

CITY OF BEAUFORT  
STATE OF SOUTH CAROLINA  
INVITATION FOR BID  
IFB NO. 2020-113



CITY OF BEAUFORT  
MOSSY OAKS DRAINAGE IMPROVEMENTS  
CDBG - BASIN 2 EAST

DUE: MAY 12, 2020 BY 3:00PM

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## SECTION ONE

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**BID INVITATION**

**CITY OF BEAUFORT  
INVITATION FOR BID  
IFB NO. 2020-113**

**SEALED BIDS** will be received by the Finance Department until **3:00 PM ET May 12, 2020**.

Due to the impact of the COVID-19 virus and the State of South Carolina Executive Order 2020-12 dated March 21, 2020 regarding “social distancing” practices, bids will be received electronically by email in portable document format (pdf) file format. All qualified contractors are invited to submit bids to the City of Beaufort for the following:

**CITY OF BEAUFORT  
IFB 2020 - 113  
MOSSY OAKS DRAINAGE PROJECT – BASIN 2 EAST (CDBG)**

**SUBMIT: One (1) portable document format (pdf) format file as an email attachment on or before 3:00 PM ET Tuesday, MAY 12, 2020. Depending upon file size limitations, a file sharing platform (i.e. Dropbox) may need to be used. After sending bids by email, bidders must send a separate email without an attachment to advise that a submission has been made. The Procurement Administrator will follow up and advise accordingly if a Dropbox submission is necessary.**

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

Jay Phillips, Procurement Administrator  
1911 Boundary St., Beaufort, South Carolina 29902  
(843) 525-7071

**INCLUDE IN SUBJECT LINE: “IFB NO. 2020-113 MOSSY OAKS DRAINAGE IMPROVEMENTS – BASIN 2 EAST CDBG”**

**A NON-MANDATORY PRE-BID MEETING WILL BE HELD AT 3:00 PM ET ON APRIL 21, 2020. ALL POTENTIAL OFFERORS ARE ENCOURAGED TO ATTEND.**

**DUE TO THE IMPACT OF THE COVID-19 VIRUS AND THE STATE OF SOUTH CAROLINA EXECUTIVE ORDER 2020-12 DATED MARCH 21, 2020 REGARDING “SOCIAL DISTANCING” PRACTICES, THE PRE-BID MEETING WILL BE CONDUCTED VIA ZOOM VIDEO CONFERENCING.**

[Link to zoom website/conference #.](#)

**DEADLINE ENFORCED**

BIDS DELIVERED AFTER THE TIME AND DATE SET FOR RECEIPT OF QUALIFICATIONS SHALL NOT BE ACCEPTED. IT IS THE OFFEROR’S RESPONSIBILITY TO ENSURE TIMELY DELIVERY OF THEIR BIDS.

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

This project is being funded in whole or in part by the Community Development Block Grant Program (CDBG). All federal CDBG requirements will apply to the contract. All contractors and subcontractors are required to be registered in the federal System for Award Management (SAM). Bidders on this work will be required to comply with the President's Executive Order No. 11246 & Order No. 11375 which prohibits discrimination in employment regarding race, creed, color, sex, or national origin. Bidders must comply with Title VI of the Civil Rights Act of 1964, the Davis- Bacon Act, the Anti-Kickback Act, the Contract Work Hours and Safety Standards Act, and 40 CFR 33.240. The CDBG application, including the cost estimate, is available for review by contacting **Jay Phillips**, City of Beaufort at [jphillips@cityofbeaufort.org](mailto:jphillips@cityofbeaufort.org) or in person at the City of Beaufort City Hall at 1911 Boundary St, Beaufort, South Carolina, 29902.

**Proprietary and/or Confidential Information**

Your bid 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 Qualifications 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 RFQ. Failure to adhere to this policy may be grounds for rejection of your bid.

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., APRIL 24, 2020. ANSWERS TO SUBMITTED QUESTIONS WILL BE POSTED ON THE CITY WEBSITE BY 5:00 PM ON APRIL 27, 2020.**

If the Offeror discovers any ambiguity, conflict, discrepancy, omission or other error in the IFB, 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 IFB or it shall be deemed waived.

The City of Beaufort reserves the right to reject any or all bids, 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.

Bidders must make positive efforts to use small and minority-owned business and to offer employment, training and contracting opportunities in accordance with Section 3 of the Housing and Urban Development Act of 1968. Attention of bidders is particularly called to the requirements as to conditions of employment to be observed and minimum wage rates to be paid under the contract.

**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 IFB.

**Required Forms**

Contractors submitting bids 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 bids, 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.

**Bids that are not signed will not be accepted as complete and shall not be considered. Bids 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 IFB, and are used in place of the person, vendor, or corporation submitting a bid. The words "bid" and "proposal" are also interchangeable.

## I. INTRODUCTION

The project site is within the Mossy Oaks neighborhood within the City of Beaufort. The overall intent is to improve the drainage system to help better protect the homes from chronic flooding that occurs during times of high rainfall and high tides. The overall drainage area is approximately 680 acres of which the stormwater drains in to two distinct basins each of which drain to the marsh and into Battery Creek. This project is for the improvements within the eastern portion of the Basin 2, the southern basin, known as ***Mossy Oaks Basin 2 – EAST (CDBG)***.

## II. SCOPE OF WORK

The work of the contract consists of removing undersized existing culverts and replacing with larger pipes of the right size and right elevation. The ditches that carry the water to the culverts will be cleaned out to the right size and right elevations as well. One section of Battery Creek Road will be raised to provide enough cover for a larger pipe crossing.

Some or all the funding for the project is being provided by a Community Development Block Grant, therefore all of the federal CDBG will apply to the contract.



### III. LOCATION MAP



### IV. SITE INSPECTION

Inspections will be conducted by the City as necessary.

### V. ADDITIONAL DOCUMENTS

Additional documents are available online under “Appendix A and Appendix B.” Proposers are required to review and be familiar with these documents as they are a part of the IFB and will become part of the awarded contract. These additional documents may be accessed on the City of Beaufort website under Quick Links – “Bid Opportunities” at [www.cityofbeaufort.org](http://www.cityofbeaufort.org).

### VI. SUBMISSION REQUIREMENTS

- I. **Required content of bid:** The detailed requirements set forth in the bid Format are recommended. Failure by any Proposer to respond to a specific requirement may result in disqualification. Bidders are reminded that bids will be considered exactly as submitted.

Points of clarification will be solicited from proposers at the discretion of the City. Those bids determined not to be in compliance with provisions of this IFB and the applicable law and/or regulations will not be processed. In addition to the information required as described below, a Respondent may submit supplemental information that it feels may be useful in evaluating its bid. This information may include documents such as a firm profile or brochure.

All costs incurred by the Proposer associated with IFB preparations and subsequent interviews and/or negotiations, which may or may not lead to execution of a contract, shall be the responsibility entirely and exclusively by the proposer.

- II. **Bid format:** The bid format requirements were developed to aid Bidders in their bid development. They also provide a structured format so reviewers can systematically evaluate several bids. These directions apply to all bids submitted.

The purpose of the Bid is to demonstrate the technical capabilities, professional qualifications, past project experiences, and knowledge within this industry. Proposer's bid must address all the points outlined herein as required, in the following order.

- a. **Transmittal Letter:** A transmittal letter must be submitted with a Proposer's bid which shall include:
- i. Name of the firm responding, including mailing address, e-mail address, telephone number, and names of contact person.
  - ii. The name of the person or persons authorized to make representations on behalf of the Proposer, binding the firm to a contract.
  - iii. Prepare an executive summary stating the respondent's understanding of the project and opinion why the respondent's firm should be chosen. Include any general information the proposer wishes the City to consider about the bid.
  - iv. An affirmative statement that the proposer has read and agrees to the General Terms and Conditions and will adhere to them as a component of the contract documents.
- b. **Proposer's Work History and References:**
- i. Provide client references (name, address, e-mail and phone number) for a minimum of three projects of a similar size and nature. References from South Carolina and the southeast United States are preferred.
  - ii. Identify any additional or unique resources, options, capabilities or assets which the Proposer would bring to this project.
- c. **Required Forms:**
- i. Bids must include the required forms.
    1. Certificates of Insurance showing present coverage as described in the "Insurance" section of the General Terms and Conditions.

2. Ethics in Public Contracting Certification
3. Non-Collusion Affidavit
4. Small / Woman-Owned / Minority Business Enterprise Form
5. Non-Resident Taxpayer Affidavit (S.S. Department of Revenue I-312)
6. IFB Signature page (must be signed in ink)
7. Price Summary Bid Form (Attachment A)

**d. Other Information to Provide:**

- i. List any lawsuits or arbitration proceedings that have been initiated by or against your company in the past five years. Briefly describe the nature of the action and the outcome.
  - ii. Proposer shall be responsible for providing a letter from the surety company that would issue Performance and Payment bonds for the Contractor included on your team, providing information on the Contractor's bonding capacity. Performance and Payment bonds are required.
- e. Bidding Documents
- i. The bidding documents consist of the following, including all addenda issued therewith and forms referenced herein, in addition to the drawings.
    1. Section 1 – Bid Documents
    2. Section 2 – Contract
    3. Section 3 – General Conditions
    4. Section 4 – Supplemental Conditions
    5. Section 5 – General Provisions
    6. Section 6 – Special Provisions

Bidding Documents are open to the public at the **City of Beaufort-City Hall Planning Conference Room, 1911 Boundary Street, Beaufort, South Carolina.**

A complete set of plans & documents may be purchased for **\$450.00**. **With an additional \$50.00 required if Bid Documents are requested to be sent overnight. Non-refundable** check is to be made payable to:

**City Hall Finance Department  
1911 Boundary Street  
Beaufort, SC 29902**

**VII. BID EVALUATION**

The City will evaluate bids based on the factors outlined within this IFB, which shall be applied to all eligible, responsive bids in selecting the successful firm. The City reserves the right to disqualify any bid for, but not limited to; person or persons it deems as non-responsive and/or non-responsible. The City reserves the right to make such investigations of the qualifications of the Bidder as it deems appropriate.

**Lowest responsible bidder.** Contracts shall be awarded to the lowest responsible bidder. In determining “lowest responsible bidder”, in addition to price, the City shall consider:

- (a) The ability, capacity and skill of the bidder to perform the contract or provide the service required;
- (b) Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;
- (c) The character, integrity, reputation, judgment, experience and efficiency of the bidder;
- (d) The quality of performance of previous contracts or services;
- (e) The previous and existing compliance by the bidder with laws and ordinances relating to the contract or services;
- (f) The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;
- (g) The quality, availability and adaptability of the supplies or contractual services to the particular use required;
- (h) The ability of the bidder to provide future maintenance and service for the use of the subject: of the contract;
- (i) The number and scope of conditions attached to the bid.

It is the City’s intent to contract with one proposer to provide the services as detailed herein. Award of any bid may be made without discussion with Bidders after responses are received. The City reserves the right to accept or reject any and all bids that is in the best interest of the City.

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**BID SUBMISSION**

BIDDER'S NAME: \_\_\_\_\_

PROJECT NAME: \_\_\_\_\_

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

**Bidder** warrants that no gratuities, in the form of gifts, entertainment, or otherwise, were offered or given by the **Bidder**, 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; **Bidder** has not directly induced or solicited any other **Bidder** to submit false or sham bid; **Bidder** has not solicited or sought by collusion to obtain for itself any advantage over any other **Bidder** or other **Owner**.

**Bidder** agrees that the cost of any work performed, materials furnished, services provided or expenses incurred, which are not specifically delineated in the Contract Documents, but which are incidental to the scope, intent, and completion of the Contract, shall be deemed to have been included in the prices bid for the various items scheduled.

**Start and Completion of Work**

The Bidder 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 **180** consecutive calendar days from the Notice to Proceed date or the date Work begins, whichever comes first.

The undersigned further agrees that in case of failure on his part to execute said contract and bond, or provide satisfactory proof of carriage of the insurance required, within fourteen (14) calendar days after the award thereof, the Bid Bond or certified check accompanying his/her bid and the money payable thereon shall be forfeited to City of Beaufort as liquidated damages; otherwise, the check or Bond accompanying this bid shall be returned to the Bidder.

**BID**

The Bidder declares that he understands that the quantities shown on the bids are subject to adjustment by either increase or decrease, and that should the quantities of any of the items of work be increased, the undersigned proposes to do the additional work at the unit prices stated herein; and should the quantities be decreased, he also understands that payment will be made on actual quantities at the unit price bid and will make no claim for anticipated profits for any decrease in the quantities, and that

actual quantities will be determined upon completion of work, at which time adjustment will be made to the Contract amount by direct increase or decrease.

**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. The words "bid" and "proposal" are also interchangeable.**

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

**Bid 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: \_\_\_\_\_

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**SECTION 1.2**  
**INSTRUCTIONS TO BIDDERS**

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## SECTION 1.2 – Instructions to Bidders (Cont'd)

### **INSTRUCTIONS TO BIDDERS**

#### **1. DEFINED TERMS**

Terms used in these Instructions to Bidders, which are defined in the General Conditions and Supplementary Conditions shall have the meanings assigned to them therein.

1.1 The term **Agreement** shall be understood to have the same meaning and intent, and be synonymous with the term **Contract**

#### **2. CONTRACT DOCUMENTS**

2.1 At the time of acquisition, the **Bidder** should verify that the Contract Documents are complete in the number of documents as indicated by the List of Documents, and in the number of pages in each document.

a) The City of Beaufort shall establish a Bidder's log consisting of the names and contact information provided by prospective bidders. Each prospective bidder shall be responsible for providing accurate information at the time when they acquire or submit for the Bid/Contract documents.

2.2 Bidder must use a complete set of Contract Documents in preparing Bid; neither Owner nor Engineer assume any responsibility for errors or misinterpretations resulting from the use of an incomplete set of Contract Documents.

2.3 Bidder has the responsibility prior to submitting Bid to examine the Contract Documents thoroughly and notify the Engineer of all conflicts, errors or discrepancies, or of questions or meaning or intent. Bidder is encouraged to visit the construction site prior to submitting a Bid.

2.4 Addenda may be issued to modify the Contract Documents in response to notifications made by Bidders, or for other reasons.

a) All addenda are available online and prospective bidders are encouraged to visit the City of Beaufort website for any issued addenda prior to submitting their bid.

b) The addenda can be found by clicking "Bid Opportunities" under quick links at <http://www.cityofbeaufort.org> or by contacting the City, Jay Phillips, at 843-525-7071 or by email at [jphillips@cityofbeaufort.org](mailto:jphillips@cityofbeaufort.org).

c) A copy of each addendum shall be mailed to each prospective bidder at the time of its issuance.

2.5 Bidders are hereby made aware that some or all of the funding for the project is by a Community Development Block Grant (CDBG) and that all federal CDBG requirements will apply to the contract. Bidders are also hereby made aware that Battery Creek Road is a street within the SCDOT roadway system and that therefore all construction, materials and vendors must meet the SCDOT Standard Specifications, 2007 edition, or comply with or be on the SCDOT lists of approved suppliers, manufactures, materials or vendors.

2.6 Bidders may contact the designated **City of Beaufort Point of Contact** at the location and during the hours given in the **Invitation to Bid** to verify the number, if any, of Addenda issued.

#### **3. ORGANIZATION OF CONTRACT DOCUMENTS**

3.1 The Bid form contains understandings and representations made by Bidder in submitting the Bid; in addition, the Schedule of Values is included.

3.2 The form of Notice of Award and Agreement, which may be executed by the Owner with the Successful Bidder, is incorporated in the Contract Documents.



## SECTION 1.2 - INSTRUCTIONS TO BIDDERS

(Cont'd)

- 3.3 The General Conditions incorporated in the Contract Documents are the **STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT** prepared by the Engineers' Joint Contract Documents Committee and approved and endorsed by The Associated General Contractors of America. Amendments or supplements to specific articles or paragraphs in the Standard General Conditions to be included herein are identified by a notation at the article or paragraph so amended or supplemented and the City of Beaufort General Conditions.
- 3.4 The actual amendments or supplements to the Standard General Conditions are made in the Supplementary Conditions by reference to the specific article or paragraph so amended or supplemented. The Supplementary Conditions may also contain additional paragraphs incorporating language required by South Carolina contract law.
- 3.5 The General Requirements of the Specifications contain additional amendments and supplements to the Standard General Conditions of the Construction Contract with regard to general and administrative matters, and also contain details for the Work of this Contract.
- 3.6 The Technical Requirements of the Specifications may cover a breakdown of the Goods and/or Service by Sections; solely for reference and payment, and not for dividing Goods and/or service among subcontractors or suppliers. Each section includes general information on the Work included, and method of payment. Items in the Technical Sections for which payment is to be made are listed in the Schedule of Prices (Section 1.8) in the Bid Documents.
- 3.7 The drawings are complementary to the Specifications to show size, form, location and arrangement of various elements of the Work.
- 3.8 Section 6.0 - Special Provisions may contain additional instruction, conditions or directions directly related to the contract or Work of the Contractor.

### 4. **PHYSICAL CONDITIONS**

- 4.1 Article 4.02 of the General Conditions set forth responsibilities for the adequacy of data regarding subsurface conditions and physical conditions and possible changes in the Contract Documents due to differing conditions. Reference is made to the General Requirements for identification of report(s) and drawing(s) on subsurface and physical conditions, which have been utilized by Engineer in preparation of the Contract Documents. Copies of reports and drawings listed in General Requirements that are NOT included with the Bidding Documents may be examined at the office of the Purchasing Director at the address and during hours set forth in the Invitation for Bid. The reports and drawings listed in the General Requirement are not part of the Contract Documents, but the technical data contained therein upon which Bidder is entitled to rely as provided in Article 4.02 of the General Conditions are identified and established in the General Requirements.
- 4.2 Article 4.03 of the General Conditions indicates that information and data reflected in the Contract Documents with respect to Underground Facilities at or contiguous to the site is based upon information and data furnished to Owner and Engineer by owners of such Underground Facilities or others, and Owner and Engineer shall not assume responsibility for the accuracy or completeness thereof.
- 4.3 Bidder prior to submitting a Bid, may conduct at bidder's expense, any additional examinations, investigations, explorations and tests pertaining to subsurface and physical conditions, and to Underground Facilities, which are deemed necessary by Bidder to determine an appropriate Bid for performing and furnishing the work in accordance with the Contract Document. Owner will provide Bidder with access to the site for the purpose set forth in this paragraph upon agreement of the Bidder to restore the site as nearly as possible to its original condition.

**SECTION 1.2 - INSTRUCTIONS TO BIDDERS  
(Cont'd)**

**5. SCHEDULE OF VALUES**

**Bidder**, with regard to completing the Schedule of Values-Section 1.8 of the Bid Form, is advised as follows:

- 5.1 The Owner, a public body, is not exempt from South Carolina State Sales and Use Taxes and equipment to be incorporated in the Work, and such taxes shall be included in with pricebid.
- 5.2 The Contractor is hereby made aware that with regard to the project, prevailing wages are to be in effect and that they apply for all highway construction activity in accordance with General Decision Number SC20200040. Prevailing wages in accordance with General Decision Number SC20200001 shall be in effect for all other construction activity that is not related to highway construction activities.
- 5.2 The quantities indicated for Unit Price Work, if any, are estimates and not guaranteed and final payment will be based on actual quantities constructed and measured for payment.
- 5.3 The Agreement, if made, will be on the basis of materials and equipment indicated in the Drawings or specified in the Specifications without consideration of possible substitute items.
- 5.4 (DELETED)
- 5.5 (DELETED)
- 5.6 The amount Bid for each item may be required to be written in words where indicated; these written entries shall control, if present, with regard to price of the bids received.
- 5.7 The Bidder shall be responsible for performing at least fifty percent (**50%**) of the work in this contract. The Bidder shall not subcontract, transfer, assign, or otherwise dispose of the contract or any portion thereof, without the written consent of the **City Manager**.

**6. SUBMISSION OF BIDS**

Bidder must provide all information requested in the Bid Form and in attachments thereto by appropriate entries handwritten in ink or typewritten.

- 6.1 Bidder must sign the Bid Form as follows:
  - (a) Proprietorship signature shall be that of the Proprietor.
  - (b) Partnership signature(s) shall be that of the person or persons authorized to sign and attest for the partnership.
  - (c) Corporation signature(s) shall be that of the person or persons authorized to sign and attest for the corporation.
- 6.2 If Bidder is a joint venture set forth the full name of the identity or identities comprising the joint venture. Each participant in the joint venture must sign in the manner indicated for the respective form of ownership as set forth in Paragraph 6.2 of these Instructions to Bidders.

**SECTION 1.2 - INSTRUCTIONS TO BIDDERS  
(Cont'd)**

- 6.3 Bidder must submit with the Bid Form a Bid Security made payable to the City of Beaufort in an amount of not less than five percent **(5%)** of the total amount indicated in the Bid Form. The Bid Security shall be in the form of a certified or bank check or a Bid Bond issued by a surety authorized to do business in South Carolina.
- 6.4 Contract Documents, with the exception of the Drawings, should be returned intact with the completed Bid Form bound in place as originally received, the whole to constitute the Bid.
- 6.5 Bids including Bid Security and other required documents, shall be submitted at the time and place indicated in the advertisement for Bids and shall be enclosed in opaque sealed envelopes, marked with the title of the work and name and address of the Bidder. If the Bid is sent through the mail or other delivery system, the sealed envelope shall be enclosed in a separate envelope with the notation "**BID ENCLOSED**" on the face of it.
- 6.6 Bids may be modified or withdrawn by a document duly executed in the manner that a Bid must be executed and delivered to the place where Bids are to be submitted at any time prior to the opening of Bids.

**7. DISPOSITION OF BIDS**

- 7.1 **OWNER**, any time prior to Bid opening, may withdraw the advertisement for Bids and not accept Bids. Any Bid received under this circumstance will be returned, unopened to Bidder.
- 7.2 **OWNER** may open Bids and (unless obviously non-responsive) read only total value aloud publicly.
- 7.3 **Deleted**
- 7.4 **Deleted**
- 7.5 **OWNER**, in evaluating Bids, will consider the qualifications of the Bidders, whether or not the Bids comply with the prescribed requirements, and such alternates, and of the data, as may be requested by the Bid Form.
- 7.6 **Deleted**
- 7.7 **OWNER** may conduct reasonable investigations as deemed necessary to assist in the evaluation of Bids and to establish the responsibility, qualifications and financial ability of Bidders to perform and furnish the Work of the Contract in accordance with the Contract Documents.
- 7.8 The Beaufort City Council reserves the right to reject all Bids and waive any formalities. Any claims for cost(s) incurred by any bidders in preparation of any part of, or total package for the bidding of this project will not be handled for reimbursement by the City of Beaufort or their representatives.

**SECTION 1.2 - INSTRUCTIONS TO BIDDERS  
(Cont'd)**

**8. AWARD OF CONTRACT**

8.1 **OWNER**, if the Contract is awarded, will award it to the lowest responsible Bidder. The lowest Bid will be determined based on the total of the Bid price for each item as indicated in words or mathematical extensions of unit prices in the Bid Form documents.

- i. Written entries, if present, will supersede numerical entries regardless of whether there are arithmetic discrepancies between the written amount and the numerical entries.
- ii. Discrepancies or mathematical errors in extension(s) of values shall be resolved in favor of the correct mathematics.
- iii. Discrepancies or errors in sums of figures shall be resolved in favor of the correct sum.
- iv. In the event of a gross mathematical error in the Bid, the Owner shall notify the Bidder (in writing) of the error and any correction to be enacted, and allow the Bidder to either accept the corrected mathematical values or withdraw the Bid without advising the Bidder as to outcome or results of either of the actions.

8.2 **OWNER**, **OWNER** will issue the Successful Bidder a Notice of Intent to Award within ninety (90) days after the day of the Bid opening, if the Contract is to be awarded. Owner will issue Notice of Award once CDBG Grant Administration has approved it.

8.3 **OWNER'S** Notice of Award to the Successful Bidder will be transmitted with the required number of unsigned counterparts of the Agreement.

8.4 **Successful Bidder**, within fourteen (**14**) days after receiving Notice of Award shall sign and deliver the required number of counterparts of the Agreement to Owner with the required Bond. Article 5.01 of the General Conditions and the Supplementary Conditions set forth Owner's requirements as to performance and payment bonds.

8.5 **Bidder**, in submitting Bid, understands and agrees that the Bid security may be forfeited as liquidated damages, and not as a penalty, if the Bidder is determined to be Successful Bidder and thereafter fails to execute the Agreement and furnish the required Bonds within the stipulated time.

8.6 **OWNER**, within ten (**10**) days after receiving the Agreement and bonds, shall deliver one signed counterpart to Contractor, and thereby establish the effective Date of the Agreement.

8.7 The **Successful Bidder** shall secure and pay for necessary approvals, permits, assessments, and changes required for the construction and installation of this project as required by local, state, and federal regulations. City permits shall be required as applicable. All subcontractors

involved in the project, will have to obtain a City of Beaufort business license to be eligible to perform work of the Contract.

**9. COMMENCEMENT OF CONTRACT TIME**

9.1 **OWNER** may give **CONTRACTOR** a Notice to Proceed within thirty (**30**) days after the Effective Date of the Agreement, and indicate therein, the day on which the Contract Time will commence to run.

**10. CONTRACT TIME**

See Item 4 of Bid Form.

**11. DAMAGES**

See Item 5 of Bid Form.

**12. RETAINAGE**

See Item 6 of Bid Form.

**SECTION 1.2 - INSTRUCTIONS TO BIDDERS  
(Cont'd)**

**13. RIGHT TO PROTEST**

- 13.1 Any actual bidder who is aggrieved in connection with the award of a contract may protest to the **City Manager**. The protest shall be submitted in writing within fourteen (14) days of the Notice of Award. The protest must be accompanied by a detailed statement indicating the reasons for such protest.
- 13.2 **Authority to Resolve Protest:** The **City Manager** shall have authority, prior to the commencement of an action in court concerning the controversy, to settle and resolve a protest of an actual aggrieved bidder, concerning the award of the contract.
- 13.3 **Decision:** If the protest is not resolved by mutual agreement of the parties, the City Manager shall issue a decision in writing within ten **(10)** days of receipt of the written protest. The decision shall:
- (a) State the reasons and describe the actions taken; and
  - (b) Inform the protestant of its right to administrative review as provided in this Section.
- 13.4 **Notice of Decision:** A decision under Subsection (3) of the Instructions to Bidder shall be noticed by certified mail to the protestant and any other party intervening.

**13.5 Rights to Review**

- (a) Any person adversely affected by the decision appeals administratively within **(10)** days after receipt of decision to the **City Council** in accordance with this section.
- (b) Any protest taken to **City Council** or court shall be subject to the protestant paying all of City of Beaufort administrative costs, attorney fees and court costs, when the protest is found to be without standing.

**13.6 Litigation**

- (a) Any litigation arising out of this Bid Award or subsequent contract or agreement shall be held only in a Circuit Court of Beaufort County, Beaufort County, South Carolina and the fourteenth Judicial Circuit.

**End of Section**

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**Section 1.3  
of  
BID SU**

**BID DOCUMENTS**

**Mossy Oaks Drainage Project**

**I. Housing & Urban Development-Section 3 Documents**

- i. Section 3- Information Sheet
- ii. Section 3- Contractor's Self Certification
- iii. Section 3- Bidder's Contract/Subcontracts
- iv. Section 3- Bidder's Estimated New Hires
- v. Section 3-Resident Certification Form

**II. SC Illegal Immigration Reform Act**

**III. Certification Regarding Disbarment**

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**Section 1.3 – Bid Submission  
Part I**

**Section 3 Documents - Housing and Urban Development**

**Section 3 Information Sheet for Contractors/Businesses**

**What is Section 3?**

Section 3 is a provision of the Housing and Urban Development (HUD) Act of 1968 that helps foster local economic development, neighborhood economic improvement, and individual self-sufficiency. The Section 3 program requires that recipients of certain financial assistance, to the greatest extent feasible, provide job training, employment, and contracting opportunities for low-income residents in connection with projects and activities in their neighborhoods.

**Who are Section 3 residents?**

Section 3 residents are:

- Public housing residents or
- Persons who live in the area where an assisted project is located and who have a household income that falls below income limits.

**What is a Section 3 business concern?**

A business that:

- Is 51 percent or more owned by Section 3 residents;
- Employs Section 3 residents for at least 30 percent of its full-time, permanent staff; or
- Provides evidence of a commitment to subcontract to Section 3 business concerns, 25 percent or more of the dollar amount of the awarded contract.

**What types of economic opportunities should be made available under Section 3?**

- Job training
- Employment
- Contracts

**Examples of Opportunities include:**

<ul style="list-style-type: none"> <li>• Accounting</li> <li>• Architecture</li> <li>• Appliance repair</li> <li>• Bookkeeping</li> <li>• Bricklaying</li> <li>• Carpentry</li> <li>• Carpet Installation</li> <li>• Catering</li> <li>• Cement/Masonry</li> <li>• Computer/Information</li> <li>• Demolition</li> <li>• Drywall</li> </ul>	<ul style="list-style-type: none"> <li>• Electrical</li> <li>• Elevator Construction</li> <li>• Engineering</li> <li>• Fencing</li> <li>• Florists</li> <li>• Heating</li> <li>• Iron Works</li> <li>• Janitorial</li> <li>• Landscaping</li> <li>• Machine Operation</li> <li>• Manufacturing</li> </ul>	<ul style="list-style-type: none"> <li>• Marketing</li> <li>• Painting</li> <li>• Payroll Photography</li> <li>• Plastering</li> <li>• Plumbing</li> <li>• Printing Purchasing</li> <li>• Research</li> <li>• Surveying</li> <li>• Tile setting</li> <li>• Transportation</li> <li>• Word processing</li> </ul>
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## **Section 1.3 – Bid Submission (Cont'd)** **Part I- Section 3 Documents**

### **Who receives priority under Section 3?**

For training and employment:

- Persons in public and assisted housing
- Persons in the area where the HUD financial assistance is spent
- Participants in HUD Youthbuild programs
- Homeless persons

For contracting:

- Businesses that meet the definition of a Section 3 business concern

### **How can businesses find Section 3 residents to work for them?**

Businesses can recruit Section 3 residents in public housing developments and in the neighborhoods where the HUD assistance is being spent. Effective ways of informing residents about available training and job opportunities are:

- Contacting resident organizations, local community development and employment agencies
- Distributing flyers
- Posting signs
- Placing ads in local newspapers

### **Are recipients, contractors, and subcontractors required to provide long-term employment opportunities, not simply seasonal or temporary employment?**

Recipients are required, to the greatest extent feasible, to provide all types of employment opportunities to low and very low-income persons, including permanent employment and long-term jobs.

Recipients and contractors are encouraged to have Section 3 residents make up at least 30 percent of their permanent, full-time staff.

A Section 3 resident who has been employed for 3 years may no longer be counted towards meeting the 30 percent requirement. This encourages recipients to continue hiring Section 3 residents when employment opportunities are available.

### **What if it appears an entity is not complying with Section 3?**

There is a complaint process. Section 3 residents, businesses, or a representative for either may file a complaint if it seems a recipient is violating Section 3 requirements are being on a HUD-funded project.

### **Will HUD require compliance?**

Yes. HUD monitors the performance of contractors, reviews annual reports from recipients, and investigates complaints. HUD also examines employment and contract records for evidence that recipients are training and employing Section 3 residents and awarding contracts to Section 3 businesses.

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**Section 1.3 – Bid Submission (Cont'd)**  
**Part I- Section 3 Documents**

# Section 3 Business Self-Certification

## BASIC INFORMATION

1. Company Name: \_\_\_\_\_
2. Company Address: \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ County \_\_\_\_\_
3. Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_  
Email address: \_\_\_\_\_
4. Contractor's License: Class A B C N/A License Number: \_\_\_\_\_
5. Business License \_\_\_\_\_ Number \_\_\_\_\_ Federal ID Number \_\_\_\_\_
6. Type of Business: \_\_\_\_\_

## TYPES OF SECTION 3 BUSINESS ENTERPRISES

Please check "Yes" or "No". If you answer "YES" to one or more of the following questions, you may designate your company as a Section 3 Business Enterprise.

1. 51% or more of your business is owned by a Section 3 residents\*; or  
 Yes  No

*Attach list of Section 3 owners and income certifications*

2. At least 30% of your full-time employees include persons that are currently Section 3 residents\*, or within three years of the date of first employment with the business concern were Section 3 residents; or  
 Yes  No

*Attach list of employees, Section 3 employees, and self-certifications*

3. You can provide evidence, as required, of a commitment to subcontract in excess of 25% of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications in the above two paragraphs.  
 Yes  No

*Attach list of subcontracted businesses, types and amounts*

**VERIFICATION** - *The company hereby agrees to provide, upon request, documents verifying the information provided on this form.*

**I declare and affirm under penalty of law that the statements made herein are true and accurate to the best of my knowledge. I understand that falsifying information and incomplete statements will disqualify certification status.**

Signature of Business Owner or Authorized Representative: \_\_\_\_\_

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

Attested by: Date: \_\_\_\_\_

**\*Section 3 resident is:** 1) a public housing resident; or 2) a low- or very low-income person residing in the metropolitan area or Non-Metropolitan County in which the Section 3 covered assistance is expended.



**Section 1.3 – Bid Submission (Cont'd)**  
**Part I- Section 3 Documents**

**Section 3 Business Concern**

**1. A business that is 51% or more owned by section 3 residents, or**

**2. A business whose permanent full-time work force is at least 30% section 3 residents or,**

**3. A business which contracts a dollar amount of all subcontracts with businesses as defined in numbers 1 and 2 above.**

---

Company

---

Project Name

---

Project Number

---

Person Completing Form

---

Date

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**Section 1.3 – Bid Submission (Cont'd)**  
**Part I- Section 3 Documents**

**SECTION 3 - BIDDER'S ESTIMATED NEW HIRES**

<b>Job Category</b>	<b>Total Estimated Positions Needed for Project</b>	<b>No. Positions Occupied by Permanent Employees</b>	<b>Number of Positions Not Occupied</b>	<b>Number of Positions to be Filled with Section 3 Residents</b>
<b>Officer/Supervisors</b>				
<b>Professionals</b>				
<b>Technical</b>				
<b>Hsq. Sales/Rental Mgmt.</b>				
<b>Office/Clerical</b>				
<b>Service Workers</b>				
<b>Others</b>				
<b>TRADE:</b>				
<b>Journeyman</b>				
<b>Apprentices</b>				
<b>Trainees</b>				
<b>Others</b>				
<b>TRADE:</b>				
<b>Journeyman</b>				
<b>Apprentices</b>				
<b>Trainees</b>				
<b>Others</b>				

**Section 3 Resident**

**Individual residing in a public housing project or within the non-metropolitan county in which the project is located and whose income does not exceed 80% of the higher of the median income, adjusted by family size, for the county of residence or the non-metropolitan area of the state.**

\_\_\_\_\_  
Company

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

\_\_\_\_\_  
Project Number

\_\_\_\_\_  
Person Completing Form

\_\_\_\_\_  
Date

**Section 1.3 - Bid Submission (Cont'd)**  
**Part I- Section 3 Documents**

**Sample - Section 3 Resident Certification Form**

**ELIGIBILITY FOR PREFERENCE**

A Section 3 Resident seeking the preference in training and employment provided by this part shall certify, or submit evidence to the recipient contractor or subcontractor, if requested, that the person is a Section 3 Resident, as defined in Section 135.5.

I \_\_\_\_\_, (Print Name) am a resident of \_\_\_\_\_ (City, County, State) and qualify as a Section 3 Resident because I am a public housing resident OR because my household income does not exceed the income guidelines by family size as published at the bottom of this form\*.

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

Address: \_\_\_\_\_ (will be verified)

**FY 2012 – HOUSEHOLD INCOME GUIDELINES**

Place a Check on the line that is applicable	Family Size	Low Income *
	1	
	2	
	3	
	4	
	5	
	6	
	7	
	8	

\* Circle the appropriate column based on household size and income – income limits are attached and/or can be downloaded from the [www.cdbgSC.com](http://www.cdbgSC.com) website.

I hereby certify that the information provided by me to be true and correct and understand any falsification of any of the information could subject me to disqualification from participation and punishment under the law.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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

**PART II**  
**Section 1.3 – Bid Submission - Bid Documents**

**SOUTH CAROLINA ILLEGAL IMMIGRATION REFORM ACT**  
**CONTRACTOR CERTIFICATION**

In accordance with the requirements of the South Carolina Illegal Immigration Reform Act, \_\_\_\_\_ (“Contractor”) hereby certifies that it is currently in compliance with the requirements of Title 8, Chapter 14 of the S.C. Code Annotated and will remain in compliance with such requirements throughout the term of its contract with the **City of Beaufort** (“Owner”).

Contractor hereby acknowledges that in order to comply with requirements of S.C. Code Annotated Section 8-14-20(B), it will:

1. Register and participate in the federal work authorization program (E-Verify) to verify the employment authorization of all new employees; and require agreement from its subcontractors, and through the subcontractors, the sub-subcontractors, to register and participate in the federal verification the employment authorization of all new employees.

Contractor agrees to provide to Owner any documentation required to establish the applicability of the South Carolina Illegal Immigration Reform Act to the Contractor, subcontractor, or sub-subcontractor. Contractor further agrees that it will provide Owner with any documentation required to establish that the Contractor and any subcontractors or sub-subcontractors are in compliance with the requirements of Title 8, Chapter 14 of the S.C. Code Annotated.

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

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

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

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**PART III**  
**Section 1.3- Bid Submission - Bid Documents**

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION LOWER TIER COVERED TRANSACTIONS** 10/16

This certification is required by the regulations implementing Executive Orders 12549 and 12689, Debarment and Suspension, and 2 CFR Part 200, Participants' responsibilities.)

*(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS BELOW)*

- (1) The prospective lower tier participant certifies, by submission of this bid, that neither it nor its principles are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this bid.

**Grant Number:** \_\_\_\_\_ **Name of Participant:** \_\_\_\_\_

**Address of Participant:**

\_\_\_\_\_

<b>Name and Title of Authorized Representative</b>	<b>Signature</b>	<b>Date</b>

- 1 By signing and submitting this bid, the prospective lower tier participant is providing the certification set out below.
- 2 The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- 3 The prospective lower tier participant shall provide immediate written notice to the person to which this bid is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 4 The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", "proposal" "bid", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Orders 12549 and 12689.

**PART III**

**Section 1.3.1- Bid Submission-Bid Documents  
(Cont'd)**

- 5 The prospective lower tier participant agrees by submitting this bid that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- 6 The prospective lower tier participant further agrees by submitting this bid that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- 7 A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may check the System for Award Management (SAM).
- 8 Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- 9 Except for transactions authorized under paragraph 5 of these instructions, if a participant in a 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.

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**Section 1.4 – Bid Submission Documents**

**BID BOND**

(Five Percent [5%] of Bid)

**KNOW ALL MEN BY THESE PRESENTS**, that we, the undersigned:

\_\_\_\_\_, as Principal, and  
\_\_\_\_\_, as Surety, are hereby held and  
firmly bound unto the City of Beaufort, Beaufort County, South Carolina as **Owner** in the penal sum of  
\_\_\_\_\_ Dollars (\$\_\_\_\_\_) for the payment of  
which, well and truly to be made, we hereby jointly and severally bid ourselves, our heirs, executors,  
administrators, successors, and assigns.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

The condition of the above obligation is such that whereas the Principal has submitted to City of Beaufort, South Carolina a certain bid, attached hereto and hereby made a part hereof, to enter into a contract in writing for the construction of: **MOSSY OAKS DRAINAGE PROJECT**

**NOW, THEREFORE,**

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

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

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

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

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

\_\_\_\_\_(SEAL)  
Surety

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

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**Section 1.5 – Bid Submission Documents**

**CERTIFICATION BY CONTRACTOR**

Regarding

**NON-SEGREGATED FACILITIES**

The Bidder certifies that he does not, and will not, provide and maintain segregated facilities for his employees at his establishments and, further that he does not, and will not, permit his employees to perform their services at those locations, under his control, where segregated facilities are provided and maintained. Segregated fountains, transportation, parking, entertainment, recreation, ad housing facilities; waiting, rest, wash, dressing, and locker room, and time clock, work, storage, restaurant, and other eating areas which are set apart in fact, or by explicit directive, habit, local custom, or otherwise, on the basis of color, creed, national origin, and race. The Bidder agrees that, except where he has obtained identical certifications from proposed subcontractors for specific time periods, he will obtain identical certifications from proposed subcontractors prior to the award of subcontractors exceeding **\$10,000.00** which are not exempt from the provisions of the Equal Opportunity clause, and that he will retain such certifications in his files.

The Bidder agrees that a breach of this certification is a violation of the Equal Opportunity clause in this Contract. The penalty for making false statements is prescribed in 18 U.S.C. 1001.

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Name and Title of Signer

\_\_\_\_\_  
Date

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**Section 1.6 – Bid Submission Documents**

**NON-COLLUSION AFFIDAVIT OF PRIME BIDDER**

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

being first duly sworn, deposes and says that:

- (1) He/She is \_\_\_\_\_ (Owner, Partner, Officer, Representative, or Agent) of the Bidder that has submitted the attached Bid;
- (2) He/She is fully informed respecting the preparation and contents of the attached Bid and of all pertinent circumstances respecting such Bid;
- (3) Such Bid is genuine and is not a collusive or sham Bid;
- (4) Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees, or parties in interest, including this affiant, 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 Bid in connection with the Contract for which the attached Bid has been submitted to or refrain from bidding in connection with such Contract, or has in any collusion or communication or conference with any other Bidder, firm or person to fix the price or prices in the attached Bid or of another Bidder, or to fix any overhead, profit or cost element of the bid price or the Bid of any other Bidder, or to secure through any 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 attached Bid Form 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, representative, owners, employees, or parties in interest, including this affiant.

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

Name \_\_\_\_\_

Title \_\_\_\_\_

Subscribed and Sworn to before me this

\_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

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

\_\_\_\_\_ Title

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

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**Section 1.7 – Bid Submission Documents**

**BID FORM**

**THIS BID SUBMITTED TO: City of Beaufort**

**TITLE OF WORK: MOSSY OAKS DRAINAGE PROJECT – BASIN 2 EAST CDBG**

**LOCATION OF WORK: City of Beaufort, Beaufort County, SC**

1. **BIDDER** has examined all Contract Documents including Addenda.
2. **BIDDER** understands and accepts the terms and conditions of the Invitation to Bid, Instructions to Bidders, and all other Contract Documents.
3. **BIDDER**, by having examined all Contract Documents and by the execution of this document, is of a clear understanding that both Highway General Wage Decision (SC20200040) and Heavy General Wage Decisions (SC20200001) will be applicable to this project.
4. In accordance with Article 1.1 of the Agreement, the Work will be completed and ready for final payment within **180** consecutive calendar days from the date when the Contract Time commences to run.
5. In accordance with Article 1.2 and Article 3.3 of the Agreement, damages for delay are to be in accordance with the SC Division of Transportation, Standard Specifications for Highway Construction, Edition of 2000, and latest supplements, Section 108 "Prosecution and Progress".
6. In accordance with Article 3.1 of the Agreement, progress payments will be made less retainage (as identified in Article 3.2 of the Agreement) in an amount equal to ten percent **(10%)**.
7. The Work shall be completed in accordance with the Schedule of Values set forth by **BIDDERS** in Bid Form - Schedule of Values, which is attached hereto and made a part hereof.
8. **BIDDER** will, if this Bid is accepted by Owner, enter into the Agreement included in the Contract Documents to perform and furnish all Work as specified or indicated in the Contract Documents.
9. **BIDDER** has completed the following additional documents, which are attached hereto and made a part hereof: (See forms below)
  - (a) **NON-COLLUSION AFFIDAVIT**
  - (b) **CONSENT OF SURETY**
  - (c) **DISADVANTAGED BUSINESS ENTERPRISES (DBE) - Committal Sheet** [for detailed information see Section 6 Special Provisions -6.3.5 DBE Supplemental Specifications for DBE supplemental Specifications]
9. **BIDDER** has included with this Bid Form a Bid Security in an amount and under the terms and conditions indicated in the Instructions to Bidders.
10. **BIDDER** is organized under the laws of the State of \_\_\_\_\_ as a (indicate proprietorship, partnership, or corporation) as follows:

Name (of business): \_\_\_\_\_

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

Telephone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_

**Section 1.7 – Bid Submission Documents  
(Cont'd)**

**BID FORM**

South Carolina Bidder's License No.: \_\_\_\_\_

Local Contractor's License No.: \_\_\_\_\_

Contractor must obtain a General Contractor's License and a Bidder's License from the S.C. Licensing Board for Contractors before a contract is awarded to him. Such licenses shall not be a prerequisite to the submission of a bid.

Licensing Authority: \_\_\_\_\_

11. Communications concerning this Bid should be addressed to the attention of, as follows:

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

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

\_\_\_\_\_

Telephone No.: \_\_\_\_\_ FAX No.: \_\_\_\_\_

Email address \_\_\_\_\_

**SIGNED BY:**

\_\_\_\_\_ (Signature)

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

Title: \_\_\_\_\_ Date: \_\_\_\_\_, 2018

I, the above signed, certify that this Bid does not violate any Federal or State Antitrust Laws.

\_\_\_\_\_ (initial)

*(Balance of this page has been intentionally left blank)*

**Section 1.7 – Bid Submission Documents  
(Cont'd)**

**CONSENT OF SURETY**

**OWNER:** \_\_\_\_\_

**TITLE OF WORK:** \_\_\_\_\_  
(Complete above exactly as given in Invitation to Bid)

In consideration of the premises and of One Dollar (**\$1.00**), lawful money of the United States, it is in hand paid by the Contractor, the receipt whereof, is hereby acknowledged, the undersigned surety consents and agrees that if the contract, for which the preceding Bid is made, be awarded to the person or persons submitting the same as contracted, it will become bound as surety and guarantor for its faithful performance in an amount equal to one hundred percent (**100%**) of the Contract Price, and will execute as surety thereto when required to do so by the Owner, and if the said Contractor shall omit or refuse to execute such contract, if so awarded, it will pay without proof of notice and on demand to the Owner any increase between the sum of which the said Contractor would have been entitled upon the completion of the said Contract and the sum which the said Owner may be obligated to pay to another contractor to whom the contract may be afterwards awarded, the amount in such case to be determined by the bids plus the cost, if any, of re-advertising for bids for this work, less the amount of any certified check or bid bond payable and received.

In witness whereof, said surety has caused these presents to be signed and attested by a duly authorized officer and its corporate seal to be hereto affixed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(A corporate acknowledgment and statement of authority to be here attached by the surety company).

(Surety Company) \_\_\_\_\_

**BY:**

(Surety Company) \_\_\_\_\_

(Attorney-In-Fact) \_\_\_\_\_

Attest: \_\_\_\_\_

**Section 1.7 – Bid Submission Documents  
(Cont'd)**

**NON-COLLUSION AFFIDAVIT**

**OWNER:** \_\_\_\_\_

**TITLE OF WORK:** \_\_\_\_\_

(Complete above exactly as given in Invitation to Bid)

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

I, \_\_\_\_\_ of the \_\_\_\_\_ of \_\_\_\_\_ in  
the County of \_\_\_\_\_ and the State of \_\_\_\_\_ full age, being duly sworn  
according to Law on my oath depose and say that:

I am \_\_\_\_\_ of the firm of \_\_\_\_\_,  
the Bidder making the Bid for the above named Work, and that I executed the said Bid with full  
authority so to do; that said Bidder has not, directly or indirectly, entered into any agreement,  
participating in any collusion, or otherwise taken any action in restraint of free, competitive bidding  
in connection with the above named Work; and that all statements contained in said Bid and in  
the affidavit are true and correct, and made with full knowledge that the **OWNER** relies upon the  
truth of the statements contained in said Bid and in the statements contained in this affidavit in  
awarding the contract for the said Work.

I further warrant that no person or selling agency has been employed or retained to solicit or secure  
such contract upon an agreement or understanding for a commission, percentage, brokerage or  
contingent fee, except bona fide employees or bona fide established commercial or selling  
agencies maintained by \_\_\_\_\_.

(Name of Contractor) \_\_\_\_\_

(Also type or print name of affiant under signature) \_\_\_\_\_

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

**NOTARY PUBLIC of** \_\_\_\_\_

\_\_\_\_\_

My commission expires \_\_\_\_\_, 20\_\_\_\_.

**Section 1.7 – Bid Submission Documents  
(cont'd)**

May 2014

**DISADVANTAGED BUSINESS ENTERPRISES (DBE)  
COMMITTAL SHEET**

Information must be shown on this sheet as required by the supplemental specifications (Sec 6 - Special Provisions – 6.3.4 DBE Supplemental Specifications) entitled ““Disadvantaged Business Enterprises (DBE) Supplemental Specification” as referenced, and by inference are hereby included in this bid.

**FAILURE TO PROVIDE ALL INFORMATION REQUIRED ON THIS FORM MAY RESULT IN THE AWARD BEING MADE TO THE NEXT LOWEST RESPONSIBLE AND RESPONSIVE BIDDER. FOR DESIGN BUILD PROJECTS, FAILURE TO PROVIDE ALL INFORMATION REQUIRED ON THIS FORM MAY RESULT IN SANCTION IN ACCORDANCE WITH PART B OF THE DBE SUPPLEMENTAL SPECIFICATIONS.**

<sup>1</sup> Name & Address of DBE's (Subcontractor or Supplier)	<sup>2</sup> Percent	<sup>3</sup> Description of Work and Approximate Quantity <sup>6</sup> (show percent when appropriate)				<sup>5</sup> Dollar Value
		Item	Qty.	Unit	<sup>4</sup> Unit Price	

**BASED ON THE ABOVE, BIDDER'S TOTAL COMMITTAL FOR THIS CONTRACT: \_\_\_\_\_%**

**THE CONTRACT DBE GOAL LISTED IN ARTICLE 10 OF SECTION 6.0-SPECIAL PROVISIONS \_\_\_\_\_%**

- 1 The designation of Firm A and/or B is not considered acceptable. I hereby certify that this company has communicated with and received quotes from the DBE's listed above and that they are willing to perform the work as listed above and that this company is committed to utilizing the above firm(s) on this contract.
- 2 Percent – show percent of total contract amount committed to each DBE listed.
- 3 All information requested must be included unless item is listed in bid on a lump sum basis.
- 4 Unit Price – show unit price quoted by DBE.
- 5 Dollar Value – extended amount based on Quantity and Unit Price.
- 6 Applies to lump sum items only.

**Section 1.7 – Bid Submission Documents  
(cont'd)**

*(The form may be reproduced or additional sheets added in order to provide all requested information.)*

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

\_\_\_\_\_  
(Company)

\_\_\_\_\_(SEAL) By: \_\_\_\_\_

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

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

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

(Balance of this page intentionally left blank)

**Section 1.8 – Bid Submission Documents  
(Cont'd)**

**Section 1.8 - SCHEDULE OF VALUES  
CONTRACTOR BID TAB**

**BID FORM**

**MOSSY OAKS BASIN 2 - EAST (CDBG)**

LINE ITEM	PAY ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL PRICE
1	1031000	MOBILIZATION	1	LS		
2	1032010	BONDS AND INSURANCE	1	LS		
3	1050800	CONSTRUCTION STAKES, LINES & GRADES	1	EA		
4	1071000	TRAFFIC CONTROL	1	LS		
5	1090200	AS-BUILT CONSTRUCTION PLANS	1	LS		
6	2025000	REMOVAL & DISPOSAL OF EXISTING ASPHALT PAVEMENT	2451.1	SY		
7	2027000	REMOVAL & DISPOSAL OF EXISTING CONCRETE	544.5	SY		
8	2021005	REMOVAL & DISPOSAL OF EXISTING CATCH BASIN	1.0	EA		
9	2028500	REMOVAL & DISPOSAL OF EXISTING PIPE	346	LF		
10	2031000	UNCLASSIFIED EXCAVATION	300	CY		
11	2033000	BORROW EXCAVATION	150	CY		
12	2045000	COFFERDAM (TEMPORARY)	180	LF		
13	2081001	FINE GRADING	1100	SY		
14	2103000	FLOWABLE FILL	250	CY		
15	3100310	HOT MIX ASPHALT BASE COURSE - TYPE B	254	TON		
16	4011004	LIQUID ASPHALT BINDER PG64-22	60.80	TON		
17	4013990	MILLING EXISTING ASPHALT PAVEMENT (VARIABLE)	221.9	SY		
18	4020320	HOT MIX ASPHALT INTERMEDIATE COURSE TYPE B	755	TON		
19	4030320	HOT MIX ASPHALT SURFACE COURSE TYPE C	181	TON		
20	6041150	BARRICADE - TYPE 2	20	LF		
21	6041200	BARRICADE - TYPE 3	40	LF		
22	6020005	PERMANENT CONSTRUCTION SIGNS (GROUND MOUNTED)	481	SF		
23	6250005	4" WHITE BROKEN LINES (GAPS EXCL.)-FAST DRY PAINT	50	LF		
24	6250010	4" WHITE SOLID LINES (PVT. EDGE LINES)-FAST DRY PAINT	1400	LF		
25	6250015	8" WHITE SOLID LINES - (CROSSWALKS & CHANNELIZATION) - FAST DRY PAINT	80	LF		
26	6250025	24" WHITE SOLID LINES - (STOP/DIAGONAL LINES) - FAST DRY PAINT	50	LF		
27	6250110	4"YELLOW SOLID LINE(PVT.EDGE&NO PASSING ZONE)-FAST DRY PAINT	1400	LF		
28	6271005	4" WHITE BROKEN LINES (GAPS EXCL.) THERMOPLASTIC - 90 MIL.	50	LF		
29	6271010	4" WHITE SOLID LINES (PVT. EDGE LINES) THERMOPLASTIC - 90 MIL.	1400	LF		
30	6271015	8" WHITE SOLID LINES THERMOPLASTIC - 125 MIL.	80	LF		
31	6271025	24" WHITE SOLID LINES (STOP/DIAG LINES) - THERMO. - 125 MIL.	50	LF		
32	6271074	4" YELLOW SOLID LINES(PVT.EDGE LINES) THERMO-90 MIL.	1400	LF		
33	6531215	U-SECTION POST FOR SIGN BRACING - 2P	630	LF		
34	7143615	15" SMOOTH WALL PIPE	28	LF		
35	7143618	18" SMOOTH WALL PIPE	150	LF		
36	7143618	18" SMOOTH WALL PIPE (Class V)	24	LF		
37	7143618	14"x24" ELLIPTICAL SMOOTH WALL PIPE	24	LF		
38	7143624	24" SMOOTH WALL PIPE	188	LF		
39	7143624	24" SMOOTH WALL PIPE (Class V)	24	LF		
40	7143624	19"x30" ELLIPTICAL SMOOTH WALL PIPE	24	LF		
41	7143654	54" SMOOTH WALL PIPE	2344	LF		
42	7143660	60" SMOOTH WALL PIPE	112	LF		
43	7149999	CLEAN OUT EXISTING DITCH (2' FLAT BOTTOM OR SMALLER)	3415	LF		
44	7149999A	CLEAN OUT EXISTING DITCH (2' - 14' FLAT BOTTOM)	150	LF		
45		FLARED END SECTION - 54" RCP	2	EA		
46	7192010	DROP INLET (24"x24")	2	EA		
47	7192107	JUNCTION BOX (6'x12')	4	EA		
48	7204100	CONCRETE SIDEWALK (4" UNIFORM)	440	SY		
49	7204900	DETECTABLE WARNING MATERIAL	40	SF		
50	7205000	CONCRETE DRIVEWAY(6" UNIFORM)	45	SY		
51	7209000	PEDESTRIAN RAMP CONSTRUCTION	50	SY		
52	8041020	RIP-RAP (CLASS B)	473	TON		
53	8048200	GEOTEXTILE FOR EROSION CONTROL UNDER RIPRAP(CLASS 2)TYPE A	442	SY		
54	8100100	PERMANENT COVER	1.15	ACRE		
55	8100200	TEMPORARY COVER	1.15	ACRE		

**Section 1.8 – Bid Submission Documents  
(Cont'd)**

56	8131000	SODDING	1.00	MSY		
57	8104005	FERTILIZER (NITROGEN)	115	LB		
58	8104010	FERTILIZER (PHOSPHORIC ACID)	115	LB		
59	8104015	FERTILIZER (POTASH)	115	LB		
60	8105005	AGRICULTURAL GRANULAR LIME	704	LB		
61	8109901	MOWING	2	ACRE		
62	8151101	TURF REINFORCEMENT MATTING (TRM) TYPE 1	2.000	MSY		
63	8152007	SEDIMENT TUBES FOR DITCH CHECKS	140	LF		
64	8153000	SILT FENCE	1056	LF		
65	8153090	REPLACE/REPAIR SILT FENCE	106	LF		
66	8153106	FLOATING TURBIDITY BARRIER-LIGHT DUTY(6'DEPH)	125	LF		
67	8154050	REMOVAL OF SILT RETAINED BY SILT FENCE	264	LF		
68	8156200	CLEANING INLET STRUCTURE FILTERS	36	LF		
69		DEWATERING SEDIMENT FILTER BAG	1.9957	EA		
70	8156219	INLET STRUCTURE FILTER - TYPE A	180	LF		
71	8156300	SEDIMENT DAM RIPRAP	90	TON		
					TOTAL OF PROJECT = \$	-



**Section 1.9 – Bid Submission Documents**

**CONTRACTOR'S QUALIFICATION STATEMENT**

**A. GENERAL**

1 Submit to: \_\_\_\_\_

2 Name of Project (if applicable): \_\_\_\_\_

3 Contractor \_\_\_\_\_

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

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

Street Address \_\_\_\_\_

Telephone Number (including area code): \_\_\_\_\_

Facsimile Number (including area code): \_\_\_\_\_

Contact Person \_\_\_\_\_

Contact Person's Telephone Number: \_\_\_\_\_

South Carolina Contractor's License Number: \_\_\_\_\_

**B. BUSINESS ORGANIZATION**

1 Check type of business organization:

Corporation \_\_\_\_\_ Partnership \_\_\_\_\_ Individual \_\_\_\_\_

Joint Venture \_\_\_\_\_ Other \_\_\_\_\_

2 Status

(a) If a corporation:

State of Incorporation: \_\_\_\_\_

(b) If not incorporated in South Carolina,

State Corporation Commission Registration Number: \_\_\_\_\_

Date of Incorporation: \_\_\_\_\_

Federal I.D. Number \_\_\_\_\_

**Section 1.9 – Bid Submission Documents**  
**CONTRACTOR'S QUALIFICATION STATEMENT**  
**(Cont'd)**

	<u>Name</u>	<u>Address</u>	<u>Phone No.</u>	<u>Years in Position</u>
<u>Officers:</u>				
President	_____	_____	_____	_____
Vice President (s)	_____	_____	_____	_____
Secretary	_____	_____	_____	_____
Treasurer	_____	_____	_____	_____

(c) Are you a Subchapter S Corporation: Yes \_\_\_\_\_ No \_\_\_\_\_

Subchapter S Shareholders:

<u>Name</u>	<u>Address</u>	<u>Phone No.</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

(If more than three shareholders, attach a separate list to this document)

3 If a partnership:

Date of Organization: \_\_\_\_\_

Type of partnership: \_\_\_\_\_

List of General Partners:

<u>Name</u>	<u>Address &amp; Phone No.</u>	<u>Years as GP</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

4 If individually owned:

<u>Name</u>	<u>Address &amp; phone number of sole proprietor:</u>
_____	_____

Years in business: \_\_\_\_\_

**Section 1.9 – Bid Submission Documents**  
**CONTRACTOR'S QUALIFICATION STATEMENT**  
**(Cont'd)**

5 Have you ever operated under another name? Yes \_\_\_\_\_ No \_\_\_\_\_

*If yes, then list*

(a) All other business names and addresses of principal place of business for each business.

i \_\_\_\_\_

i \_\_\_\_\_

ii \_\_\_\_\_

(If more than three businesses, attach a separate list to this document that includes information required by sections (b) & (c) of this item)

(b) Number of years in business under each name:

i \_\_\_\_\_

ii \_\_\_\_\_

iii \_\_\_\_\_

(c) Contractor's license number in each state in which a business was operated. i .

—

ii \_\_\_\_\_

iii \_\_\_\_\_

**C. BONDING**

1 Bonding Agent: \_\_\_\_\_

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

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

Telephone Number (including area code) \_\_\_\_\_

Contact Person \_\_\_\_\_

2 Bonding Company: \_\_\_\_\_

(SURETY Company for Payment Bond must be on Treasury List)

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

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

Telephone Number (including area code) \_\_\_\_\_

**Section 1.9 – Bid Submission Documents**  
**CONTRACTOR'S QUALIFICATION STATEMENT**  
**(Cont'd)**

Contact Person \_\_\_\_\_

Best's Key Rating of bonding company: \_\_\_\_\_

3 Number of years this bonding company has acted as surety for you: \_\_\_\_\_

4 Bonding Capacity: Maximum single size job: \$ \_\_\_\_\_  
(Minimum 5 x Contract Value)

Total bonding limit: \$ \_\_\_\_\_

5 Do you intend to use any alternative form of security?

If so, indicate the form of security you intend to use and the name, address, point of contact, and telephone number of the banks, savings and loan, or surety you intend to use.

(NOTE: *Prequalification will not assure acceptance of any form of security.*)

<u>Form of Security</u>	<u>Bank or Savings &amp; Loan</u>	<u>Contact</u>	<u>Address &amp; Phone #</u>
-------------------------	-----------------------------------	----------------	------------------------------

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

6 Have any Performance or Payment Bond claims ever been paid by any surety on behalf of your organization?

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, state the name of the project(s); the date; the name, address, telephone number, and contact person for the claimant; the surety satisfying the claim; the size of the claim; and the circumstances giving rise to the claim. (Provide attachments if necessary.)

_____
_____
_____

7 Have you ever arbitrated or litigated a claim with an Owner, Architect, or Engineer in the last five years?

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, state the name of the project(s); the date; the name, address, telephone number, and contact person for the claimant; the surety satisfying the claim; the size of the claim; and the circumstances giving rise to the claim. (Provide attachments if necessary.)

_____
_____

**Section 1.9 – Bid Submission Documents**  
**CONTRACTOR'S QUALIFICATION STATEMENT**  
**(Cont'd)**

8 If you answer yes to any of the following, provide the name, address, telephone number, contact person, and circumstances relating to the question on a separate attachment.

Have you or any officer, partner, or owner of your organization, in any state or territory of the United States, or with respect to any agency of the Local, State or Federal government:

- a. In the last five years, received any fines or citations for building code violations which were unrelated to design? Yes\_\_\_\_\_ No \_\_\_\_\_
- b. Ever been found to be guilty of charges relating to conflicts of interest: Yes\_\_\_\_\_ No \_\_\_\_\_
- c. Ever been convicted on charges related to any criminal activity relating to construction means, methods, or techniques; bidding or bid rigging; or bribery? Yes\_\_\_\_\_ No \_\_\_\_\_
- d. In the last five years, been found guilty of any minority contracting law violations? Yes\_\_\_\_\_ No \_\_\_\_\_
- e. In the last five years, pleaded no contest in any criminal proceeding related to contracting? Yes\_\_\_\_\_ No \_\_\_\_\_
- f. Ever been disbarred from doing Federal, state, or local government work for any reason? Yes\_\_\_\_\_ No \_\_\_\_\_
- g. Ever been terminated on a contract due to your default? Yes\_\_\_\_\_ No \_\_\_\_\_
- h. In the last five years, paid liquidated damages for being late on a project? Yes\_\_\_\_\_ No \_\_\_\_\_
- i. In the last five years, been subject to tax collection proceedings? Yes\_\_\_\_\_ No \_\_\_\_\_
- j. In the last seven years, filed for bankruptcy? Yes\_\_\_\_\_ No \_\_\_\_\_

If the answer to **j.** was yes, under what chapter of bankruptcy did you file?

---

If you filed under Chapter 11 Reorganization, how long did you operate under this status? \_\_\_\_\_

Are you operating under Chapter 11 status now? Yes\_\_\_\_\_ No \_\_\_\_\_

**Section 1.9 – Bid Submission Documents  
CONTRACTOR'S QUALIFICATION STATEMENT**

**D. SAFETY**

- 1 Have you, in the last three years, been cited for willful violations for failure to abate, or for repeated violations, by the United States Occupational Safety and Health Administration or by the South Carolina Occupational Safety and Health Administration or by any other governmental body?

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, state date, name, address, telephone number, and contact person for agency issuing citation and the nature of the violation. Also, advise the number of fines paid, if any. (Provide attachments if necessary.)

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- 2 Describe, in detail, the major components of your safety program. (Provide attachments if necessary.)

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- D.3 List your workman's compensation experience modifier for the last three years.

20 \_\_\_\_\_

20 \_\_\_\_\_

20 \_\_\_\_\_

**E. KEY PERSONNEL AND PROJECTS**

- 1 Attach a resume for the designated employee registered with the State Board of Contractors. As a minimum, provide number of years in his/her field, number of years with your organization, education, registrations, awards, prior employment experience, etc.
- 2 Attach a list of all projects (not a selective sampling) over one million dollars in size, with location address, total dollar values, and dollar values completed by your organization's office which will handle this project that have been completed in the last five years. Provide the names, addresses, telephone numbers, and contacts for the Owner and Architect or Engineer for each project.

**Section 1.9 – Bid Submission Documents**  
**CONTRACTOR'S QUALIFICATION STATEMENT**  
**(Cont'd)**

- 3 List three completed projects which are most relevant to the project(s) proposed by this Owner.

JOB #1 Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Size of Project \_\_\_\_\_  
Owner's Name \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_  
Contact: \_\_\_\_\_  
Architect's/Engineer's Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_  
Contact: \_\_\_\_\_  
Final Contract Amount: \_\_\_\_\_  
Provide Project Description: \_\_\_\_\_

JOB #2 Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Size of Project \_\_\_\_\_  
Owner's Name \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_  
Contact: \_\_\_\_\_  
Architect's/Engineer's Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_  
Contact: \_\_\_\_\_  
Final Contract Amount: \_\_\_\_\_

**Section 1.9 – Bid Submission Documents**  
**CONTRACTOR'S QUALIFICATION STATEMENT**  
**(Cont'd)**

JOB #3      Name: \_\_\_\_\_

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

Size of Project \_\_\_\_\_

Owner's Name \_\_\_\_\_

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

Telephone Number: \_\_\_\_\_

Contact: \_\_\_\_\_

Architect's/Engineer's Name: \_\_\_\_\_

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

Telephone Number: \_\_\_\_\_

Contact: \_\_\_\_\_

Final Contract Amount: \_\_\_\_\_

Provide Project Description: \_\_\_\_\_

4 Provide your gross annual receipts for the last three years.

20\_\_      \$ \_\_\_\_\_

20\_\_      ..\$ \_\_\_\_\_

20\_\_      \$ \_\_\_\_\_

5 Attach a list of your current work in progress. As a minimum, provide project names and addresses, contract amounts, percentages complete, schedule status, and contact names for the Owners and Architects/Engineers.

6 What qualifications relevant to the project(s) proposed by this Owner do you believe are unique to your organization?

\_\_\_\_\_

\_\_\_\_\_

7 What is the range (dollar value) of project you prefer? \_\_\_\_\_

\_\_\_\_\_



**Section 1.9 – Bid Submission Documents**  
**CONTRACTOR'S QUALIFICATION STATEMENT**  
**(Cont'd)**

8 Staffing:

- a) State how your firm would staff this project.

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- b) Provide resumes for key personnel to be assigned to this project. As a minimum, provide resumes for the project manager and site superintendent, including number of years' experience in his/her field, number of years with your organization, education, registrations, award, prior employment experience, references, etc. (Provide attachments as necessary.)

**F. REFERENCES**

- 1 List at least five references from each industry group listed. Provide other references as requested. (On a separate attachment, provide current names, addresses, telephone numbers, and contacts for each of your listed references.)

- a) Architects/Engineers:

---

---

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---

---

- b) Major Subcontractors:

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---

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---

---

- c) Financial Institutions:

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**Section 1.9 – Bid Submission Documents  
CONTRACTOR'S QUALIFICATION STATEMENT  
(Cont'd)**

d) Owners:

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**CERTIFICATION:** The foregoing is a statement of fact.

---

Signature	Typed/Printed Name and Title	Date
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*(Balance of this page was intentionally left blank)*

**SECTION ONE**  
**BID SUBMISSION**

**MOSSY OAKS**  
**DRAINAGE PROJECT – BASIN 2 EAST (CDBG)**  
**~ 2020 ~**

**PREVAILING WAGES**

**SECTION 1.10**

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**SECTION 1.10.1 – Prevailing Wages – SC 1  
 BID DOCUMENTS (as of 1/3/2020)**

General Decision Number: SC 20200001 01/03/2020

SCI Superseded General Decision Number:

SC20190001 State: South Carolina

Construction Types: Heavy (Heavy and Sewer and Water Line)

**Counties:** Abbeville, Allendale, Bamberg, Barnwell, Beaufort, Cherokee, Chester, Chesterfield, Clarendon, Colleton, Dillon, Georgetown, Greenwood, Hampton, Jasper, Lancaster, Lee, Marion, Marlboro, McCormick, Newberry, Oconee, Orangeburg, Union and Williamsburg Counties in South Carolina.

DOES NOT INCLUDE SAVANNAH RIVER SITE IN ALLENDALE AND BARNWELL COUNTIES

HEAVY CONSTRUCTION PROJECTS (includes Sewer & Water Line projects)

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.80 for calendar year 2020 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.80 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2020. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Modification Number	Publication Date
0	01/03/2020

SUSC1990-005 02/08/1990

	Rates	Fringes
Boilermaker (tank work) .....	\$12.96	3.315
Bricklayer .....	\$7.25	
Carpenter .....	\$7.42	
Cement mason/concrete finisher .....	\$7.25	
Ironworker .....	\$10.98	
Laborers:		
Chainsaw .....	\$7.25	
General .....	\$7.25	
Pipe layer .....	\$7.25	

**SECTION 1.10.1 – Prevailing Wages – SC 1  
BID DOCUMENTS**

Pipefitter ..... \$ 9.09

Power equipment operators:

Backhoe ..... \$7.25

Bulldozer ..... \$7.25

Crane..... \$7.98

Dragline ..... \$7.25

Front End Loader .....\$7.25

Mechanic ..... \$7.25

Motor grader..... \$7.25

Pan Scraper ..... \$7.25

Line Construction:

Line technician .....\$10.08

Manhole Builder .....\$7.25

Truck Driver..... \$7.25

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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.  
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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year.

Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

**SECTION 1.10.1 – Prevailing Wages – SC 1  
BID DOCUMENTS**

**Union Rate Identifiers**

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198—005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

**Survey Rate Identifiers**

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

**Union Average Rate Identifiers**

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data.

EXAMPLE: UAVG-OH-0010

08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH, indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

-----  
**WAGE DETERMINATION APPEALS PROCESS**

- 1) Has there been an initial decision in the matter? This can be:
  - \* an existing published wage determination
  - \* a survey underlying a wage determination
  - \* a Wage and Hour Division letter setting forth a position on a wage determination matter
  - \* a conformance (additional classification and rate) ruling

**SECTION 1.10.1 – Prevailing Wages – SC 1  
BID DOCUMENTS**

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

- 2) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7) . Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

- 3) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

- 4) All decisions by the Administrative Review Board are final.

-----  
END OF GENERAL DECISION

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**SECTION 1.10.2 – Prevailing Wages – SC 40  
BID DOCUMENTS**

Colleton.....	\$10.16
Georgetown, Hampton, Jasper.....	\$10.07
Newberry, Allendale, Bamberg, Barnwell .....	\$11.82
Orangeburg .....	\$12.63
Williamsburg.....	\$10.01
Luteman .....	\$11.71
Pipelayer .....	\$13.87
Traffic Control-Cone Setter	
Allendale, Bamber, Barnwell, Newberry, Orangeburg .....	\$12.98
Beaufort, Colleton, Georgetown, Hampton, Jasper, Williamsburg .....	\$12.84
Traffic Control-Flagger....., .....	\$11.68
<b>POWER EQUIPMENT OPERATOR:</b>	
Backhoe/Excavator/Trackhoe	
Allendale, Bamberg, Barnwell, Newberry, Orangeburg .....	\$17.56
Beaufort.....	\$15.20
Colleton .....	\$17.78
Georgetown, Hampton, Jasper, Williamsburg.....	\$17.23
Bulldozer .....	\$20.12
Crane.....	\$16.62
Grader/Blade .....	\$16.62
Loader (Front End) .....	\$15.51
Mechanic.....	\$18.22
Milling Machine.....	\$18.83
Paver	
Allendale, Bamberg, Barnwell, Newberry, Orangeburg, Williamsburg.	\$15.01
Beaufort.....	\$14.96
Colleton, Georgetown, Hampton, Jasper .....	\$13.67
Roller .....	\$12.76
Screed .....	\$13.01
Tractor .....	\$13.26

**SECTION 1.10.2 – Prevailing Wages – SC 40  
BID DOCUMENTS**

**TRUCK DRIVER**

Dump Truck.....	\$12.00
Lowboy Truck.....	\$14.43
Single Axle, Includes	
Pilot Car.....	\$12.04
Tractor Haul Truck.....	\$16.25

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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

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**SECTION 1.10.2 – Prevailing Wages – SC 40  
BID DOCUMENTS**

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A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

**WAGE DETERMINATION APPEALS PROCESS**

1.) Has there been an initial decision in the matter? This can be:

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- \* a survey underlying a wage determination
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Branch of Construction Wage Determinations  
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U.S. Department of Labor  
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Washington, DC 20210

**SECTION 1.10.2 – Prevailing Wages – SC 40  
BID DOCUMENTS**

- 2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

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200 Constitution Avenue, N.W.  
Washington, DC 20210

- 4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

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**Sec 1.10.3 - Mitigation Measures**

**Mitigation Measures and Conditions [40 CFR 1505.2(c)]**

Summarize below all mitigation measures adopted by the Responsible Entity to reduce, avoid, or eliminate adverse environmental impacts and to avoid non-compliance or non-conformance with the above-listed authorities and factors. These measures/conditions must be incorporated into project contracts, development agreements, and other relevant documents. The staff responsible for implementing and monitoring mitigation measures should be clearly identified in the mitigation plan.

Law, Authority, or Factor	Mitigation Measure
Floodplains	<p><i>Department of the Army HH&amp;G Section letter dated 05/31/18 stated project is located in Zone AB (El.13), areas located in the 100-year flood boundary with a base flood elevation of 11 feet referenced to the National Geodetic Vertical Datum of 1929.</i></p> <p><i>Since a portion of the project may be subject to flood hazards, project design is required to include provisions to (a) assure that flood hazards will not be created by flow obstruction or debris collections, (b) protect pipes from high velocity at stream crossings, and (c) flood proof any Electrical/mechanical equipment that would be damaged by flood waters.</i></p> <p><i>An Eight Step Process has been completed.</i></p>
Wetlands	<p><i>Department of the Army Regulatory Division letter (pending)</i></p> <p><i>The project area associated with the proposed drainage improvements in the Mossy Oaks community includes wetlands and other waters of the US that have been appropriately delineated and documented as part of the project development. The majority of these waters appear to ultimately drain to Battery Creek approximately 500 feet downstream of the PSA. In summary, 53.82-acre PSA includes two traditionally navigable waters (TNW A and BJ that are collectively 0.70 acres, five jurisdictional wetland areas (Jurisdictional Wetland C, D, E, F and G) that are collectively 2.03 acres, and three 11011-JW features (NJD 1,2 and 3) totaling 0.75 acres. JW C is 0.04 acres JW D is 0.14 acres, JW E is 0.18 acres, JW F is 1.40 acres and JW G is .027 acres</i></p> <p><i>NJ feature 1 is 0.65-acre man made ditch originating from a closed system, NJ Feature 2 is 0.05-acre man made ditch, NJ Feature 3 is 0.05-acre retention pond</i></p> <p><i>Infrastructure Consulting &amp; Engineering</i></p>

*JD submitted to ACE - Regulatory  
All required permits will be obtained.*

## SECTION TWO

### CONTRACT DOCUMENTS

#### MOSSY OAKS

#### DRAINAGE PROJECT – BASIN 2 EAST (CDBG)

~ 2020 ~

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## Section 2 – Contract Documents

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

#### CITY OF BEAUFORT CONTRACT for MOSSY OAKS DRAINAGE PROJECT – BASIN 2 EAST (CDBG)

**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 \_\_\_\_\_, 20\_\_\_\_ and between the City of Beaufort, South Carolina and \_\_\_\_\_ 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:**

#### **Mossy Oaks Drainage Project – BASIN 2 EAST (CDBG)**

hereinafter called the “**Project**”, for the sum of \_\_\_\_\_ (\$ \_\_\_\_\_) 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 bid, 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 **180** 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 **180** 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

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

**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 **NOT** be amended to change / modify the value of retainage.

**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. Retainage must remain 10% throughout the contract.

**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.

**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,

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

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 \_\_\_\_\_ to \_\_\_\_\_ 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

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.

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

- 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)



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

**NOTICE OF AWARD**

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

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

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

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

Owner: **City of Beaufort**

Title of Work: **Mossy Oaks Drainage Project – BASIN 2 EAST (CDBG)**

Location: **Mossy Oaks Neighborhood**

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

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

**NOTICE TO PROCEED**

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

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

**PROJECT DESCRIPTION:**

**Mossy Oaks Drainage Project – BASIN 2 EAST (CDBG)**

You are hereby notified to commence WORK in accordance with the Agreement dated \_\_\_\_\_, 20\_\_\_\_, and you are to complete the WORK within **180** 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 \_\_\_\_\_

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

**CHANGE ORDER**

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

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

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

**NAME OF PROJECT:** Mossy Oaks Drainage Project – BASIN 2 EAST (CDBG)

**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) \_\_\_\_\_

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**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  
depose 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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Mossy Oaks Drainage Project

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

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**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: **Mossy Oaks Drainage Project – BASIN 2 EAST (CDBG)** 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 \_\_\_\_\_

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**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, administrator, 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:

**Mossy Oaks Drainage Project – BASIN 2 EAST (CDBG)**

in accordance with drawings and specifications prepared by City of Beaufort 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 understand, 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 Bid 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 Bid is genuine and is not a collusive or sham Bid;
- (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 Bid 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 Bid, 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 Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Bidder or any 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



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**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 **Mossy Oaks Drainage – BASIN 2 EAST (CDBG)** 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: \_\_\_\_\_

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SECTION 3  
STANDARD  
GENERAL CONDITIONS  
OF THE  
CONSTRUCTION CONTRACT

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly By



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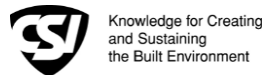
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## GENERAL CONDITIONS

### 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 bid 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 adaptation 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.

#### 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 bid 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's Expense:*

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

*6.06 Concerning Subcontractors, Suppliers, and Others*

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

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

whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.

C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:

1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity, nor
2. shall 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. ~~If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.~~
4. Costs of special consultants (including but not limited to Engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:
  - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
  - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
  - c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
  - d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, 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. *Contractor's Fee:* When all the Work is performed on the basis of cost plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.~~

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

#### 11.02 Allowances

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

##### *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

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

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

11.03 Unit Price Work

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.

B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.

C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.

D. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:

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

ARTICLE 12 - CHANGE OF CONTRACT PRICE;  
CHANGE OF CONTRACT TIMES

12.01 Change of Contract Price

A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:

1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of

the items involved (subject to the provisions of Paragraph 11.03); or

2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or
3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).

C. *Contractor's Fee:* The Contractor's fee for overhead and profit shall be determined as follows:

1. a mutually acceptable fixed fee; or
2. ~~if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:~~
  - a. ~~for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;~~
  - b. ~~for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;~~
  - c. ~~where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraph 12.01.C.2.a is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;~~
  - d. ~~no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;~~
  - e. ~~the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and~~
  - f. ~~when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.~~

*12.02 Change of Contract Times*

A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

*12.03 Delays*

A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.

B. If Owner, Engineer, or other contractors or utility owners performing 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.

#### 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**

#### **MOSSY OAKS**

#### **DRAINAGE PROJECT – BASIN 2 EAST (CDBG)**

**~ 2020 ~**

**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 2.05B-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 for 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 2007 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 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 - Bid

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

Bid 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-Bid

Delete any reference to electronic bidding and add the following additional language after the last paragraph:

*No bid 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 bid 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 bid 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 bids sent by mail must be received by the City Manager's Office prior to the time specified in the **Invitation to Bid**. Bids 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 Bids

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 Bid 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 its 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**

# **MOSSY OAKS DRAINAGE PROJECT BASIN 2 EAST (CDBG)**

**~ 2020 ~**

**SECTION FIVE - GENERAL PROVISIONS**

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- 3) Contract Liability
- 4) Additional Liability Coverage - Owner, Engineer & SCDOT

Part B – Property Insurance

- 1) Builders Risk
- 2) Boiler and Machinery

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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 insureds on **CONTRACTOR'S** General Liability Policy, or By issue of a separate Protective Liability Policy covering **OWNER, ENGINEER & SCDOT** for the coverage and 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

### MOSSY OAKS DRAINAGE PROJECT BASIN 2 EAST (CDBG)

~ 2020 ~

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## SECTION SIX - SPECIAL PROVISIONS

### SECTION 6.0 -SPECIAL PROVISIONS: MOSSY OAKS DRAINAGE IMPROVEMENTS– BASIN 2 EAST (CDBG)

#### 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. **There shall be no pre-qualifications of the Bidders.**

#### 3. City’s Representative

- A. The Project Manager for Infrastructure Consulting & Engineering shall be the City of Beaufort Representative for this project.

- B. **The ENGINEER shall verify the amount of work completed on the above referenced reconstruction projects with the CONTRACTOR before Progress Payments are issued.**

#### 4. 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.

#### 5. 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.

#### 6. 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.

**SECTION 6.0 - SPECIAL PROVISIONS  
(Cont'd)**

**7. 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.

**8. Construction Notes All Referenced Roads**

- A. **Material** – Contractor shall coordinate with The City of Beaufort (843) 525-7070 as to where any overburden from the project is to be stockpiled. It shall be the obligation of the property owner to adequately protect stockpiled material from the project that has been placed on their lands.
- 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.

## SECTION 6.0 - SPECIAL PROVISIONS (Cont'd)

- 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  
Dominion Energy Gas – (843) 815-8807

### 7. Other Pertinent Utility Agencies for This Contract

Dominion Energy (electric) – (843) 525-7751  
Century Link (Telephone) – (843) 521-7424  
Hargray (telephone and Cable) – (843)815-2314

### 9. 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**.
- C. Asphalt cores shall be obtained by outside agencies Contractor to hire and pay for an accredited/approved Asphalt Testing Agency.

### 10. 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.

### 11. 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

## SECTION 6.0 - SPECIAL PROVISIONS (Cont'd)

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.

### 12. RIGHT OF WAY AVAILABILITY AND STAGING

REQUIREMENTS: Mossy Oaks Drainage

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.

### 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 **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.

#### B. Lane Closure

The City prohibits lane closures on Battery Creek Road during peak business hours, Monday through Friday from 8:00-9:00 AM and 4:30-6:00 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.

### 14. TECHNICAL SECTION

Cleaning Up Work Site



**SECTION 6.0 - SPECIAL PROVISIONS  
(Cont'd)**

- 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
- 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.

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**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/project\\_support/traffic\\_engineering/approved\\_products\\_list.pdf](https://www.scdot.org/business/project_support/traffic_engineering/approved_products_list.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 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*

**SECTION 6.0 - SPECIAL PROVISIONS  
(Cont'd)**

- d) to SCDOT and that the policies cannot be cancelled for non-payment of premiums until at least
- e) 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.
- f) 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.*

**3. SECTION 106: QUALIFIED PRODUCT LISTINGS**

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.*

**4. 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).*

**5. 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.

**6. 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.

**7. SECTION 107: CRANE SAFETY:**

See attached Supplemental Specification dated August 1, 2013

**8. SECTION 107: REQUIREMENTS FOR FEDERAL AID CONTRACTS WHICH AFFECT SUBCONTRACTORS. DBE HAULERS. MATERIAL SUPPLIERS AND VENDORS:**

See attached Supplemental Specification dated March 1, 2010

**SECTION 6.0 - SPECIAL PROVISIONS  
(Cont'd)**

**9. SECTION 107: DISADVANTAGED BUSINESS ENTERPRISES (DBE) GOALS AND REQUIREMENTS:**

The DBE goal for the project is as follows:

**DISADVANTAGE BUSINESS ENTERPRISES CONTRACT GOAL 10 %**

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.

**10. 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.*

**11. 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-ordinate these activities with and receives guidance from the SCDOT Public Affairs Office.

**12. 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.

**13. 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:

**SECTION 6.0 - SPECIAL PROVISIONS  
(Cont'd)**

- a) to certify its compliance with the requirements of Chapter 14 of Title 8 of the S.C. Code of Laws a) 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).

**14. 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

- 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.

**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.

**SECTION 6.0 - SPECIAL PROVISIONS  
(Cont'd)**

- b) Prior to marking the sign location, care must be taken when marking the signs to ensure that
- c) 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.
- d) 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.

**15. 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 bid, 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. 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

## SECTION 6.0 - SPECIAL PROVISIONS (Cont'd)

- iii. 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 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.
  - iv. 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**.
  - v. 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.
  - vi. 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

**16. 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.*

### 17. SECTION 815: EROSION CONTROL MEASURES:

See attached Supplemental Specification dated **January 1, 2009**,

### 18. SECTION 815: EROSION CONTROL:

See attached Supplemental Specification Dated **July 1, 2011**

**TITLE SHEET**

**SECTION SIX .ONE**

**CDBG**

**GENERAL SPECIAL PROVISIONS**

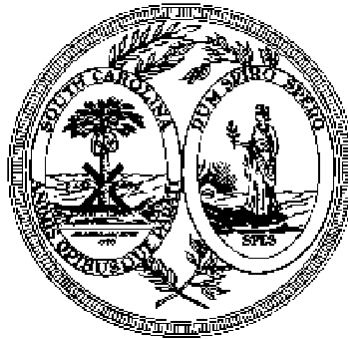
**DEPARTMENT OF COMMERCE CONTRACT**

**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**  
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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.



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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**  
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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 ensure 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**  
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- (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**  
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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.

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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-based 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.

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**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

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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 asset 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,



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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

**SECTION 6.1 – SPECIAL PROVISIONS**  
**Department of Commerce – Contract**  
**(Cont'd)**

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 of 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**  
**Department of Commerce – Contract**  
**(Cont'd)**

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**  
**Of**  
**SPECIAL PROVISIONS**

**~SUPPLEMENTAL SPECIFICATIONS~**

**MOSSY OAKS**  
**DRAINAGE PROJECT – BASIN 2 EAST**  
**~ 2020 ~**

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SUPPLEMENTAL SPECIFICATIONS

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 allowed 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.

SUPPLEMENTAL SPECIFICATIONS

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.

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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.

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 subcontractors 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 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 COMMITMENT**

- 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

**DBE Supplemental Specifications  
(Cont'd)**

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

**DBE Supplemental Specifications  
(Cont'd)**

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.

**DBE Supplemental Specifications  
(Cont'd)**

- (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 bids 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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Contractor'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.

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Sample placard:

Operated by:  Bell's Trucking, LLC USDOT 123456
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**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:

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- 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.

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**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.

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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.

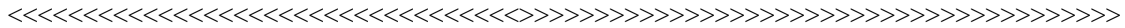
NOTE: On Contractor furnished borrow pits the contractor is not entitled to any additional time or money for delay on impact resulting from A (1) above or for extra work required by A(1) above. Therefore, contractors may wish to retain professional archaeological services to better ensure that borrow 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

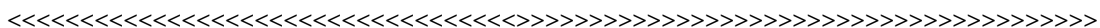


**ESTABLISHMENT OF A DRUG FREE WORKPLACE**

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:

- (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**



## REQUIRED CONTRACT PROVISIONS FEDERAL- AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Non-segregated 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 or INVITATION FOR BID 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,

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 to 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 minorities, 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 asset 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 journeyman 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 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 bid, 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 bid 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 bid 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 bid 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 bid 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/bid 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 bid.

**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 bid, 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 bid 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 bid 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 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).

e. The prospective lower tier participant agrees by submitting this bid 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 bid 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 bid, 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.

1. The prospective participant certifies, by signing and submitting this bid, 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 bid 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.

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 bid.

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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)

**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

<i>Timetable</i>	<i>Goals (percent)</i>
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, Cuban, Central or South American or other

SUPPLEMENTAL SPECIFICATIONS

- 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:
    - a. 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.
    - b. 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.
    - c. 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.
    - d. 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.
    - e. 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.
    - f. 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.
    - g. Review at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including



SUPPLEMENTAL SPECIFICATIONS

- 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 workforce.
  - 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 if 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 BID, ADDENDUMS, AMENDMENTS, PLANS, STANDARD SPECIFICATIONS, SUPPLEMENTAL SPECIFICATIONS, AND SPECIAL PROVISIONS ARE PART OF THIS BID 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 28U.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 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 IS REQUIRED:

Executed on \_\_\_\_\_, 20\_\_.

Signed:

\_\_\_\_\_

(Officer/Proposer)

\_\_\_\_\_

(Title)

\_\_\_\_\_

(Company)

\_\_\_\_\_

(Address)

SEAL