in writing.

**13. Maintenance and Maintaining Traffic**

A. Unless otherwise provided, an existing road while undergoing improvements shall be kept open to all traffic by the **CONTRACTOR**. The **CONTRACTOR** will be required, without direct compensation, to maintain in good condition and satisfactory to the **ENGINEER**, the entire section or sections of highway or roadway, within the limits of the contract from the time he first begins work until all work has been completed and accepted.

**14. Street Lighting**

A . Street Lighting

1. The Unit Price Bid for the Street Lighting, if scheduled to be part of the Contract, shall include (but not limited to) all costs for all labor, equipment, and material for installing the items indicated on the drawings and in the details to provide a complete conduit system.
2. The unit price shall include all cost for trenching conduit, pull strings, backfill, patching, and any other item of work to install the conduit system to serve the street light locations shown on the drawings. It shall include all costs for coordination to install the system as much as possible within the limits of project demolition and in accordance with all applicable electrical codes.

**SECTION 6.2 - GENERAL SPECIAL PROVISIONS  
(Cont'd)**

3. Measurement will be on linear feet basis of 2" PVC Street Lighting Conduit installed.
4. Payment, at the Unit Price Bid, will be full compensation for the work completed
- B. Conduits and Fittings (Schedule 40 PVC)
  1. The Unit Price Bid for conduits, if scheduled to be part of the Contract, shall include all costs for furnishing all labor and equipment to install conduits at locations shown on the drawings.  
**This does not include conduits in duct banks.** The price shall include all fittings. Conduits shall be properly terminated where necessary and completely mandrelled, cleaned, and pull lines installed, with ends sealed from the weather. No additional compensation will be given for fittings and sweeps. The unit price for this item shall include all costs for furnishing all material, labor, and equipment to provide trenching, back filling with flowable fill and patching for miscellaneous conduits extending from the duct banks. Use common trench where more than one conduit is shown.
  2. Measurement will be on a per linear foot basis for each type of conduit installed.
  3. Payment, at the Unit Price Bid, will be full compensation for the work satisfactorily completed.
- C. Street Light Foundations
  1. The Unit Price Bid for Street Lighting-Foundations, if scheduled to be part of the Contract, shall include (but not limited to) furnishing all material, labor, and equipment required to install light pole bases or foundations (including concrete and reinforcement) as shown on the Drawings. Street Light Foundations that are not set at the correct elevation will not be measured for payment.
  2. Measurement will be in the number of light pole bases or foundations in place, and accepted.
- D. Street Lighting Poles and Bases/Light Fixtures/Lamps
  1. The Unit Price Bid for Furnishing Street Lighting-Poles & Fixtures, if scheduled to be part of the Contract, shall include (but not limited to) furnishing all material, labor, and equipment required to allow for the installation of light poles and fixtures as shown on the Drawings. Street Light Poles and fixtures that are not fully operational will not be measured for payment.
  2. The Contractor will install the light poles, fixtures, and do the electrical wiring. SCE&G shall be responsible for final wiring in the hand holes to energize the lights.
  3. Measurement will be in the number of light poles with fixtures in place, and accepted.
  4. The amount to be paid, if scheduled to be part of the Contract, under this item shall be the actual direct cost to the Contractor for furnishing and installing the selected street light poles and bases, light fixtures, and lamps. All other costs associated with this work, including but not limited to charges for overhead, profit, insurance, and incidental expenses, shall be included in the bid item for Street Lighting
  5. The light poles and fixtures shall be per the Contract drawings and Contract Specifications in Section 6.0 - Special Provisions, Item 17 – Section 665-lighting, Foundation & Pole Construction and in Item 18 – Section 688 – Install Streetlight Luminaire.

**15. Technical Section**

**15.1 Cleaning Up Work Site**

- A. During progress of the work, keep the site and affected adjacent areas cleaned up. Remove all rubbish, surplus materials, and unneeded construction equipment and repair all damages so that the public and property owners will be inconvenienced as little as possible
- B. Where materials or debris has washed or flowed into or has been placed in existing water-courses, ditches, gutters, drains, pipes, structures, by work done under this contract, or elsewhere during the course of the Contractor's operations, remove and satisfactorily dispose of such material or debris

## SECTION 6.2 - GENERAL SPECIAL PROVISIONS (Cont'd)

during the progress of the work. Upon completion of the work, leave all ditches, channels, drains, pipes, structures, and work, etc in clean and neat conditions.

C. On or before the completion of the work, unless otherwise directed or permitted in writing, tear down all temporary buildings and structures built by the Contractor for his own use. Remove all temporary works, tools, and machinery or other construction equipment furnished by Contractor. Remove all rubbish from any grounds which have been occupied by the Contractor; leave the roads and all parts of the premises and adjacent property affected by Contractor's operations in a neat and satisfactory condition.

D. Remove, acceptably disinfect, and cover all organic matter and materials containing organic matter in, under and around all privies, houses, and other buildings used.

E. Restore or replace, when and as directed, any public or private property damaged by Contractor's work, equipment, or employees, to a condition at least equal to that existing immediately prior to the beginning of the operations. Perform, as required, all necessary highway or driveway reshaping of shoulders and ditches, walks and landscaping work. Use suitable materials, equipment and methods for such restoration. The Contractor shall be responsible for obtaining releases from the various property owners, stating that all restoration work is satisfactory.

### 16. Landscaping

#### 16.1 Landscape Specifications

##### A. General

1. All specified trees to be B&B. Any trees displaying girdling or circling roots, poor branching structure, recent pruning cuts, wounds, etc. will be rejected on site. Awarded Contractor to provide nursery source information to City Landscape Architect prior to digging of trees. Photos of trees selected provided at time of bid submittal are appreciated.
2. Soil to be removed from top of rootball as needed to expose root flare **prior** to digging of tree pit.
3. Tree pit to be excavated to a depth not exceeding depth of measured rootball, less 2 inches. Bottom of tree pit must remain undisturbed.
4. Trees to be planted 2" above finish grade.
5. Berm, forming tree saucer to be formed at outer edge of rootball. Saucer and berm to be mulched with 3" layer double shredded hardwood mulch.
6. All trees to be staked following installation.

#### 16.2 Installation-Trees

##### A. General-Trees

1. All trees to meet or exceed ANSI Z60.1 standards for caliper, height, spread and quality.
2. Trees to be Quercus Lyrate (Overcup Oak), unless otherwise specified elsewhere herein, with a minimum 2.5" caliper thickness at DBH. All trees to match in height of clear trunk from grade to lowest branching point.
3. Excavate planting hole for trees at least two times the diameter of the rootball and 2" shallower than the root ball. Contractor responsible to contact City Landscape Architect for inspection of tree planting holes prior to actual tree planting.
4. Each tree to receive 3 bags mushroom compost (approximately 3 cubic feet total) incorporated into existing excavated soil from tree pit. This material to be utilized in the top half of root ball area.
5. Handle tree only by root ball. After placement of tree in planting hole and backfilling to no more than ½ the depth of the root ball, saturate the planting hole with water to aid removal of air from backfill. Remove all wire and burlap from top 50% of ball and any circling roots. Complete the backfill and thoroughly saturate with water.

## SECTION 6.2 - GENERAL SPECIAL PROVISIONS (Cont'd)

6. Trees to display a 4' x 5' rectangle of 3" depth double shredded hardwood mulch. No mulch shall be placed within 2" of tree trunk. All tree and plant bed areas to be mulched with a 3" layer of double shredded hardwood mulch. Total quantity of mulch required shall be based upon the area of plantings as measured in square feet (SF)
7. Tree lawn: Remove all rubble, debris, trash, etc. as found in top 12" of tree lawn area. Incorporate and till to a 6" depth, a 2" layer of topsoil, removing existing soil as needed to allow topsoil addition. Grade to a consistent 1" below top of sidewalk and roll. Topsoil to be approved by City Landscape Architect prior to delivery to site.
- B. Tree Planting Specifications
  1. Plantings shall be installed to current industry standards (ANSI A300 Part 6) and the published Best Management Practices of the International Society of Arboriculture.
  2. These specifications are guided by the American National Standard for Tree Care Operations, ANSI A300 Part 6: *Tree, Shrub and Other Woody Plant Maintenance— Standard Practices (Transplanting)* and Part 3 (*Supplemental Support Systems*).
  3. The "planting area" includes the root ball, hole, backfill, and outside rim of the berm (if applicable) to a minimum diameter of three times the root ball diameter.
  4. The soil in the planting area will be tilled or otherwise aerated to a depth of at least 12 inches to a diameter at least two times the diameter of the root ball or container and amended with mushroom compost as specified elsewhere herein. Amended soil to be restricted to top 1/3 of root ball.
  5. The planting hole shall be dug no deeper than two inches less than the depth of the root ball, defined as the distance from the topmost primary roots to the bottom of the rooted area with the container or root ball.

**Note:** Contractor shall inspect and reveal tree root flare, if necessary, prior to depth determination of root ball and resulting depth of planting hole.
  6. Any circling roots or kinked roots will be cut smoothly using a sharp knife or pruner. The root system shall be inspected for kinked, circling or girdling roots and root defects shall be corrected prior to planting. If significant root pruning must be done to correct such problems, the tree shall be rejected.
  7. The tree shall be placed in the hole two inches higher than the depth of the root ball, as defined above. Under no circumstances should the trees be planted any deeper than the depth of the root ball.
  8. Fertilizer will not be used at planting time.
  9. The tree shall be set on undisturbed or compacted soil, to reduce settling.
  10. Maintain the tree with forks in a straight and plumb position while backfilling to no more than ½ the depth of the root ball.
  11. Saturate the planting hole with water after backfill is ½ complete to aid removal of air from the backfill.
  12. After initial backfill, watering and the tree is plumb, then add backfill as specified to just below the top horizontal ring of the wire basket, completely saturating planting hole.
  13. Remove all trunk wraps, labels, supporting stakes, ties, twine, etc. and top portion of the wire basket down to and including the first horizontal ring and the burlap from the top portion of the root ball.
  14. Immediately after backfill has settled and the tree is straight and plumb, **stake tree** using soft strapping material such as Arbor-tie.

**SECTION 6.2 - GENERAL SPECIAL PROVISIONS**  
**(Cont'd)**

15. Berms shall be constructed around the perimeter of the root ball, to a compacted height of 3 to 4 inches and covered with mulch.
16. A three inch layer of shredded double shredded hardwood mulch shall be placed over the planting area from the outside of the berm to just outside of the base of the trunk. Do not place mulch against the trunk.

**16.3 MEASUREMENT**

- A. The quantity for *Quercus Lyrate* (Overcup Oak) is measured by Each (EA), as noted in the Schedule of Prices [Section 1.8], complete, in place and accepted in accordance with the Plans and Specifications.
- B. The quantity for *Sabal Palmetto* is measured by Each (EA), as noted in the Schedule of Prices [Section 1.8], complete, in place and accepted in accordance with the Plans and Specifications.
- C. The quantity for *Liriope Muscari* "Majestic" (Majestic *Liriope*) is measured by Each (EA), as noted in the Schedule of Prices [Section 1.8], complete, in place and accepted in accordance with the Plans and Specifications.
- D. The quantity for *Muhlenbergia Capillaris* (Pink Muhly Grass) is measured by Each (EA), as noted in the Schedule of Prices [Section 1.8], complete, in place and accepted in accordance with the Plans and Specifications.
- E. The quantity for *Trachelosperum Asiaticum* (Asiatic Jasmine) is measured by Each (EA), as noted in the Schedule of Prices [Section 1.8], complete, in place and accepted in accordance with the Plans and Specifications.

**16.4 PAYMENT**

- A. Payment for the accepted quantity for *Quercus Lyrate* (Overcup Oak), measured in accordance with Subsection 16.3 (above), is determined using the contract unit price for such items of the size and type specified, or;
- B. Payment for the accepted quantity for *Sabal Palmetto*, measured in accordance with Subsection 16.3 (above), is determined using the contract unit price for such items of the size and type specified, or as;
- C. Payment for the accepted quantity for *Liriope Muscari* "Majestic" (Majestic *Liriope*), measured in accordance with Subsection 16.3 (above), is determined using the contract unit price for such items of the size and type specified, or as;
- D. Payment for the accepted quantity for *Muhlenbergia Capillaris* (Pink Muhly Grass), measured in accordance with Subsection 16.3 (above), is determined using the contract unit price for such items of the size and type specified, or as;
- E. Payment for the accepted quantity for *Trachelosperum Asiaticum* (Asiatic Jasmine), measured in accordance with Subsection 16.3 (above), is determined using the contract unit price for such items of the size and type specified, or as;
- F. As may be specified elsewhere in the contract documents.
- G. Payment for items A through E above is full compensation for procuring, delivery, installation and maintenance (until final contract payment has been completed) as specified or as directed and includes furnishing and placing specified materials, excavating; providing and placing bedding material and backfilling; disposing of surplus material; and all other materials, labor, equipment, tools, supplies, transportation, and incidentals necessary to fulfill the requirements of the pay item in accordance with the Plans, the Specifications, Industry Standards and other terms of the Contract.

## **SECTION 6.2 - GENERAL SPECIAL PROVISIONS (Cont'd)**

### **17. STORM DRAINAGE PIPE-VIDEO**

#### **17.1 GENERAL**

- A. All drainage pipe installed as part of the contract for Greenlawn Drive 2 Streetscape shall be required to comply with the SCDOT Drainage Video Inspection of Pipe per section S-M-714 1.310 (RCP) & 3.3.10 (HDPE) Installation Inspection of the SCDOT Supplemental Technical Specifications for Permanent Pipe Culverts.
- B. In addition to normally anticipated site inspections, the RCE and/or the Owner will be provided the opportunity to inspect 100% of pipe under the roadbed, 100% of pipe in a closed drainage system, and a minimum of 10.0% (random locations) of all other locations via a video inspection of the system being constructed under this contract.
- C. In addition to the requirement that the RCE or Owner be present for the video inspection when it is being done, the Contractor shall also be required to provide a written log/report and video (either in compatible tape format or on a computer disk (CD) in two counter parts).
- D. The video inspection(s) shall be performed to ensure proper jointing of pipe, clear flow, and that line, grade, and that deformations (if applicable) do not exceed SCDOT's allowable limits. The Contractor shall perform these inspections with a combination of either:
  - 1. Video Camera (condition, jointing, & obstructions) & Laser Profiler/Deflectometer (line, grade & shape)
  - 2. 9-Fin Mandrel (shape) for pipes 48-inch diameter and smaller or Direct Measurement (shape) for pipes larger than 48-inch diameter.

#### **17.2 QUALITY ASSURANCE**

- A. It shall be the responsibility of the Contractor to hire and schedule a reputable, licensed (in South Carolina), experienced video company with a minimum of three (3) years experience in videoing and inspecting storm drainage piping systems to perform the work of this section of the Contract.
- B. Video Inspection(s) of completed pipe installations will be performed after the embankment is in place and all non-asphalt bases and/or subgrades have been completed for at least 30 days. In cases where the Contractor's accepted CPM Schedule indicates that paving operations will be conducted in less than 30 days, upon receipt of a written request, the RCE can allow for an early video inspection to be performed for acceptance. If an early inspection or inspections are performed and the paving does not commence as scheduled, an additional inspection may be performed at the RCE's or SCDOT's discretion.
- C. When third party surveys and inspections are performed by a sub-contractor on behalf of the Contractor, a written report documenting and identifying, in detail, all deviations and nonconforming items shall accompany the submittal of the video survey and documented inspection results to the RCE/Owner. The written report, at a minimum, shall include a dated copy of all video taken from each video camera inspection, pipe location identification, equipment used for inspection, inspector name, inspector field notes regarding deviations or discrepancies, measurements from the pipe inspection (at a minimum to include the following: deviation from design grade, deviation from line, deflection [expressed in inches and % of pipe diameter]), and survey data for all installed pipe.
- D. For HDPE pipe, when installed pipe deflections exceeding 5.0% of the inside diameter have been encountered, The Contractor shall prepare a written report for submittal to the RCE/Owner and/or SCDOT as part of the video inspection requirements for a piped storm drainage system. The submitted written report must address/verify: structural integrity, environmental conditions, design service life of the pipe, and recommended remediation, if required.

**SECTION 6.2 - GENERAL SPECIAL PROVISIONS  
(Cont'd)**

- E. Upon acceptance of the documented findings in the written report and video by the Owner/RCE and/or SCDOT, in the event of deviations or deficiencies, the Contractor, at a minimum, shall be required to implement the following:
  - 1. Replace the pipe at locations where the measured deflection exceeds 7.5% of the nominal inside diameter of the pipe.
  - 2. Repair or remediate locations as recommended in the report or required by the Owner/RCE or SCDOT.
  - 3. Replace deficient pipe or product in locations where directed by the Owner/RCE or SCDOT.

**17.3 MEASUREMENT**

- A. The quantity for Video Survey and Report of Piped Storm Drainage System is measured by the Lump Sum (LS), as noted in the Schedule of Prices [Section 1.8], complete, in place and accepted in accordance with the Plans and Specifications.
- B. If the pay item Video Survey and Report of Piped Storm Drainage System is not included in the Contract, the Video Survey and Report of Piped Storm Drainage System work is not measured for payment directly and is considered included in contract unit bid price of either the work of the Contract for Section 714 – Permanent Pipe Culverts (SCDOT Standard Specifications- 2007 edition) and also as such, maybe directly or indirectly be related to various other items of work of the Contract.

**17.4 PAYMENT**

- A. Payment for the accepted quantity for Video Survey and Report of Piped Storm Drainage System Irrigation Rain, measured in accordance with Subsection 16.3 (above), is determined using the contract unit price for such items of the size, scope and type specified, or as; specified elsewhere within the contract documents as part of the unit price of another item of the work.
- B. Until the work of this section (video(s) and report) is completed, reviewed by RCE/Owner and/or SCDOT, accepted and/or an approved remediation or replacement plan is in place, if required, along with the RCE/Owner having received a detailed written cost estimate of the work of the remediation/replacement plan, and as such that plan approved and implemented to address identified deficiencies within the installed Storm Drainage Piping System, none of the retainage monies for the work of the Contract related to Section 714 - Permanent Pipe Culverts or Section 719 - Catch Basins, Drop Inlets, Manholes, Junction Boxes and Spring Boxes shall be released.
- C. If the value of the replacement/remediation work as identified by the Contractor's detailed written cost estimate exceeds the amount of retainage being withheld for the work of Section 714 and/or Section 719, then the Contractor shall be required to post a separate bond in the amount of the difference in value between the retainage and the presented cost to replace or remediate the piped storm drainage system. The bond shall be in place and in full force and effect until such time as the identified remedial work/replacement work of these sections is completed, in full and accepted by the RCE/Owner and SCDOT.
- D. Payment, whether direct or indirect, is full compensation for the Video Survey and Report of Piped Storm Drainage System as specified or directed and includes all materials, labor, equipment, tools, testing, supplies, transportation, and incidentals necessary to complete the work in accordance with the Plans, the Specifications, and other terms of the Contract.

END OF SECTION



**SECTION 6.2 - GENERAL SPECIAL PROVISIONS  
(Cont'd)**

May 4, 2009

*ERRATA TO 2007 STANDARD SPECIFICATIONS FOR HIGHWAY CONSTRUCTION*

Make the changes listed below to correct errata in the SDCOT 2007 *Standard Specifications for Highway Construction*:

**DIVISION 100- GENERAL PROVISIONS**

**Section 101 - DEFINITIONS AND TERMS**

Subsection 101.2 - Abbreviations and Acronyms

Amend the table of **SCDOT OFFICIALS AND OFFICES** as follows:

DELETIONS		REPLACEMENTS	
<del>BDE*</del>	<del>Bridge Design Engineer</del>	PSE *	Preconstruction Support Engineer
<del>BDGE*</del>	<del>Bridge Design Geotechnical Engineer</del>	GDS E*	Geotechnical Design Support Engineer
<del>SHE*</del>	<del>State Highway Engineer</del>	DSE *	Deputy Secretary for Engineering

\*Wherever it appears in the text, replace the deleted abbreviation with the new abbreviation.

**Section 102 - BIDDING REQUIREMENTS AND CONDITIONS**

Subsection 102.8 - Irregular Bids

Paragraph 2, item E, first sentence; delete the word "the" after the word When".

**Section 105 - CONTROL OF WORK**

Subsection 105.6 - Cooperation with Utilities

Paragraph 1, last sentence; change the word "THE" to "the".

**DIVISION 200- EARTHWORK**

**Section 202 - REMOVAL OF STRUCTURES AND OBSTRUCTIONS**

Subsection 202.5 - Measurement

Paragraph 5, second bullet; change the words "Brick sidewalk" to "Concrete, brick or stone sidewalks".

**SECTION 204 - STRUCTURE EXCAVATION**

Subsection 204.2.1.2 - Structure Excavation for Culverts

Paragraph 1, at the end of the first sentence; change "**Subsection 204.4**" to "**Subsection 204.5**".

**SECTION 6.2 - GENERAL SPECIAL PROVISIONS  
(Cont'd)**

**DIVISION 400 ASPHALT PAVEMENTS**

**Section 401 - HOT MIXED ASPHALT (HMA) PAVEMENT**

*Subsection 401.2.1.2 - Liquid Anti-Stripping Agent*

Paragraph 1, first sentence; delete the period at the end of the sentence and add "and SC-M-406."

*Subsection 401.2.5 - Material for Full Depth Patching*

Paragraph 1, delete and replace with the following:

"Use an approved SCDOT Intermediate Type C mix for all Full Depth Patching."

*Subsection 401.5 - Measurement*

After paragraph 10, add the following paragraph:

11 - The measurement of Prime Coat is the number of gallons of asphalt material applied to the completed and accepted base course.

*Subsection 401.6 Payment*

After paragraph 12, add the following paragraph:

13 - "The payment for Prime Coat is at the contract unit price for Prime Coat and includes compensation for all labor, equipment, tools, maintenance, and incidentals necessary to complete that work."

*Subsection 401.6 Payment*

Paragraph 13, **Table of Pay Items**

Change paragraph reference number "13" to "14" and add the following Pay Item:

Item No.	Pay Item	Unit
4010005	Prime Coat	GAL

**Section 403 - HMA SURFACE COURSE**

*Subsection 403.5 - Measurement*

Paragraph 1, first sentence; change "HMA Intermediate Course" to "HMA Surface Course".

*Subsection 403.6 Payment*

Paragraph 1, first sentence; change "HMA Intermediate Course" to "HMA Surface Course".

**DIVISION 600- MAINTENANCE AND TRAFFIC CONTROL**

**Section 625 - PERMANENT PAVEMENT MARKINGS FAST DRY WATERBOURNE PAINT**

*Subsection 625.2.2.4.11 Lead Content*

Paragraph 1, first sentence; change 6% to 0.06%.

**Section 627 - THERMOPLASTIC PAVEMENT MARKINGS**

*Subsection 627.4.10 Inspection and Acceptance of Work*

Paragraph 2, first sentence; change "period of 90 days" to "period of 180 days".

## **SECTION 6.2 - GENERAL SPECIAL PROVISIONS (Cont'd)**

### *Subsection 627.4.10 Inspection and Acceptance of Work*

Paragraph 2, second sentence; change "90-day observation period" to "180-day observation period".

### *Subsection 627.4.10 Inspection and Acceptance of Work*

Paragraph 3, first sentence; change "90-day period" to "180-day period".

## **DIVISION 700 STRUCTURES**

### **Section 709 - STRUCTURAL STEEL**

#### *Subsection 709.4.3.5.2 - Submittals and Notification*

Paragraph 1, delete the last two sentences and replace them with, "The Department's review and acceptance are required before any field welding will be permitted."

#### *Subsection 709.6.3 Pay Items (page 650)*

Subsection heading number; change subsection heading number from "709.6.3" to "709.6.4".

## **DIVISION 800- INCIDENTAL CONSTRUCTION**

### **Section 805 - GUARDRAIL**

#### *Subsection 805.5 - Measurement*

Paragraph 4; amend as follows:

"The quantity for the pay item 8053000 Additional Length Guardrail Post is the length of required post installed in excess of the standard length post based on the system being installed, measured by the linear foot (LF), complete, and accepted."

### **Section 815 - EROSION CONTROL**

#### *Subsection 815.1 - Description*

Paragraph 1, first sentence; change "temporary flexible pipe" to "temporary pipe".

#### *Subsection 815.5 - Measurement*

Paragraph 13; delete the first sentence and replace it with the following sentence:

"The quantity for Temporary Pipe Slope Drains is measured and paid for in accordance with Subsections 803.5 and 803.6 respectively."

#### *Subsection 815.5 - Measurement*

Delete paragraph 19.

#### *Subsection 815.6 - Payment*

After paragraph 15, add the following paragraph:

16 Payment for Removal of Silt Retained by Silt Fence is full compensation for removing and disposing of sediment deposits accumulated by silt fences as specified or directed and includes all materials, labor, equipment, tools, supplies, transportation, and incidentals necessary to fulfill the requirements of the pay item in accordance with the Plans, the Specifications, and other terms of the Contract.

**SECTION 6.2 - GENERAL SPECIAL PROVISIONS  
(Cont'd)**

*Subsection 815.6 Payment*

Change original paragraph number "16" to "17".

*Subsection 815.6 Payment*

Pay Item table; change the Unit for Item No. 8156214 to "EA".

**INDEX:**

Amend as follows:

Page I-3, after "Bridge Deck Rehabilitation, measurement and payment:"  
Delete page 807.

Page I-12, after "Letting:"  
Replace page 19 with page 9.

Page I-13, after "Overhead Sign Structure:"  
Replace page 488 with page 495.

Page I-15, after "Proof Rolling:"  
Delete page 98.

Page I-18, after "Structural Steel, turned and ribbed bolts:" Replace  
page 624 with page 625.

Page I-19, after "Waterproofing, bridge deck:"  
Delete page 907.

Page I-20, after "Working Drawings:" Replace  
page 543 with page 779.

**END of SECTION**

## **SECTION 6.2 - GENERAL SPECIAL PROVISIONS (Cont'd)**

March 20, 2003

### *THE SOUTH CAROLINA MINING ACT*

The South Carolina Mining Act enacted by the General Assembly in 1973 requires that the Department adopt reclamation standards to govern activities of the Department and any person acting under contract with the Department, on highway rights-of-way or material pits maintained solely in connection with the construction, repair and maintenance of the public road systems in South Carolina.

#### STANDARD PLAN FOR THE RECLAMATION OF EXCAVATED AREAS ADOPTED BY THE SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION

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Reclamation plans as stated herein shall include all areas disturbed in excavations of borrow and material pits, except planned inundated areas.

The final side slopes of areas excavated for borrow and material pits shall be left at such an angle so as to minimize erosion and the possibility of slides. The minimum slope in every case shall be not less than 3:1.

Small pools of water should not be allow that are, or are likely to become noxious, odious, or foul to collect or remain on the borrow pit. Suitable drainage ditches, conduits, or surface gradient shall be constructed to avoid collection of noxious, odious, or foul pools of water unless the borrow pit is to be reclaimed into a lake or pond.

Borrow pits reclaimed to a lake or pond must have an adequate supply of water to maintain a water sufficient level to maintain a minimum water depth of four (4) feet on at least fifty (50) percent of the surface area of the lake or pond.

Excavated areas will be drained where feasible unless otherwise requested by the property owner where, in such instances, the property owner may wish to develop the excavated area for recreational purposes or for the raising of fish, or for other uses, in compliance with the South Carolina Mining Act.

Where material is stripped from the ground surface in relatively thin layers, the area, after excavation has been completed, will be thoroughly scarified and terraced and planted to establish satisfactory vegetation necessary to control erosion. Vegetative cover should be established on a continuing basis to ensure soil stability appropriate to the area. Conservation practices essential for controlling both on-site and off-site erosion and siltation must be established. A minimum of seventy-five (75) percent vegetative ground cover, with no substantial bare spots, must be established and maintained into the second growing season.

Excavated areas that are drained will be seeded to obtain a satisfactory vegetative cover. The side slopes of excavated area will be planted to vegetation.

The State Highway Engineer, or his duly appointed representative, will make a final inspection of the reclaimed area and keep a permanent record of his approval thereof. A map or sketch providing the location and approximate acreage of each pit used on the project will be made available to the Final Plans Engineer.

**SECTION 6.2 - GENERAL SPECIAL PROVISIONS  
(Cont'd)**

All applicable regulations of agencies and statutes relating to the prevention and abatement of pollution shall be complied with by the contractor in the performance of the contract.

\*\*\*\*\*

The Contractor shall comply with the provisions of the Plan which are applicable to the project as determined by the Engineer. Seeding or other work necessary to comply with the plan on pits furnished by the contractor shall be at the expense of the contractor. Bermuda shall not be planted on ground surface pit areas. The quantity of fescue seed specified in Subsection 810.04 of the Standard Specifications shall be increased by fifteen (15) pounds in lieu of the deleted Bermuda seed.

**END of SECTION**

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**SECTION 6.3**  
**Of**  
**SPECIAL PROVISIONS**  
  
**~SUPPLEMENTAL SPECIFICATIONS~**  
  
**GREENLAWN DRIVE**  
  
**STREETSCAPE**  
  
**~ 2018 ~**

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## SUPPLEMENTAL SPECIFICATIONS

June 13, 1990

### **APPLICATION OF DAVIS-BACON AND RELATED ACTS TO INDEPENDENT TRUCK DRIVERS AND MISCELLANEOUS CONSTRUCTION ACTIVITIES**

#### The Davis-Bacon and Related Acts apply when:

- 1) A Contractor or Subcontractor hires a trucking firm or fleet of trucks to haul materials from a plant, pit, or quarry, which has been established specifically to serve (or nearly so) a particular project or projects covered by Davis-Bacon and Related Acts.
- 2) A Contractor or Subcontractor hires a trucking firm or fleet of trucks to haul material from a non-commercial stockpile or non-commercial storage site outside the limits of the project to the project site.
- 3) A Contractor or Subcontractor hires a trucking firm or fleet of trucks to haul excavated materials away from a Davis-Bacon covered project.
- 4) A contractor or Subcontractor rents or leases equipment with an operator to perform work as called for under a Davis-Bacon construction contract.
- 5) A common carrier is used for the transportation of materials from an exclusive material supply facility to fulfill the specific need of a construction contract.

The fleet owner is not considered a Subcontractor with regard to the 70% subcontracting limitations and would not have to be approved as a Subcontractor. However, payrolls must be submitted by truck fleet owner covering the truck drivers, and all requirements such as predetermined wages, overtime, etc., are applicable. Legitimate owner-operators (truck owner driving his own truck) must appear on the payroll by name and notation "truck Owner Operator" with no hours, etc. shown.

#### The Davis-Bacon and Related Acts do not apply when:

- 1) A Contractor or Subcontractor hires a trucking firm or fleet of trucks to haul materials from a commercial plant, pit, or quarry which had previously been established for commercial use and regularly sell materials to the general public.
- 2) A Contractor or Subcontractor hires a trucking firm or fleet of trucks to haul materials from an established commercial plant, pit, or quarry to a stockpile outside the limits of the project.
- 3) Bona fide owner-operators of trucks, who are independent contractors, use their own equipment to haul materials to or from or on a Davis-Bacon covered project. (One man-One truck)

The fleet owner is not considered a Subcontractor with regard to the 70% subcontracting limitation and would not have to be approved as a Subcontractor.

SUPPLEMENTAL SPECIFICATIONS

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## SUPPLEMENTAL SPECIFICATIONS

August 1, 2013

### CRANE SAFETY

The contractor's attention is directed to the following Crane Safety criteria. All applicable items under the submittal list section shall be submitted to the Resident Construction Engineer (RCE) before any crane operations may begin. If any personnel or equipment is changed or added, all applicable items shall be updated and submitted to the RCE before continuing with crane(s) operations.

All contractors shall comply with the manufacturer specifications and limitations applicable to the operation of any and all cranes and derricks. Prime contractors and sub-contractors shall comply with the latest Occupational Safety and Health Administration (OSHA) regulations, adopted American National Standards Institute (ANSI) and American Society of Mechanical Engineers (ASME) crane standards, and other applicable standards including, but not limited to the following:

- OSHA 29 CFR 1926 Subpart CC "Cranes and Derricks in Construction"
- OSHA 29 CFR 1926.251 "Rigging Equipment for Material Handling"
- ASME B30.5-2007 "Mobile and Locomotive Cranes"
- ASME B30.8-2010 "Floating Cranes and Floating Derricks"
- ASME B30.22-2005 "Articulating Boom Cranes"
- ASME B30.26-2010 "Rigging Hardware"

### SUBMITTAL LIST

1. **Crane Operators:** All crane operators shall be certified by the National Commission for the Certification of Crane Operators (NCCCO), National Center for Construction Education and Research (NCCER), or Crane Institute of America Certification (CIC).
  - a. Contractor shall submit a copy of the NCCCO, NCCER, or CIC certification for each crane operator prior to performing any crane operations on the job site. The original certification card shall be available for review upon request and must remain current within a 5 year expiration date for the duration of the job. (Contractors with a crane operator-in- training on the jobsite shall comply with all the OSHA Subpart CC requirements).
  - b. Contractor shall submit a copy of the current Crane Operators Medical Evaluation card (3 year expiration) in the form of NCCCO, NCCER or CIC Physical Examination form or equivalent meeting the ASME B30.5 requirement or a current USDOT Medical Examiner's Certificate card (2 year expiration). The original medical card or equivalent for all crane operators shall be available for review upon request.
2. **Competent Person:** The named competent person will have the responsibility and authority to stop any work activity due to safety concerns.
  - a. Contractor shall submit the name and qualifications of the "Competent Person" as defined by OSHA Subpart CC responsible for all crane safety and lifting operations.

May 2, 2014

## **DISADVANTAGED BUSINESS ENTERPRISE (DBE) SUPPLEMENTAL SPECIFICATION**

It is the policy of the South Carolina Department of Transportation (SCDOT) to ensure nondiscrimination in the award and administration of federally assisted contracts and to use Disadvantaged Business Enterprises (DBEs) in all types of contracting and procurement activities according to State and Federal laws. To that end the SCDOT has established a DBE program in accordance with regulations of the United States Department of Transportation (USDOT) found in 49 CFR Part 26.

This document, known as the "DBE Supplemental Specifications" includes two main parts:

- Part A. "Instructions to Bidders – Pre-award Requirements"
- Part B. "Instructions to Contractors – Post-award Requirements."

### **PART A. INSTRUCTIONS TO BIDDERS – PRE- AWARD REQUIREMENTS**

When incorporated into Design Build and/or Local Public Agency procurements, the terms "bid", "bidder", and "bid letting" shall mean "proposal", "proposer" and "proposal opening."

DEFINITIONS: The term South Carolina Department of Transportation (SCDOT), as noted within these DBE supplemental specifications, when used in a contract document being let by an entity or Local Public Agency other than SCDOT such as a Town, City, Municipality or County shall have the same meaning and intent as if it were SCDOT except that the letting entity shall be responsible for processing and any distribution of DBE documents, other than those required by law to be submitted and processed to SCDOT.

#### **1. DBE CONTRACT GOAL**

- A. The DBE participation goal for this contract is set forth in Section 6.0, Article 10 of the Special Provisions of the Contract.
- B. The successful bidder shall exercise all necessary and reasonable steps to ensure that DBEs perform services or provide materials on this contract in an amount that meets or exceeds the DBE contract goal and commitment. Submitting the bid, including electronically, shall constitute an agreement by the bidder that if awarded the contract, it will meet or exceed the DBE contract goal and commitment or make good faith efforts to meet the goal or commitment. Failure to meet the contract goal or make good faith efforts to meet the contract goal will result in the the bid being considered irregular and subject to rejection in accordance with Section 102.8(1)(D) of the SCDOT Standard Specification for Highway Construction, resulting in the contract being awarded to the next lowest responsible and responsive bidder.

#### **2. DBE COMMITTAL**

- A. Each bidder shall enter all the information regarding how it intends to meet the DBE goal in the electronic bid folder found on the electronic bidding service website, *Bid Express*, entitled "DBE List." (See paragraph (D) below for non-electronic bid submissions.) The listing of DBEs shall

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constitute a commitment by the bidder to utilize the listed DBEs, subject to the replacement requirement set forth below in Section 2 of Part B. A DBE listed on the DBE List or DBE Committal Sheet hereinafter shall be referred to as a "committed DBE."

- B. In meeting the DBE contract goal, the bidder shall use only certified DBEs included in the "South Carolina Unified Certification Program DBE Directory" (hereinafter referred to as the "Unified DBE Directory.") The DBE.BIN file used for the electronic bidding contains the names of the certified DBEs in the " Unified DBE Directory." For more information on the use of the DBE.BIN file in electronic bidding, see Section 6 below.
- C. Failure to provide all information required in the electronic bid or DBE Committal Sheet will make the bid irregular and subject to rejection, resulting in the contract being awarded to the next lowest responsible and responsive bidder.
- D. The DBE.BIN file listed for the letting must be downloaded for each particular letting because it is the data source for the DBEs listed in the "Unified DBE Directory" designated for use in the letting. ALL DBE data such as Name, Company ID, and Address must be selected from drop-down lists provided by the DBE. BIN file. If the DBE.BIN file is not downloaded, no data for the drop-down lists will be available. For non-electronic bidding in Design/Build or Local Public Agency procurements, use the attached DBE Committal Sheet in lieu of the DBE.BIN file or the form provided on pages 5 and 6 of the Bid Form in Section 1.7 of the Bid Documents.

The following information must be selected or entered in the electronic bid:

- (1) The names and addresses of certified DBEs whose services or materials will be used in the contract.
- (2) Work Type and Work Code selected from a drop-down list. When one of these is selected, the other will be filled in automatically. **[Note: Only select the Work Type and Work Code for which the selected DBE firm has been certified to perform].**
- (3) An Item of work, approximate Quantity of work to be performed or materials to be supplied, Unit (of measurement), Unit Price, and the extended dollar amount of participation by each DBE listed.
  - (a) Item: The Item is the bid item with which the DBE will be associated and must be selected from the Schedule of (Bid) Items found in the drop-down list. If the proposed work is for only a portion of an Item of work (i.e. hauling of materials, tying of reinforced steel, etc.) an adequate description of this work shall be included in the Note block.
  - (b) Quantity, Unit, & Unit Price: Initially when an Item is selected, the contract quantity, unit, and the bidder's unit price and extension will appear. If the proposed work is for only a portion of an item as described in (1) above, then the Quantity, Unit Price and /or Extension shall be changed to reflect the actual amount of work committed to the DBE. The Unit (of measurement) cannot be changed.
- (4) The bidder must also submit a copy of a signed statement or quote from each of the DBEs listed in the DBE List folder of the electronic bid or DBE committal sheet. The signed statements or quotes should verify the items, quantities, units, unit prices, and dollar values listed in the DBE List folder of the electronic bid or DBE committal sheet. COPIES OF THE SIGNED STATEMENTS MUST BE SUBMITTED TO SCDOT CONTRACT ADMINISTRATION OFFICE WITHIN FOUR (4) BUSINESS DAYS OF THE BID LETTING from the apparent low bidder. Should the apparent low bid be rejected for failing to meet the goal, the next apparent low bidder will have three (3) business days from notification to submit the signed quotes. SCDOT will accept facsimiles of the verified statements with the caveat that the bidder must furnish the original document to SCDOT upon request. Signed quotes must be on the DBEs letterhead and contain the following information: date, printed name, address, and phone number of the authorized individual providing the quote, project name and identification

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number, quote needs to be addressed to contractor from DBE, and identify specific services being performed and/or material being supplied.

#### 3. **GOOD FAITH EFFORTS REQUIREMENTS**

- A. Requirements for Submission for Approval of a Good Faith Effort. If the bidder does not meet the DBE contract goal through the DBE committals submitted with the bid, it is the bidder's responsibility to request, in writing (faxes and emails are acceptable) a good faith effort review by 5:00 pm of the next business day after they submit their bid. Bidder must submit additional information to satisfy to SCDOT that good faith efforts have been made by the bidder in attempting to meet the DBE contract goal. **THIS SUPPORTING INFORMATION/DOCUMENTATION MUST BE FURNISHED TO SCDOT CONTRACT ADMINISTRATION OFFICE IN WRITING WITHIN THREE (3) BUSINESS DAYS OF THE BID LETTING.** One complete set and five (5) copies of this information must be received by Contract Administration no later than 12:00 noon of the third business day following the bid letting. Where the information submitted includes repetitious solicitation letters, it will be acceptable to submit a sample representative letter along with the list of the firms being solicited. The documented efforts listed in item (C.) below are some of items SCDOT will consider in evaluating the bidder's good faith efforts. The documentation may include written subcontractor quotations, telephone log notations of verbal quotations, or other types of quotation documents.
- B. Failure to Submit Required Material. If the bidder fails to provide this information by the deadline, the bid is considered irregular and may be rejected in accordance with Section 102.8(1)(D), SCDOT Standard Specifications for Highway Construction.
- C. Evaluation of a Good Faith Effort. SCDOT may consider the following factors in judging whether or not the bidder made adequate and acceptable good faith efforts to meet the DBE contract goal:
- (1) Did the bidder attend any pre-bid meetings that were scheduled by SCDOT or Local Public Agency to inform DBEs of subcontracting opportunities?
  - (2) Did the bidder provide solicitations through all reasonable and available means (e.g. posting a request for quotes from DBE subcontractors on SCDOT Construction Extranet webpage; attendance at pre-bid meetings, advertising and/or written notices at least 10 days prior to the letting; or showing the bidder provided written notice to all DBEs listed in the "Unified DBE Directory" that specialize in the areas of work in which the bidder will be subcontracting).
  - (3) Did the bidder follow-up initial solicitations of interest by contacting DBEs to determine with certainty whether they were interested or not? If a reasonable amount of DBEs in the area of work do not provide an intent to quote, or there are no DBEs that specialize in the area of work to be subcontracted, did the bidder call SCDOT Office of Business Development & Special Programs to give notification of the bidder's inability to obtain DBE quotes?
  - (4) Did the bidder select portions of the work to be performed by DBEs in order to increase the likelihood of meeting the contract goal? This includes, where appropriate, breaking out contract items of work into economically feasible units to facilitate DBE participation, even when the bidder might otherwise perform these items of work with its own forces.
  - (5) Did the bidder provide interested DBEs with adequate and timely information about the plans, specifications, and requirements of the contract?
  - (6) Did the bidder negotiate in good faith with interested DBEs, or reject them as unqualified without sound reasons based on a thorough investigation of their capabilities? Any rejection should be noted in writing with a description as to why an agreement could not be reached. The fact that the bidder has the ability or desire to perform the work with its own forces will not be considered as sound reason for rejecting a DBEs quote.

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- (7) Was a quote received from an interested DBE, but rejected as unacceptable because it was not the lowest quote received? The fact that the DBE firm's quotation for the work is not the lowest quotation received will not in and of itself be considered as a sound reason for rejecting the quotation as unacceptable, as long as the quote is not unreasonable.
  - (8) Did the bidder specifically negotiate with non-DBE subcontractors to assume part of the responsibility to meet the contract goal when the work to be sublet includes potential for DBE participation?
  - (9) Any other evidence that the bidder submits which demonstrates that the bidder has made reasonable good faith efforts to include DBE participation.
  - (10) The DBE commitments submitted by all other bidders who were able to meet the DBE contract goal.
  - (11) Did the bidder contact SCDOT for assistance in locating certified DBEs?
- D. Nothing in this provision shall be construed to require the bidder to accept unreasonable quotes in order to satisfy DBE contract goals.
- E. SCDOT may give the bidder an opportunity to cure any deficiencies resulting from a minor informality or irregularity in the DBE commitment or waive any such deficiency when it is in the best interest of the State. A minor informality or irregularity is one which is merely a matter of form or is some immaterial variation from the exact requirements of the invitation for bids having no effect or merely a trivial or negligible effect on DBE contract goal, quality, quantity, or delivery of the supplies or performance of the contract, and the correct or waiver of which would not be prejudicial to bidders.

**4. DETERMINATION AND RECONSIDERATION PROCEDURES**

- A. After the letting, SCDOT will determine whether or not the low bidder has met the DBE participation contract goal or made good faith efforts to meet the goal. If SCDOT determines that the apparent low bidder failed to meet the goal, did not demonstrate a good faith effort to meet the goal, or meet the requirements of a commercially useful function SCDOT will notify the apparent low bidder of its determination by email and by US Mail or hand-delivery. The apparent low bidder may request a reconsideration of this determination.
- B. The bidder must make a request for reconsideration in writing within three (3) business days of receipt of the determination. Within six (6) business days of receipt of the determination, the bidder must provide written documentation to SCDOT Director of Construction supporting its position. Only documentation dated within three (3) business days of the bid letting may be used in support of its position. No DBE goal efforts performed after 3 business days of the bid will be allowed as evidence. If the bidder fails to request a reconsideration with three (3) business days, the determination shall be final.
- C. To reconsider the bidder's DBE commitment or good faith efforts, the Manager for the City of Beaufort will designate a panel of three City employees, who did not take part in the original determination, comprised of: (1) one City of Beaufort Council member, (2) one senior employee from the City of Beaufort Public Works department (3) one employee from the City of Beaufort Finance Department (hereinafter referred to as the "Reconsideration Panel"). The City Council member will be appointed chairman of the Reconsideration Panel. A representative from FHWA may be a non-voting member of the Reconsideration Panel. The Reconsideration Panel will contact the bidder and schedule a meeting. The Reconsideration Panel will make reasonable efforts to accommodate the bidder's schedule; however, if the bidder is unavailable or not prepared for a hearing within ten (10) business days of receipt of original written determination, the bidder's reconsideration rights will be considered to have been waived.



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- D. The meeting will be held at the City of Beaufort, 1911 Boundary St, Beaufort, SC. The bidder will be allowed up to two (2) hours to present written or oral evidence supporting its position.
- E. The Reconsideration Panel will issue a written report and recommendation to the City of Beaufort Manager. The City of Beaufort shall not award the contract until the City of Beaufort Manager issues a decision or the bidder waives its reconsideration right either through failure to request reconsideration or failure to be available for the meeting. The City of Beaufort Manager will notify the bidder of the final decision in writing.

**5. CONSEQUENCES OF FAILURE TO COMPLY WITH DBE PROVISIONS**

- A. Failure on the part of the bidder to meet the DBE contract goal or to demonstrate good faith efforts to meet the DBE contract goal will result in the bid being declared irregular and may be rejected resulting in the contract being awarded to the next lowest responsible and responsive bidder. Upon rejection, the award may be made to the next lowest responsible and responsive bidder.
- B. After bid letting, but prior to award, City of Beaufort reserves the right to cancel the project, or any or all bids or proposals may be rejected in whole or part, when it is in the best interest of the State.

**6. DIRECTORY OF SOUTH CAROLINA CERTIFIED DISADVANTAGED BUSINESS ENTERPRISES**

- A. The electronic DBE.BIN file found on the electronic bidding service website, *Bid Express*, contains data from the "Unified DBE Directory" approved for use in each particular letting. **The file must be downloaded for each letting because the directory approved for use in each letting is updated prior to the letting.** The bidder is advised that this directory pertains only to DBE certification and not to qualifications. It is the bidder's responsibility to determine the actual capabilities and/or limitations of the certified DBE firms. For non-electronic bid submissions, the directory can be found at [http://www.scdot.org/doing/businessDevelop\\_SCUnified.aspx](http://www.scdot.org/doing/businessDevelop_SCUnified.aspx).
- B. In meeting the DBE participation contract goal, the bidder shall use only DBEs that are included in the "Unified DBE Directory" contained in the DBE.BIN file, or on-line, current for the month the bid is submitted. The bidder may only count toward the DBE goal work in the areas for which the DBE has been certified, unless prior written approval from SCDOT is obtained. The bidder and the DBE must jointly apply to SCDOT's Director of Construction for approval of work in an area of work other than that in which the DBE has been certified. The requested work must be in an area related to the area of work in which the DBE has been certified. Such requests must be submitted in writing to the Director of Construction no later than ten (10) business days prior to the date of the letting. The Director of Construction has the right to approve or disapprove the request. The Director of Construction will give the bidder and the DBE written notice of his decision no later than five (5) business days prior to the date on which bids are received. If approved, a copy of the written approval must accompany the submission of the subcontractor's quote.
- C. Certification of a DBE for work in a certain area of work or approval to perform work in a related area shall not constitute a guarantee that the DBE will successfully perform the work or that the work will be performed completely. Such certification or approval shall only imply that the successful completion of the work by the DBE can count toward satisfying the DBE contract goal in accordance with the counting rules set forth in 49 CFR Part 26 (see Section 3 of Part B below.)
- D. The bidder may print a copy of the "Unified DBE Directory" from SCDOT web page at [http://www.scdot.org/doing/businessDevelop\\_SCUnified.aspx](http://www.scdot.org/doing/businessDevelop_SCUnified.aspx).

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**7. ADDITIONAL DBE PARTICIPATION**

The bidder is strongly encouraged to obtain the maximum amount of DBE participation feasible on the contract. Any DBE participation in excess of the DBE contract goal shall also be included in the DBE Quarterly Reports.

**8. CONTRACTOR'S RESPONSIBILITY TO REPORT BIDDER INFORMATION**

The bidder should keep a list of all subcontractors (DBE or non-DBE) who bid or quoted for subcontracts on this project. As a condition to prequalification or renewal of prequalification, Contractors must submit the names and addresses of all firms (DBE and non-DBE) who quoted the Contractor for subcontracts on SCDOT projects throughout the course of the previous year. This requirement may be waived when the Contract being let by an entity or Local Public Agency other than SCDOT.

**PART B. INSTRUCTIONS TO CONTRACTORS – POST-AWARD REQUIREMENTS**

**1. CONTRACTOR'S OBLIGATIONS**

- A. 49 CFR 26. The Contractor shall carry out the applicable requirements of 49 CFR Part 26 and these DBE Supplemental Specifications in the award and administration of this contract. Failure by the Contractor to carry out these requirements is a material breach of the contract, and may result in the termination of the contract or such other remedy as SCDOT deems appropriate.
- B. Meeting both the Goal and Commitment or Making Good Faith Efforts to Meet the Goal and Commitment. It is the Contractor's responsibility to meet or make good faith efforts to meet the DBE contract goal and commitments. Failure to meet the goal or commitments to the specific DBEs listed on the committal sheet or to demonstrate good faith efforts to meet the goal or commitments may result in any one or more of the following sanctions:
- (1) Withholding monthly progress payments;
  - (2) Declaring the Contractor in default pursuant to Section 108.10 of the Standard Specifications and terminating the contract;
  - (3) Assessing sanctions in the amount of the difference in the DBE contract committal and the actual payments made to each certified DBEs;
  - (4) Disqualifying the Contractor from bidding pursuant to Regulation 63-306, Volume 25A, of the S. C. Code of Laws; and/or
  - (5) Requiring the Contractor to obtain DBE participation on future contracts to the extent the Contractor failed to meet or use good faith efforts to meet the DBE contract goal.
- C. Using the DBEs shown on the Committal Sheet to Perform the Work. The Contractor must utilize the specific DBEs listed on the "DBE Committal Sheet" to perform the work and supply the materials for which each is listed unless the Contractor obtains prior written approval from the Director of Construction to perform the work with other forces or obtain the materials from other sources as set forth in Section 2 below. The Contractor shall not be entitled to any payment for such work or material unless it is performed or supplied by the listed DBE or, with prior written approval of the Director of Construction, by other forces (including those of the Contractor). Failure to meet a commitment to a specific DBE may result in the sanctions listed in Section 1(B) above, unless prior written approval is obtained for replacement of the committed DBE.

When SCDOT makes changes that result in the reduction or elimination of work to be performed by a committed DBE, the Contractor will not be required to seek additional participation. When the SCDOT makes changes that result in additional work to be performed by a DBE based upon the

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Contrator's commitment, the DBE shall participate in additional work to the same extent as the DBE participated in the original work.

- D. Incorporating DBE Supplemental Provisions in Subcontracts. The Contractor shall make available, at the request of SCDOT, a copy of all DBE subcontracts. The Contractor shall ensure that all subcontracts or agreements with DBEs to supply labor or materials require that the subcontract and all lower tier subcontracts be performed in accordance with these DBE Supplemental Specifications. The contractor is advised to insert the following provision in each subcontract or agreement:

"This contract or agreement shall be performed in accordance with the requirements of the SCDOT DBE Supplemental Specifications dated January 1, 2014."

## **2. REPLACEMENT OF CERTIFIED DBES**

- A. Requirement for Replacement. The following shall apply to replacement of a DBE listed on the "DBE Committal Sheet":

- (1) *When a DBE listed on the DBE committal sheet (hereafter referred to as a "committed DBE") is unable or unwilling to perform the work in accordance with the subcontract, the Contractor shall follow the replacement procedures in Section 2(B) below. Failure on the part of the Contractor to comply with this requirement shall constitute a breach of contract and may be cause for the imposition of the sanctions set forth in Section 1(B) above.*
  - (2) *When a committed or non-committed DBE is decertified or removed from the SC Unified DBE Directory after execution of a valid subcontract agreement with the Contractor:*
    - (a) The Contractor may continue to utilize the decertified DBE on the contract and receive credit toward the DBE contract goal for the DBEs work unless the Contractor is implicated in the DBE decertification. However, the Contractor is encouraged to replace the decertified DBE with a certified DBE where feasible, to assist SCDOT in meeting the overall statewide DBE goal.
    - (b) If a *committed or non-committed* DBE is removed from the SC Unified DBE Directory due to graduation from the DBE program, the Contractor may continue to utilize the graduated DBE on the contract and receive credit toward the DBE contract goal for the DBEs work.
  - (3) *When a committed DBE is decertified or removed from the SC Unified DBE Directory prior to execution of a valid subcontract agreement with the Contractor, the Contractor shall follow the replacement procedures in Section 2(B) below. Failure on the part of the Contractor to comply with this requirement shall constitute a breach of the contract and may be cause for the imposition of the sanctions set forth in Section 1(B) above.*
- B. Replacement Procedures. In order to replace a *committed* DBE, the Contractor must obtain prior written approval from the Director of Construction. Prior to requesting SCDOT's approval to terminate and/or substitute a committed DBE, the Contractor is to give notice to the DBE subcontractor in writing (certified mail) with a copy provided to both the Director of Construction and the Director of Business Development & Special Programs. The purpose of this notice is to both inform the DBE subcontractor of the Contractor's intent to request SCDOT's approval to terminate and/or substitute as well as to outline the reasons for the request. The DBE subcontractor shall be given five business days from receipt of notice to provide a written response stating either its consent or its reasons why it objects to the proposed termination. On a case by case basis and

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at SCDOT's sole discretion, a shorter response period than five business days may be allowed as a matter of public necessity. If SCDOT determines a shorter response period is justified, the contractor and committed DBE will be advised in writing. In no case shall the Contractor's ability to negotiate a more advantageous contract with another subcontractor be considered a valid basis for replacement. If the Contractor obtains the Director of Construction's approval for the replacement, the Contractor shall replace the committed DBE with another certified DBE or make good faith efforts to do so as set forth in Section 2(C) below. Any DBE who is certified at the time of replacement may be used as a replacement. If the Director of Construction does not approve of replacement, the Contractor shall continue to use the *committed* DBE in accordance with the contract. Failure to do so may constitute cause for imposition of any of the sanctions set forth in Section 1(B) above.

C. Good Faith Efforts. After approval for replacement is obtained, if the Contractor is not able to find a replacement DBE, the Contractor shall provide the Director of Construction with documentation of its good faith efforts to find a replacement. This documentation shall include, but is not limited to, the following:

- (1) Copies of written notification to certified DBEs that their interest is solicited in subcontracting the work defaulted by the previous certified DBE or in subcontracting other items of work in the contract.
- (2) Statement of efforts to negotiate with certified DBEs for specific sub-bids including at a minimum:
  - (a) Names, addresses and telephone numbers of certified DBEs who were contacted;
  - (b) Description of the information provided to certified DBEs regarding the plans and specifications for portions of the work to be performed;
  - (c) Statement of why additional agreements with certified DBEs were not reached.
- (3) For each certified DBE contacted but rejected, the reasons for the Contractor's rejection. Failure to find a replacement DBE at the original price is not in itself evidence of good faith.
- (4) Documentation demonstrating that the Contractor contacted SCDOT's DBE Supportive Service Office for assistance in locating certified DBEs willing to take over that portion of work or do other work on the contract.

If SCDOT determines that the Contractor has made good faith efforts to replace the committed DBE with another certified DBE, then the remaining portion of the DBEs work shown on the "DBE Committal Sheet" can be completed by the Contractor's own forces or by a non-DBE subcontractor approved by SCDOT. The Contractor will not be required to make up that part of the DBE goal attributable to the portion of work not completed by the committed DBE, and this shortfall in meeting the DBE goal will be waived by SCDOT.

If SCDOT determines that the Contractor has not made good faith efforts to replace the committed DBE with another certified DBE, such failure may constitute cause for imposition of any of the sanctions set forth in Section 1(B) above.

D. Payment from the Contract. The Contractor shall not be entitled to payment for work or material committed to a committed DBE unless:

- (1) The work is performed by the *committed* DBE; or
- (2) The work is performed by another certified DBE after the Director of Construction has given approval to replace the committed DBE as provided above; or

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- (3) The work is performed by a non-DBE after SCDOT determines that the Contractor has demonstrated good faith efforts to replace the committed DBE as provided above.

**3. COUNTING CERTIFIED DBE PARTICIPATION TOWARD MEETING THE DBE GOAL**

DBE participation shall be measured by the actual, verified payments made to DBEs subject to the following rules (all references to "DBE" herein shall mean "certified DBE"). The Contractor is bound by these rules in regard to receiving and reporting credit toward the DBE contract goal. The Contractor shall report on DBE Quarterly Reports only the amounts properly attributable toward the goal under these rules.

**A. General Counting Rules.**

- (1) The entire amount of that portion of a construction contract (or other contract not covered by paragraph A(2) of this section) that is performed by the DBEs own forces may be counted toward the goal. The cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate) can be counted toward the goal.
- (2) When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the subcontractor is also a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward the DBE goals.
- (3) The Contractor can count expenditures to a DBE only if the DBE is certified by SCDOT, except as provided in section 2(A)(2) above, in the event a DBE loses eligibility status after a subcontract is signed.
- (4) The Contractor can count expenditures to a DBE only after the DBE has actually been paid.

- B. Joint Ventures.** When a DBE performs as a participant in a joint venture, the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces can be counted toward DBE goals. A joint venture must be approved by the Director of Construction prior to start of the contract.

- C. Commercially Useful Function.** Expenditures to a DBE contractor can be counted toward DBE goals only if the DBE is performing a commercially useful function on that contract:

- (1) A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, SCDOT will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.
- (2) A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, SCDOT will examine similar transactions, particularly those in which DBEs do not participate.
- (3) If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, SCDOT will presume that it is not performing a commercially useful function.
- (4) When a DBE is presumed not to be performing a commercially useful function as provided in paragraph (3) of this section, the DBE may present evidence to rebut this presumption. SCDOT



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may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

- (5) SCDOT's decisions on commercially useful function matters are subject to review by the Federal Highway Administration, but are not administratively appealable to the USDOT.

D. Special Rules for Trucking Companies. SCDOT will use the following rules to determine whether a DBE trucking company is performing a commercially useful function and what portion of the DBE work can be counted toward DBE goals:

- (1) **DBE must control all work.** To be considered as performing a commercially useful function, the DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.

- (2) **DBE must "own" at least one truck.** The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the project. For purposes of this section, a DBE will be considered to "own" a truck if:

a) the truck is titled in the DBE's name; or,

b) the DBE leases the truck under a valid lease-to-own agreement and the driver of the truck is an employee of the DBE.

The DBE must submit documentation to SCDOT to establish the number of trucks the DBE owns, operates and insures. The DBE must submit the documentation to SCDOT's Office of Business Development & Special Programs at the time of certification, annual reporting on certification requirements, or at any time during the year that the DBE obtains additional trucks.

- (3) **Counting DBE trucking toward DBE goal.** The Contractor can count toward DBE goals the total value of the transportation services the DBE provides using trucks the DBE owns, insures, and operates using drivers the DBE employs.

- (4) **Counting subcontracted DBE trucking toward DBE goal.** The DBE may subcontract with another DBE firm, including an owner-operator who is certified as a DBE, to provide trucks on a project. In this case, the Contractor may count toward the DBE goal the total value of the transportation services provided by the DBE subcontractor.

- (5) **Counting subcontracted non-DBE trucking toward the goal.** The DBE may lease trucks from a non-DBE firm, including an owner-operator, to provide trucks on a project. Prior to beginning work, the DBE must provide SCDOT's Resident Construction Engineer with a list identifying all DBE and non-DBE trucks and truck numbers that will be used on the project. In this case, the Contractor may count toward the DBE goal the total value of the transportation services provided in each quarter by the non-DBE trucks, not to exceed the value of the transportation services provided by DBE-owned trucks in that quarter. For example, in a given quarter, if DBE-owned trucks provide transportation services of \$50,000, while non-DBE trucks provide transportation services of \$75,000, a maximum of \$100,000 can be counted toward the DBE goal in that quarter.

For purposes of this paragraph (5), a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the lease truck. Leased trucks must display a placard with the name and USDOT identification number of the DBE leasing the truck. The placard must be legible and visible when standing at least 15 feet from the driver's side of the truck. It may be affixed to the side of the truck or inside the cab window as long as it does not interfere with the safe operation of the truck. See example below.

**DBE Supplemental Specifications  
(Cont'd)**

Sample placard:

Operated by:  Bell's Trucking, LLC USDOT 123456
--

**NOTE: DBE firms may not receive credit for DBE participation when leasing non-DBE owned trucks from the Prime contractor with whom the DBE firm is subcontracted as 49 CFR 26.55(a)(1) applies.**

E. DBE Manufacturers and Dealers. The Contractor can count expenditures with DBEs for materials or supplies toward DBE goals in accordance with the following rules:

- (1) *DBE Manufacturers.* If the materials or supplies are obtained from a DBE manufacturer, the Contractor can count 100 percent of the cost of the materials or supplies toward DBE goals. For purposes of this paragraph, a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications. The DBE must be listed as a "manufacturer" in the "South Carolina Unified DBE Directory" to be considered a manufacturer for purposes of these counting rules.
- (2) *DBE Dealers.* If the materials or supplies are purchased from a DBE regular dealer, the Contractor can count 60 percent of the cost of the materials or supplies toward DBE goals. For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. The DBE must be listed as a "dealer" in the South Carolina Unified DBE Directory to be considered a dealer for purposes of these counting rules.
- (3) *DBE Brokers.* With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of material or supplies required on a job site, toward DBE goals.

F. Special Rules for Design Build and Local Public Agency Contracts

- (1) When the Design Build team changes work that results in the reduction or elimination of work that the Design Build team committed to be performed by a DBE, the Design Build team shall seek additional participation by DBEs equal to the reduced DBE participation caused by the change.

4. **JOINT CHECKS.**

The Director of Construction must approve all requests for a Contractor to issue and use joint checks with a DBE. The following conditions apply:

**DBE Supplemental Specifications  
(Cont'd)**

- A. The DBE must submit a request to the Director of Construction which includes a formalized agreement between all parties that specify the conditions under which the arrangement will be permitted;
- B. The DBE remains responsible for all other elements of 49 CFR 26.55(c)(1). SCDOT must clearly determine that independence is not threatened because the DBE retains final decision making responsibility;
- C. There can be no requirement by the prime contractor that a DBE use a specific supplier nor the prime contractor's negotiated unit price.

**5. REPORTS**

The Contractor shall furnish to the SCDOT the following reports and information. THIS REQUIREMENT APPLIES REGARDLESS OF WHETHER THERE IS A CONTRACT GOAL ASSIGNED TO THE CONTRACT.

- A. DBE Quarterly Reports. The Contractor shall provide to the SCDOT, DBE Quarterly Reports showing the dollar amount of payments to each certified DBE. The Contractor and each DBE that received payment must sign the report. The Contractor's and DBE's signature on the Quarterly Report shall constitute certification that the DBE has performed the work and that the Contractor is entitled to credit toward the DBE goal for the amount shown in accordance with the counting rules set forth in Section 3 above. The report shall include the amount paid each DBE for the quarter and the total amount paid to each DBE on the contract. The report must include DBE subcontractors, hauling firms, and suppliers. The report shall be submitted in duplicate to the Resident Construction Engineer by the 15th of the month after each calendar quarter (January, April, July, and October 15). Failure to submit the quarterly report may result in the withholding of monthly progress and/or final payment. The Quarterly Report must be submitted for each quarter even if no payments have been made to a DBE in that quarter. When no payments have been made to a DBE in a quarter, DBEs are not required to sign the report.
- B. Trucker's Reports. All DBE haulers must complete and submit a DBE Trucker's Report along with the DBE quarterly report when the DBE leases trucks from another firm. The DBE hauler must list all trucks leased, payments made to the lessee during the quarter, and identify whether each leased truck is owned by a certified DBE or non-DBE. DBE Haulers must also submit one copy of each lease agreement to the Resident Construction Engineer prior to the start of work for each truck leased. A lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.
- C. Other Documents. Upon request of SCDOT, the Contractor and all subcontractors shall furnish documents, including subcontracts, necessary to verify the amount and costs of the materials or services provided by certified DBE suppliers or subcontractors. The Contractor shall keep the documents that verify this information for at least three years from the date of final close-out of the contract. Failure to provide these documents upon request may result in the withholding of monthly progress and/or final payment or disqualifying the Contractor from bidding pursuant to R. 63-306, South Carolina State Regulations.



**DBE Supplemental Specifications  
(Cont'd)**

**6. CONTRACT COMPLETION – DETERMINATION OF WHETHER CONTRACTOR HAS MET THE GOAL OR MADE GOOD FAITH EFFORTS**

- A. Review by SCDOT. After receipt of the final DBE Quarterly Reports, SCDOT will review the necessary contract documentation to determine whether the Contractor has met the DBE commitments and contract goal.
- B. Notification of Failure to Meet Goal. If the documentation indicates that the Contractor has not met the DBE commitments and contract goal, the Director of Construction will notify the Contractor in writing and request documentation of the Contractor's good faith efforts to meet the goal.
- C. Determination of Good Faith Efforts. The Contractor shall submit documentation demonstrating good faith efforts to meet the contract commitments and goal to the Director of Construction within thirty (30) days of the date of the "Notification of Failure to Meet Goal." The Director of Construction will provide the Contractor with written notice of SCDOT's determination whether good faith efforts have been demonstrated.
- D. Request for Reconsideration. If the Contractor disagrees with SCDOT's determination of post construction compliance, the Contractor may request a reconsideration by filing a written request with the Director of Construction within ten (10) business days after receipt of the determination. The Contractor shall submit any additional documentation that it wishes to be considered in support of its position within ten (10) business days of its request for reconsideration. If the Contractor fails to request a reconsideration within ten (10) days, the determination shall be final. If the Contractor requests reconsideration, the Director of Construction Office will appoint a Reconsideration Official who did not take part in the original determination to review the decision and supporting documentation (hereinafter referred to as the "Reconsideration Official"). FHWA may participate in the review process. The Reconsideration Official will contact the Contractor and schedule a meeting with the Contractor. The meeting will be held at the SCDOT Headquarters Building in Columbia. At the meeting, the Contractor will have an opportunity to present oral and written evidence to demonstrate that good faith efforts were made to meet the DBE commitments and contract goal. The Reconsideration Official may also consider evidence presented by SCDOT at the same meeting. After the meeting, the Reconsideration Official will issue a written report and recommendation to the Director of Construction. The Director of Construction shall make the final decision on the issue. The Director of Construction will notify the Contractor of the final decision in writing.

(This paged added for pagination purposes, only)

SUPPLEMENTAL SPECIFICATIONS

August 7, 1991

**LATE DISCOVERY OF ARCHAEOLOGICAL/HISTORICAL REMAINS ON FEDERAL AID PROJECTS AND APPROVAL OF DESIGNATED BORROW PITS**

A. Late Discovery of Archaeological/Historical Remains on Federal Aid Projects.

1. Responsibilities:

The Contractor and subcontractors must notify their workers to watch for the presence of any prehistoric or historic remains, including but not limited to arrowheads, pottery, ceramics, flakes, bones, graves, gravestones, or brick concentrations. If any such cultural remains are encountered, the Resident Construction Engineer shall be immediately notified and all work in the vicinity of the discovered materials or site shall cease until the Department's Staff Archaeologist or the State Highway Engineer directs otherwise.

2. Applicability:

This provision covers all areas of ground disturbance resulting from this federal – aid contract, including but not limited to road construction, Department designated borrow pits, Contractor furnished borrow pits, and/or staging areas.

3. Cost Reimbursement and Time Delays:

Any extra work required by A(1) above within the project right of way or on Department designated borrow pits (see below) will be paid for in accordance with Subsection 104.05 of the Standard Specifications. Extra contract time may be provided under Subsection 108.06 of the Standard Specifications for archaeological work within the project right of way or on designated borrow pits.

NOTE: On Contractor furnished borrow pits the contractor is not entitled to any additional time or money for delay on impact resulting from A(1) above or for extra work required by A(1) above. Therefore, contractors may wish to retain professional archaeological services to better ensure that borrow pit areas are cleared of archaeological/historical remains prior to use on Federal aid projects.

B. Approval of Designated Borrow Pits on Federal Aid Projects (Plant Sites which qualify as commercial are not included).

In instances where the Department specifically designates the location of borrow pits on project plans or in contract specifications for use on a Federal aid project, an archaeological survey will be performed by Department archaeologists prior to award of contract.

This provision also applies to designated disposal sites, staging areas, haul roads, and job site field offices.

## SUPPLEMENTAL SPECIFICATIONS

[illegible]

## ESTABLISHMENT OF A DRUG FREE WORK PLACE

In accordance with Section 44-107-30, South Carolina Code of Law, 1976, as amended, and as a condition precedent to the Award of the Contract, the PROPOSER, (hereinafter the Contractor), CERTIFIES on behalf of the Contract that the Contractor will provide a drug-free workplace by:

- (1) publishing a statement notifying employees that the unlawful manufacture, distribution, dispensations, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of the prohibition;
- (2) establishing a drug-free awareness program to inform employees about:
  - (a) the dangers of drug abuse in the workplace;
  - (b) the person's policy of maintaining a drug-free workplace;
  - (c) any available drug counseling, rehabilitation, and employee assistance programs; and
  - (d) the penalties that may be imposed upon employees for drug violations.;
- (3) making it a requirement that each employee to be engaged in the performance of the Contract be given a copy of the statement required by item (1);
- (4) notifying the employee in the statement required by item (1) that, as a condition of employment on the Contract, the employee will:
  - (a) abide by the terms of the statement; and
  - (b) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after the conviction;
- (5) notifying the South Carolina Department of Transportation within ten (10) days after receiving notice under item (4)(b) from an employee or otherwise receiving actual notice of conviction;
- (6) imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee convicted as required on Section 44-107-50; and
- (7) making a good faith effort to continue to maintain a drug-free workplace through implementation of items (1), (2), (3), (4), (5), and (6).

END OF THIS SECTION

[illegible]

## REQUIRED CONTRACT PROVISIONS FEDERAL- AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

### ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

#### I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization

and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

#### II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 601.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

**1. Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35,

## Greenlawn Drive - Streetscape

29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

**2. EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

**3. Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to

implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

**4. Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

**5. Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

**6. Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

**7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these

special provisions, such contractor shall immediately notify the contracting agency.

**8. Reasonable Accommodation for Applicants /**

**Employees with Disabilities:** The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

**9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:**

The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

**10. Assurance Required by 49 CFR 26.13(b):**

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

**11. Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work



classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

### III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

### IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA1273 format and FHWA program requirements.

#### 1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.



(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

## 2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

## 3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the

costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal

prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### 4. Apprentices and trainees

##### a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an

apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

##### b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

##### d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

**6. Subcontracts.** The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

**7. Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

**9. Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

**10. Certification of eligibility.**

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

**V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

**1. Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to

work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

**2. Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

**3. Withholding for unpaid wages and liquidated damages.** The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

**4. Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

**VI. SUBLETTING OR ASSIGNING THE CONTRACT**

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The

term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;
- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

#### **VII. SAFETY: ACCIDENT PREVENTION**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of

employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

#### **VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;



Shall be fined under this title or imprisoned not more than 5 years or both."

#### **IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

#### **X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

##### **1. Instructions for Certification – First Tier Participants:**

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.
- d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

\* \* \* \* \*

##### **2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:**

- a. The prospective first tier participant 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 participating in 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 (a)(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.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

#### **2. Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contractor). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

#### **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Participants:**

1. The prospective lower tier participant certifies., by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any statements in this certification, such prospective participant shall attach an explanation to this proposal.

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#### **XI CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

This provision is applicable to all Federal-Aid construction contracts and to all related sub-contracts that exceed \$ 100,000 (49 CFR 20)

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS  
PREFERENCE FOR APPALACHIAN DEVELOPMENT  
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS  
ROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

- a. To the extent that qualified persons regularly residing in the area are not available.
- b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.
- c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.



SUPPLEMENTAL SPECIFICATIONS

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY  
CONSTRUCTION CONTRACT SPECIFICATIONS

**NOTICE OF REQUIREMENT FOR AFFIRMATIVE  
ACTION TO ENSURE EQUAL EMPLOYMENT  
OPPORTUNITY (EXECUTIVE ORDER 11246)**

1. The Offeror's or Bidders attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
2. The goals and timetables for minority and female participation expressed in percentage terms for the Contractor's aggregate work force in each trade on all construction work in the covered area are as follows:

Goals for Women Apply Nationwide

GOALS AND TIMETABLES  
*Timetable*

*Goals  
(percent)*

From Apr. 1, 1976 until March 31, 1979———	3.1
From Apr. 1, 1979 until March 31, 1980———	5.1
From Apr. 1, 1980 until March 31, 1981———	6.9

Goals for Minority Participation

South Carolina

SMSA Counties:.....	16.0
Greenville, Pickens, Spartanburg	
Non-SMSA Counties:.....	17.8
Abbeville, Anderson, Cherokee, Greenwood, Laurens, Oconee, Union	
SMSA Counties:.....	23.4
Lexington, Richland	
Non-SMSA Counties:.....	32.0
Calhoun, Clarendon, Fairfield, Kershaw, Lee, Newberry, Orangeburg, Saluda, Sumter	
Non-SMSA Counties.....	33.0
Chesterfield, Darlington, Dillon, Florence, Georgetown, Horry, Marion, Marlboro, Williamsburg	
SMSA Counties:.....	30.0
Berkeley, Charleston, Dorchester	
Non-SMSA Counties.....	30.7
Colleton	
Non-SMSA Counties.....	29.8
Beaufort, Hampton, Jasper	
Non-SMSA Counties.....	15.7
Chester Lancaster York	
Non-SMSA Counties.....	32.8
Barnwell, Edgefield, McCormick, Allendale, Bamberg	
SMSA Counties:.....	27.2
Aiken	

1. These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical areas where the work is actually performed. With

regard to this second area, the Contractor is also subject to the goals for both its federally involved and non-federally involved construction.

2. The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 Shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a) and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees of trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.
3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor, employer identification number, estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.
4. As used in this Notice and in the contract resulting from this solicitation, the "covered area" is (insert description of the geographical areas where the contract is to be performed giving the state, county, and city, if any). The "covered area is the SMSA County or Counties or Non-SMSA County or Counties in which the contract work is performed.

**STANDARD FEDERAL EQUAL EMPLOYMENT  
OPPORTUNITY CONSTRUCTION CONTRACT  
SPECIFICATIONS  
(EXECUTIVE ORDER 11246)**

1. As used in these specifications:
  - a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
  - b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
  - c. "Employer identification number" means the Federal Social Security number used on the Employers Quarterly Federal Tax Return, U. S. Treasury Department Form 941.
  - d. "Minority" includes:
    - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
    - (ii) Hispanic (all persons of Mexican, Puerto Rican,

## SUPPLEMENTAL SPECIFICATIONS

- Cuban, Central or South American or other Spanish Culture or origin regardless of race);
- (iii) Asian or Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
- (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
3. If the Contractor is participating (pursuant to 41 CFR 60–4.5) in a Hometown Plan approved by the U. S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in which it has employees in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notices form and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.
5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U. S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
- Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority of female individuals working at such sites or in such facilities.
  - Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available and maintain a record of the organization's responses.
  - Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may taken.
  - Provide immediate written notification to the Director when union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet his obligations.
  - Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under (7b) above.
  - Disseminate the Contractor's EEO policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
  - Review at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any

## SUPPLEMENTAL SPECIFICATIONS

- responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initialization of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
  - i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures and tests to be used in the selection process.
  - j. Encourage present minority and female employees to recruit other minority persons and women and where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.
  - k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
  - l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
  - m. Ensure that all seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
  - n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
  - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
  - p. Conduct a review, at least annually of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the contractor's minority and female work force participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
  10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
  11. The Contractor shall not enter into any Subcontract with any person or firm debarred from the Government contracts pursuant to the executive Order 11246.
  12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and the Equal Opportunity Clause, including suspensions, termination and cancellation of the existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of the Federal Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of the specifications and Executive Order 11246, as amended.
  13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4-8.
  14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any employee identification number when assigned, social security number, race, sex status (e.g., Mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and location at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that the existing records satisfy this requirement, contractors shall not be required to maintain separate records.
  15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g. those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).
- End of Section



SUPPLEMENTAL SPECIFICATIONS

BY SUBMITTING THIS BID ELECTRONICALLY, I **HEREBY ACKNOWLEDGE** THAT ALL REQUIREMENTS INCLUDED IN THE HARD COPY PROPOSAL, ADDENDUMS, AMENDMENTS, PLANS, STANDARD SPECIFICATIONS, SUPPLEMENTAL SPECIFICATIONS, AND SPECIAL PROVISIONS ARE PART OF THIS BID PROPOSAL AND CONTRACT. I **FURTHER ACKNOWLEDGE** THAT THIS ELECTRONIC BID IS SUBJECT TO THE PROVISIONS OF THE SOUTH CAROLINA ELECTRONIC COMMERCE ACT, §26-5-10, ET, SEQ., OF THE SOUTH CAROLINA CODE OF LAWS.

IN ACCORDANCE WITH THE PROVISIONS OF S.C. CODE ANN. §§ 39-3-10 ET. SEQ., 39-5-10 ET. SEQ., 15 U.S.C. §45; 23 C.F.R. §635.112(F); AND 28 U.S.C. §1746, THAT I AM AN OFFICER OF THE PROPOSER FIRM AND, UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES AND SOUTH CAROLINA, DECLARE, BY MY CERTIFICATION BELOW, THAT THE FOLLOWING IS TRUE AND CORRECT, AND FURTHER, THAT THIS FIRM, ASSOCIATION OR CORPORATION HAS NOT, EITHER DIRECTLY OR INDIRECTLY, ENTERED INTO ANY AGREEMENT, PARTICIPATED IN ANY COLLUSION, OR OTHERWISE TAKEN ANY ACTION IN RESTRAINT OF FREE COMPETITIVE BIDDING IN CONNECTION WITH THE SUBMISSION OF A BID PROPOSAL ON THE ABOVE REFERENCED PROJECT.

**BY CHECKING THIS BOX ☐ , I CERTIFY THAT I HAVE READ, UNDERSTAND, ACCEPT, AND ACKNOWLEDGE ALL OF THE ABOVE STATEMENTS.**

COMPLETE THE FOLLOWING ONLY IF HARD COPY BID PROPOSAL IS REQUIRED:

Executed on\_\_\_\_\_, 20\_\_.

Signed:

\_\_\_\_\_

(Officer/Proposer)

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

SEAL

\_\_\_\_\_  
(Company)

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